

Corporate Immigration - Switzerland

Federal Council activates safeguard clause for EU-17 and EU-8 states

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Invocation of safeguard clause
Continuation of quota for EU-8
New quota for EU-17
Impact
Changes to notification procedure

Invocation of safeguard clause

Switzerland is an attractive destination for migrants. In recent years an increasing number of people have entered the country for residential and employment purposes, which has impacted on Switzerland both positively and negatively. The Federal Council recently addressed the issue of how to deal with the negative effects.

Following political debate, on April 24 2013 the Federal Council invoked the safeguard clause contained in the Agreement on the Free Movement of Persons between the European Union and Switzerland. This clause allows Switzerland to implement unilaterally a quota system up to May 31 2014, provided that the number of residence permits issued to citizens from EU member states exceeds the average for the three preceding years by at least 10%.

Consequently, invocation of the safeguard clause has activated a quota system for the issuance of five-year residence permits (B-permits) for EU-17⁽¹⁾ and EU-8 states.⁽²⁾

Continuation of quota for EU-8

In 2012 the Federal Council activated the safeguard clause for EU-8 countries for the issuance of B-permits. For these countries the same restrictions remain in force for a further year.

A quota of approximately 2,180 B-permits was released on May 1 2013 for one year up to May 31 2014.

New quota for EU-17

The safeguard clause is due to be extended to EU-17 states from June 1 2013. The restrictions apply only to B-permits.

A quota of approximately 53,700 B-permits for EU-17 states will apply for a one-year period.

Impact

Short-term work permits (L-permits) for EU-17 and EU-8 nationals will remain unaffected by the measures outlined above. Therefore, EU-17 and EU-8 nationals with local employment contracts with a duration of less than one year may register in Switzerland and receive an L-permit without being subject to quota restrictions. They may commence work after registration.

As B-permits will no longer be issued automatically on registration, employers should expect a delay before employees can commence work. EU-17 and EU-8 nationals with local employment contracts with an indefinite duration or a duration of more than one year must first register in Switzerland and await approval of a B-permit by the competent authorities. Employees may commence work in Switzerland only after such approval is granted.

Furthermore, if quota levels have been reached, work permit applications will, in principle, be put on standby until the next set of quotas is released (quarterly). Permits will be granted by the authorities on a first-come, first-served basis.

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Some cantonal authorities have applied a more practical approach and have been granting L-permits in cases where the B-permit quota has been reached. However, this is not the case in all cantons.

Changes to notification procedure

The Agreement on the Free Movement of Persons includes a provision for companies registered in EU and European Free Trade Association states with regard to employees working for up to 90 days a calendar year. Consequently, employees on temporary assignment in Switzerland for a period of 90 working days or less are not subject to work authorisation. Employers are required only to notify such employees to the authorities through an online system within a prescribed deadline (ie, eight days before the employees' assignment start date).

Until now, employers did not need to notify the exact paid salary of their assigned employees to the authorities. However, the Federal Council has announced a new measure with regard to the online notification procedure. Effective May 15 2013 the gross hourly wage of each assigned worker will have to be notified at the time that the employee is registered online. Gross salaries of assigned employees must comply with the relevant wage and employment conditions applicable to the locale and industry in order to avoid wage dumping.

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Endnotes

(1) Comprised of Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia and Spain.

(2) Comprised of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

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