

Update

Newsflash May 2013

Work permit quotas for all EU countries

In the coming 12 months, workers from EU states will have only restricted access to the Swiss labour market. Indeed, the Swiss government decided on 24 April 2013 to invoke the safeguard clause contained in the Agreement on the Free Movement of Persons. As a result, quotas will apply for a period of one year to category B work permits for nationals of EU states, including countries such as France, Germany or Italy.

Background

Switzerland is an attractive destination for migrants, and over recent years the number of people coming to reside and work in the country has risen each year. According to the Swiss government, this steady growth has both positive and negative effects on the economy and the labour market, on the social insurance system, the spatial planning, the housing market and the infrastructures.

In this context, the Swiss government has addressed the question of how to deal with certain adverse consequences of immigration and has come to the conclusion that the so-called "safeguard clause" represents one measure which can help to make immigration more acceptable to society and compatible with its needs.

Safeguard clause

The Agreement on the Free Movement of Persons ("AFMP") contains a safeguard clause which allows Switzerland, for up to twelve years after the AFMP's entry into force (*i.e.* until 31 May 2014), unilaterally to reintroduce authorization quotas. In order to invoke the safeguard clause, the number of newly-issued work and residence permits issued over a period of one year must exceed by 10% the average of the past three years.

First application in 2012 for the EU-8 states

In April 2012, the Swiss government decided to apply for the first time the safeguard clause with effect as of 1 May 2012. This first application concerned workers from the 8

new EU Members, *i.e.* Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia and the Czech Republic, applying for B-permits (long term work permits of more than two years). This restriction was applicable for a period of one year, *i.e.* until 30 April 2013.

Second application in 2013 for the EU-8-states and the EU-17 states

On 24 April 2013, the Swiss government decided to maintain the safeguard clause for an additional one year with respect to nationals of the EU-8 states, but also to extend its application to nationals of the EU-17 states as well, provided certain quantitative requirements would be met by 31 May 2013 (the EU-17 comprises the western and southern European countries: Belgium, Cyprus, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Sweden, Spain and the United Kingdom).

On 15 May 2013, the quantitative requirements for the activation of the safeguard clause with respect to the EU-17 countries were reached. As a consequence, the granting of B work permits to EU-17 nationals will also be subject to quotas.

Quotas

After 1 May 2013, the quotas for B work permits will thus be kept in place for nationals of the EU-8 states, and as of 1 of June 2013, quotas will be applied to B work permits for nationals of the EU-17 states as well. Quotas of around

2'180 B-permits for EU-8 states and quotas of around 53'700 B-permits for EU-17 states will apply for one year. However, the Swiss government will refrain from restricting category L-permits (short-term work permits of up to two years) for workers from the EU-8 and EU-17 states.

It should further be noted that the following activities and categories of persons are not affected by quotas:

- > Extensions of existing B permits;
- > Persons without gainful activity;
- > Persons benefiting from family reunification;
- > Posted employees (service providers); and
- > EFTA nationals.

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Procedure

Although quotas have been reintroduced, no review of wage and working conditions or of the priority for Swiss nationals is undertaken prior to granting B work permits. By way of comparison, such reviews are conducted as part of the procedure for granting B work permits to non-EU citizens or to Romanian and Bulgarian citizens. The permits are to be attributed to the quota prior to engagement with an employer. The B work permits will be allocated on a first-come, first-served basis; in other words, the only determining factor for granting permits will be their availability.

Please do not hesitate to contact us in case of any questions.

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