

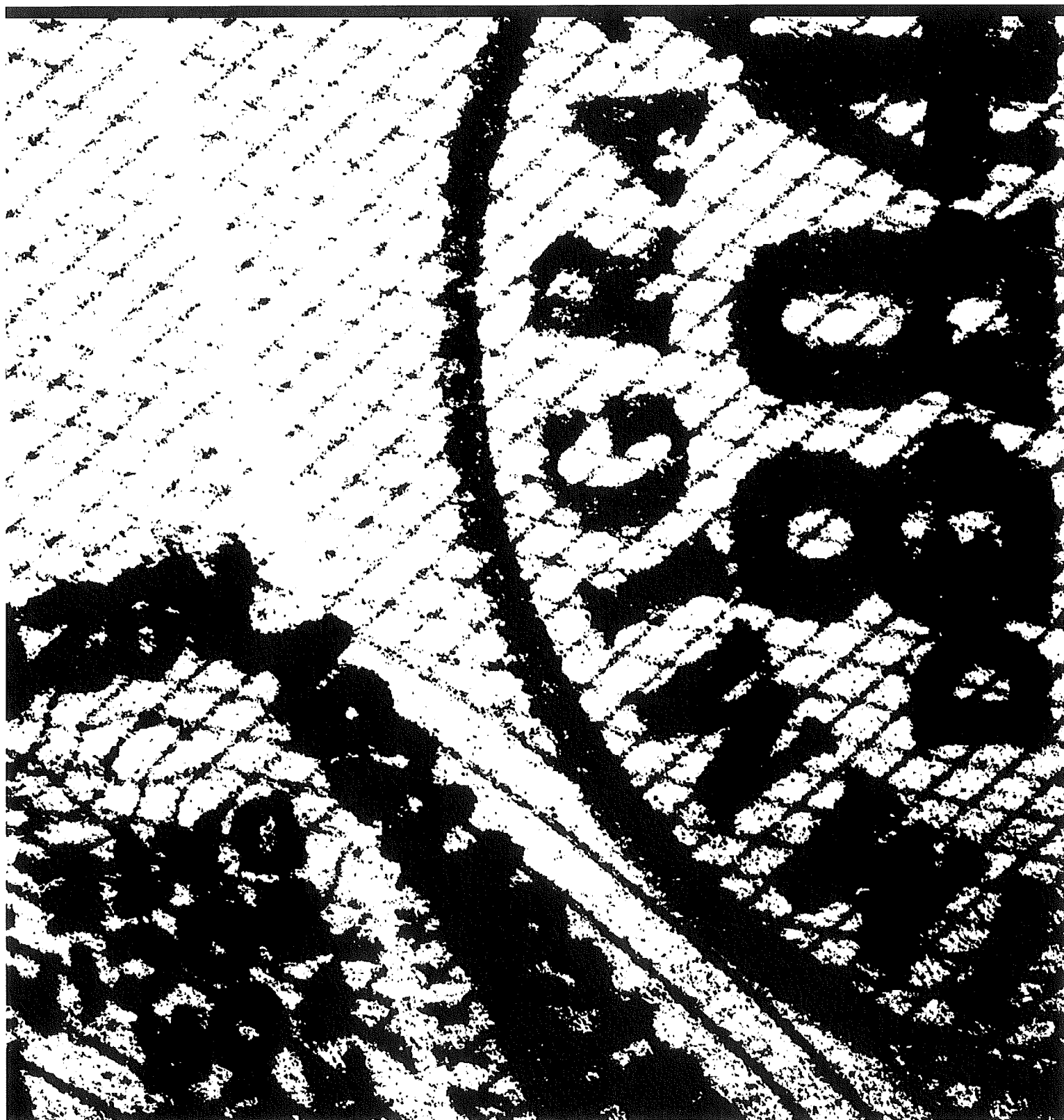


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# Immigration and Nationality Law News

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# Immigration law update Switzerland 2011

## SWITZERLAND

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This immigration law update from Switzerland will focus on the three main topics:

- immigration rules for EU/EFTA nationals;
- governmental statistics on foreign nationals living in Switzerland; and
- special conditions for investors and entrepreneurs.

Business immigration in Switzerland is always dynamic. New administrative practices, court decisions and political changes may result in reforms of Switzerland's immigration law. This is where updates such as this can play their part.

### Immigration rules for EU/EFTA nationals

More than ten years ago, Switzerland entered into bilateral agreements with the European Union. The Free Movements of Persons Agreement was signed in 1999. It came into force on 1 June 2002. Following the eastern expansion of the EU on 1 May 2004, the agreement was supplemented by an additional protocol containing provisions for the gradual introduction of the free movement of persons in the ten new member states of the EU (EU-8 plus EU-2). This protocol came into force on 1 April 2006. The Swiss population agreed to the continuation of the Free Movement of Persons Agreement after 2009 and the second protocol on extending the agreement to Romania and Bulgaria, the newest two EU Member States. The second protocol came into force on 1 June 2009.

The Free Movements of Persons Agreement and the protocols lift restrictions on EU nationals wishing to live and/or work in Switzerland. In addition to the right of free movement, the agreement grants a mutual recognition of professional qualifications, the right to buy property and the coordination of social security systems. EU/EFTA-nationals are granted access to the Swiss labour market regardless of their qualifications.

All these rules also apply to the nationals of the European Free Trade Association (EFTA). As the regulations contained in the Free

Movement of Persons Agreement come into force gradually, transitional measures and special regulations still apply to nationals of some states.

Nationals of the EU-17 and the EFTA states have full rights to freedom of movement since 1 June 2007. There are no longer any transitional measures for these nationals. However, until 31 May 2014, Switzerland has reserved the right to reintroduce quotas (the so-called specific safeguard clause), should labour immigration from EU countries become excessive (exceeding the average of the previous three years by ten per cent).

As described above, the Free Movements of Persons Agreement was supplemented by the first protocol in order to extend the regulation to the ten new EU Member States which joined the EU in 2004. However, as far as employment in Switzerland is concerned, Switzerland was allowed to impose restrictions on citizens from EU-8 countries until 30 April 2011. Nationals of these countries were still facing restricted access to the Swiss labour market and were subject to special quotas. Since 1 May 2011, citizens from EU-8 countries can also benefit from the full rights of the freedom of movement regulation.

According to the second protocol to the Free Movements of Persons Agreement, the bilateral agreement was extended to Romania and Bulgaria. Employees and service providers from these two EU-2 countries will initially be subject to interim provisions. Switzerland may apply restrictions on employment matters to citizens of Bulgaria and Romania until 2016. EU-2 nationals therefore still have restricted access to the Swiss labour market and are subject to special quotas. The domestic workforce can be given priority over the Romanian and Bulgarian workforce. Moreover, salaries and working conditions may be controlled by the authorities. With regard to family reunions and stays without gainful employment, Romanian and Bulgarian nationals enjoy the same rights as all the other EU nationals.

### Governmental statistics on foreign nationals living in Switzerland

According to governmental statistics on foreign nationals living in Switzerland, in 2010 the number of foreign nationals living in Switzerland stood at 1.75m. This is equivalent to 22.3 per cent of the whole Swiss population. In densely populated economically strong cantons (such as for example Zurich), the percentage is even higher. In comparison, in Germany only nine per cent of the population does not hold a German passport.

The percentage of foreign nationals living in Switzerland increased by three per cent in 2010. Between 2005 and 2009, more than 150,000 new foreigners took up residence in Switzerland.

Even though immigration decreased during the economic crisis to some extent, Switzerland still records the highest immigration rates of all OECD countries compared to the resident population.

More than 60 per cent of all the foreign nationals living in Switzerland come from an EU/EFTA country, while the rest are from so called 'third countries'.

Among all foreign nationals living in Switzerland, people from Italy represent the biggest group (16.3 per cent) followed by immigrants from Germany. Whereas Italians mainly entered Switzerland as guest workers in the middle of the last century, the number of Germans taking up residence is still increasing due to the higher salaries paid in Switzerland in, for example, the service and health sectors.

The percentage of foreign nationals varies greatly depending on the region. In the economic centres of the country such as Zurich, Basel and Geneva, more than 30 per cent of all inhabitants do not possess Swiss nationality. However, in some rural regions of the Bernese Oberland or in central Switzerland, the number of foreign nationals amounts to less than ten per cent.

### Special conditions for investors and entrepreneurs

EU/EFTA nationals are allowed to invest in Switzerland without restrictions. They also have a legal claim to set up their own business as entrepreneurs in the canton and the branch of their choice. Governmental permit obligations (such as, for example, for licensed businesses and branches with patent obligations) still apply.

The following groups of persons from a third country (not an EU/EFTA Member State) also have a legal claim to get a permit for self-employment:

- foreigners holding a C permit;
- foreign spouses of foreigners holding a C permit; and
- foreign spouses of Swiss nationals.

All other foreigners seeking to be self-employed need a valid work and residence permit before starting a business. In addition to fulfilling all the other requirements for the issuing of the permits, permits for self-employment will only be granted if the applicant demonstrates that the self-employment is going to have a lasting positive impact on the Swiss labour market. Such a lasting positive impact is assumed if the new business contributes to a wider diversification of the local economy, several new jobs are created or at least maintained, if significant investments are made or significant new orders are generated for the Swiss economy. As permits for self-employed third country nationals are rarely issued, it is easier in most cases to establish a company first in order to work as an employee. Foreigners wishing to proceed this way should bear in mind that at least one person who is authorised to sign for the company has to reside in Switzerland. Otherwise an established firm will not be incorporated in the commercial register.

Some cantons may even require a commercial register entry as an attachment to the application for a permit as a self-employed person. Consequently, the foreigner wishing to immigrate to Switzerland needs a business partner who is authorised to sign for the company and already resides in the country.

The conditions for obtaining a permit as an investor in Switzerland are quite similar to the ones applicable to self-employed people. The investment in a company located in the canton of residence has to be considerable and should contribute to the local labour market. Buying shares in a market-listed firm does not serve this purpose. For the same reason, a permit cannot be obtained simply by putting assets in a Swiss bank account. Additionally, investors should be wealthy and financially independent (ie, able to live off their assets).

Furthermore investors applying for a residence permit have to spend the majority of the year here and should give proof of close personal connections to Switzerland.

Foreigners who are admitted as self-employed entrepreneurs or investors will receive a B permit (residence permit). Generally, B permits have a validity of one year and are prolonged upon request if the conditions are still met.