



US Nationals Traveling to and Working in Switzerland

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Under Swiss immigration law, US citizens are “third country nationals”. The immigration of third country nationals is governed primarily by the Federal Act on Foreign Nationals and Integration and its corresponding ordinance. In addition, Switzerland is a signatory country to the General Agreement on Trade in Services (GATS), which is a multilateral framework agreement that applies to all member states of the World Trade Organization (WTO). Finally, Switzerland ratified the Schengen Agreement concerning the creation of Europe’s “Schengen Area”.

Qualification of Activity in Switzerland – Business Travel vs. Gainful Employment

Whether a business trip to Switzerland constitutes “business travel” or “gainful employment” is key in determining whether and, if so, what type of visa and permit a US citizen must obtain.

Business travel generally includes attending meetings, unpaid training, or business events as well as looking for potential business opportunities. As soon as the activities, however, focus on earning compensation or income, they typically constitute “gainful employment”. For example, gainful employment includes training on the job, internships and traineeships and acts performed to complete a specific project (a works contract) in Switzerland.

While it is often difficult to delineate between “business travel” or “gainful employment”, it is often advisable to assume that it is the latter if the business activity is more than just attending business meetings or events.

Business Travel of US Citizens

US citizens typically do not require a visa for business travel to the Schengen Area as long as their stay does not exceed 90 days within a 180-day period. Stays are cumulative and include visits to any country within the Schengen Area. Only when the activities of US citizens

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constitute gainful employment, or when the stay of US citizens exceeds 90 days within a 180-day period, is a visa required before entering the Schengen Area. Stays exceeding 90 days within a 180-day period without a visa may subject the US citizen to a fine or a travel ban.

Gainful Employment of US Citizens

Individuals that live outside of Switzerland, and generally work outside Switzerland, but provide services in Switzerland for only up to eight days per calendar year, do not require a permit nor a visa. Certain industries (e.g., primary or secondary construction industry and civil engineering, catering and hotel services, industrial and private cleaners, surveillance and security services, and services in the sex industry), however, require a work permit and visa as of the first day.

If the gainful employment of a US citizen should exceed eight days per calendar year, then that individual is subject to Swiss visa and work permit requirements. Various types of permits are available to US citizens, depending on the duration of their gainful employment in Switzerland,

- 120 days' permit (so-called K2 visa) for a maximum of 120 days within one year;
- Short-term residence permit (so-called L permit) for a duration of up to one year; and
- Long-term residence permit (s-called B permit) for a duration exceeding one year.

120 Days' Permit (K2 Visa)

If the gainful employment does not exceed 120 days within one year, US citizens may apply for a K2 visa. A K2 visa allows the holder to travel to Switzerland for four months at a time or for a total of 120 non-continuous days within a year from the issuance of the visa, whichever the case may be. US citizens must obtain an entry visa at a Swiss representation outside of Switzerland before entering the country. Because the gainful employment will be temporary, US citizens holding a K2 visa do not need to register with the local authorities upon entering Switzerland. Also, it is the obligation of the US citizen (or his employer) to track the number of days used under the K2 visa so as to avoid an overstay under the K2 visa.



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Short-Term and Long-Term Residence Permit

Short-term (L Permit) and long-term residence permits (B Permit) are subject to stringent requirements that apply to all third-country nationals including, of course, US citizens. Short-term residence permits are granted to US citizens with an employment agreement not exceeding one year while long-term residence permits are the proper permits for employment agreements for more than one year.

US citizens must be able to demonstrate that they are highly qualified (managers, specialists or other skilled professionals) to obtain either a short-term or long-term permit. To demonstrate this the US citizen must hold not only a university degree, but also have several years of professional work experience. Depending on the type of permit sought, other aspects of the application may include the applicant's professional and social adaptability, knowledge of a local language, and age.

The prospective Swiss employer must also prove that there is no suitable person from Switzerland or from an EU or EFTA country to fill the position. Finally, the salary, social security contributions, and the terms of employment for the US citizen must be in accordance with conditions customary to the region, the profession, and the particular sector.

General Agreement on Trade in Services (GATS)

Because it is often quite difficult for a Swiss company to demonstrate to the satisfaction of the Swiss immigration authorities that a Swiss national or a national of an EU or EFTA country could not be found for a position, Swiss employers that intend to hire a US citizen often take advantage of GATS. Under GATS, citizens of WTO member states may more easily access the Swiss labor market as they are afforded "national treatment", meaning they have the same rights as domestic workers.

Specifically, GATS applies to (1) US citizens who provide services in Switzerland based on a service agreement concluded between a US service provider and a Swiss company, and (2) US nationals who are transferred from a US affiliate as part of an intra-company transfer.

Under GATS, all requirements (specifically regarding

qualification) as discussed above must be satisfied, except that the employer is not required to establish that there is no Swiss citizen or a citizen of an EU or EFTA member state that can fill the position.

Quotas – The Final Hurdle

Regardless of whether a short-term or long-term residence permit is approved under the Swiss national legislation or GATS, all applications are subject to annual quotas. Switzerland sets forth separate quotas for short-term and long-term residence permits that are distributed to the competent authorities quarterly. Once all quotas are exhausted, the Swiss authorities are prohibited from approving any more residence permit applications. As a result, it is important that US citizens keep their eye on quotas, and when they are released, to ensure that the Swiss authorities are still permitted to issue an approval upon receiving an application.