



# Explanatory Notes on Gainful Employment of Third-Country Nationals

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## **1. General information**

Third-country nationals seeking to be admitted to work in Switzerland require a permit from the first day.

There is no legal right to any (specific) permit, nor is there any right to an extension of a permit; such must always be based on justified grounds. First-time short-stay or residence permits are subject to quotas. Permits may only be granted if there is a quota.

Applications are examined individually. Depending on individual circumstances, the competent public authority may request additional documentation as well as more extensive requirements than the legal requirements specified below.

The documents are to be submitted in German or English. Accordingly, diplomas must be submitted as certified translations.

## **2. Local employment (Art. 18 FNIA)**

### **2.1. Application**

The application for a permit must be submitted by the employer (Art. 11 para. 3 FNIA). Applications submitted by employees cannot be processed.

- Application for entry permit

### **2.2. Interests of the economy as a whole (Art. 18 lit. a FNIA)**

The admission of an employee from a third country to work must correspond to the general interests of the Swiss economy. In particular, the respective employment market situation as well as a future, sustainable economic development must be taken into account. Relevant documents:

- Specific reason for application (mandatory)
- Business plan (budget, market opportunities/prospects and comparison, order contracts, etc.)
- Balance sheet and profit & loss account

### **2.3. Obligation to give notice of vacant positions (Art. 21a FNIA)**

Employers must notify the public employment agencies of vacant positions in professions with an unemployment rate of over 5%.

The purpose of this measure is to further strengthen the employment market integration of the domestic labour force and to further reduce unemployment in Switzerland.

Therefore, anyone seeking to employ a third-country national in said professions must, on all accounts, include proof in the application that notice of a vacant position was given.

### **2.4. Precedence of domestic employees (Art. 21 FNIA)**

Employees from third countries may only be employed if it can be demonstrated that the vacant position cannot be filled with suitable domestic or EU/EFTA employees. Domestic employees are defined as persons who have a regulated stay in Switzerland and are admitted to the employment market. The relevant documents are:

- Job posting at the regional public employment agency (RAV) and on EURES
- Job advertisements with date from print or online media
- List of applicants with detailed information (nationality, education/qualification, date of job application and reason for rejection)

### **1.5. Salary and employment conditions (Art. 22 FNIA)**

The purpose of this regulation is to ensure equal treatment of foreign and domestic employees. The employer must inform the job market authority about the length of employment, the employment conditions and the salary. The employment contract must be current and complete in content, and be in keeping with the conditions customary for the location and sector. The salary calculator of the Swiss Confederation ([www.salarium.ch](http://www.salarium.ch)) may prove helpful in this respect. Relevant documents:

- Employment contract with date and signed by both parties (mandatory)

### **2.6. Personal requirements (Art. 23 FNIA)**

Third-country nationals may only be granted permission to work if they are managers, specialists or other qualified workers. The professional qualifications must correspond to the new job to be performed. Relevant documents:

- Educational certificates and job references/testimonials (possibly certified translations)
- Curriculum vitae (mandatory)
- Copy of passport/ID (mandatory)

### 3. Cross-border services (Art. 26 FNIA; assignment)

#### 3.1. Company-internal<sup>1</sup> assignment

##### 3.1.1. Application

The application for a permit is to be submitted by the foreign employer (Art. 11 para. 3 FNIA). Applications submitted by employees cannot be processed.

- Application for entry permit

##### 3.1.2. General interests of the economy (Art. 26 para. 1 FNIA)

Admission of an employee from a third country must be in keeping with the general interests of the Swiss economy. In particular, the respective employment market situation as well as a future, sustainable economic development must be taken into account. Relevant documents:

- Specific reason for application  
With information about the business, the tasks and the assigned employee

##### 3.1.3. Precedence of domestic employees (Art. 21 FNIA)

Since providers of cross-border services, that is to say, assigned employees, are only in Switzerland temporarily and subsequently return to their home country, the precedence requirement shall be waived.

##### 3.1.4. Salary and employment conditions (Art. 22 FNIA)

The purpose of this provision is to ensure equal treatment of foreign and domestic employees. The employer is to inform the job market authority about the length of employment, the employment conditions and the salary. Relevant documents:

- 'Letter of Assignment' form (for assignments up to four months)
- Assignment contract (for assignments that exceed four months) The following information must be included:
  - Employee
  - Home company and host company
  - Position during the assignment
  - Scope of tasks/duties
  - Place of work
  - Start and length of assignment
  - Basic salary in home country
  - Supplementary payment during the assignment
  - Confirmation that all assignment expenses will be assumed (travel, board, lodging) or payment of a monthly flat sum of minimum CHF 3,000 plus the actual travel expenses for a minimum of 12 months from the date of entry

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<sup>1</sup> Employees of a foreign business or foreign company work temporarily in a branch, subsidiary or branch office established in Switzerland of that business.

- Assurance of health and accident insurance coverage
- Regulation of social security contributions
- Explicit provisions concerning paid leave, working hours, etc. or annotation that Swiss law shall apply exclusively for all of the contractual points not governed in the contract
- Date and signature of employer and employee.

### 3.1.5. Personal requirements (Art. 23 FNIA)

Third-country nationals may only be granted permission to work if they are managers, specialists or other qualified workers. The professional qualifications must correspond to the new job to be performed. Relevant documents:

- Educational certificates and job references/testimonials (possibly certified translations)
- Curriculum vitae (mandatory)
- Copy of passport/ID (mandatory)

All of the documents are to be submitted in German or English.

## 3.2. External<sup>2</sup> assignment

### 3.2.1. Application

The application is to be submitted by the foreign employer (Art. 11 para. 3 FNIA). Applications submitted by employers cannot be processed.

- Application for entry permit

### 3.2.2. General interests of the economy (Art. 26 para. 1 FNIA)

Admission of an employee from a third country must correspond to the general interests of the Swiss economy. In particular, the respective employment market situation as well as a future, sustainable economic development must be taken into account. Relevant documents:

- Specific reason for application (mandatory)  
With information about the business, the project and the assigned employee
- Assignment contract/service contract/project contract (mandatory)  
Between the Swiss company at which work/service will be performed (principal) and the foreign employer (agent)
- Actual project description

### 3.2.3. Precedence of domestic employees (Art. 21 FNIA)

Since providers of cross-border services, that is to say, assigned employees, are only in Switzerland temporarily and subsequently return to their home country, the precedence requirement shall be waived.

### 3.2.4. Salary and employment conditions (Art. 22 FNIA)

The purpose of this provision is to ensure equal treatment of foreign and domestic employees. The employer is to inform the relevant job market authority about the length of employment, the employment conditions and the salary. Relevant documents:

- “Letter of Assignment” form (for assignments up to four months)
- Assignment contract (for assignments that exceed four months) The following information must be included:
  - Employee
  - Home company and host company
  - Position during the assignment
  - Scope of tasks/duties
  - Place of work
  - Start and length of assignment
  - Basic salary in home country
  - Supplementary payment during the assignment
  - Confirmation that all assignment expenses will be assumed (travel, board, lodging) or payment of a monthly flat sum of minimum CHF 3,000 plus the actual travel expenses for a minimum of 12 months from the date of entry
  - Assurance of health and accident insurance coverage
  - Regulation of social security contributions
  - Explicit provisions concerning paid leave, working hours, etc. or annotation that Swiss law shall apply exclusively for all of the contractual points not governed in the contract
  - Date and signature of employer and employee.

### 3.2.5. Personal requirements (Art. 23 FNIA)

Third-country nationals may only be admitted to work if they are managers, specialists or other qualified workers. The professional qualifications must correspond to the new job to be performed. Relevant documents:

- Educational certificates and job references/testimonials (possibly certified translations)
- Curriculum vitae (mandatory)
- Copy of passport/ID (mandatory)

All of the documents are to be submitted in German or English.

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<sup>2</sup> Employees execute an assignment temporarily for their foreign employer at the Swiss place of assignment (at the customer's). The assignment contract (or service contract or project contract) is concluded between the Swiss customer and the foreign employer.

## 4. Self-employment<sup>3</sup> (Art. 19 FNIA)

### 4.1. Application

- Application for entry permit

### 4.2. Interests of the economy as a whole (Art. 19 lit. a FNIA)

Admission of an employee from a third country for the purpose of self-employment must be in keeping with the general interests of the Swiss economy. This may be the case if a service is to be provided for which there is a strong demand and no over-supply and, furthermore, jobs are created or investments made. Relevant documents:

- Specific reason for application
- Business plan (budget, market opportunities/prospects and comparisons, assignment contracts, etc.)
- Balance sheet and profit & loss account

### 4.3. Financial and operational requirements (Art. 19 lit. b FNIA)

The expected income from the envisaged self-employment must be sufficient to cover operational costs and living expenses. Furthermore, the necessary facilities, including business premises, must be obtainable. This requires having sufficient seed capital. Relevant documents:

- Business plan (mandatory)
- Budgeted balance sheet (mandatory)
- Liabilities from loans
- Rental agreements for office premises
- Etc.

### 4.4. Personal requirements (Art. 23 FNIA)

On principle, third-country nationals may only be admitted to work if they are managers, specialists or other qualified workers. However, derogations may be considered in exceptional circumstances; namely if, for example, investors or entrepreneurs create new jobs, or in the case of recognised persons from the world of science, culture and sport, or persons with special professional knowledge/skills for which there is a need. Relevant documents:

- Educational certificates and job references/testimonials (possibly certified translations)
- Possibly recognition of foreign diploma
- Curriculum vitae (mandatory)
- Copy of passport/ID (mandatory)

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<sup>3</sup> A self-employed activity is regarded as an activity carried out within the framework of an own, freely chosen organisation aimed at generating income, under own authority to issue directives and at own entrepreneurial risk. This freely chosen organisation is used in relation to external parties, for example, by operating a trading, manufacturing, service, commercial or other business operation. Work as a medical doctor, lawyer or fiduciary is also regarded as a self-employed activity (Art. 2 Ordinance on Admission, Stay and Employment, OASA)