

NEWSLETTER

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Switzerland - Foreign Nationals and Integration Act (FNIA)

The revised and renamed Foreign Nationals and Integration Act entered into force on 1 January 2019 and entails several changes. This Newsletter aims to present the new integration requirements as well as changes in the status of permanent residence (C permit).

I. INTRODUCTION

The revised Act on Foreign nationals, newly called “Foreign Nationals and Integration Act (FNIA)”¹ and the corresponding Ordinance on Admission, Residence and Employment (AREO)² entered into force 1 January 2019. At the beginning of this year, the State Secretariat for Migration (SEM) updated its Directives³ (hereafter: SEM Directives) accordingly.

In summary, the revision aims to improve the professional and social integration of foreign nationals living in Switzerland, through clear integration requirements and positive incentives.

The new regulations concerning integration are in principle applicable to all foreign nationals residing in Switzerland. However, EU/EFTA nationals benefit from the free movement of persons and are in principle governed by the corresponding international agreements⁴ regarding entry, regulation of stay and family reunification in Switzerland. The FNIA however applies to EU/EFTA nationals for certain aspects, e.g. the issuance, extension and revocation of per-

manence residence permits (C permits), or in case the FNIA foresees a better legal status.

This Newsletter aims to present the new integration requirements as well as changes in the status of permanent residence (C permit). For information about other aspects of the new law such as the so-called “integration agreements” or the access to the Swiss labour market for temporarily admitted foreigners and recognized refugees, please refer to our former publication on the change of law⁵.

II. INTEGRATION REQUIREMENTS

Where required by law, the authorities need to evaluate the level of a foreign national’s integration before granting or extending certain types of work/residence permits.

According to the new Article 58a para 1 FNIA, the criteria applied in the integration evaluation of foreign nationals are the following:

¹ Swiss Systematic Register (SR) 142.20. The English translation of the new law is now available under <https://www.admin.ch/opc/en/classified-compilation/20020232/201903010000/142.20.pdf>

² SR 142.201.

³ <https://www.sem.admin.ch/sem/fr/home/publiservice/weisungen-kreisschreiben/auslaenderbereich.html>

⁴ SR 0.142.112.681 and 0.632.31

⁵ https://www.suterhowald.ch/upload/publications/news_alert_switzerland_new_foreign_nationals_and_integration_act_november2018_e.pdf

1. COMPLIANCE WITH PUBLIC SECURITY AND ORDER

Compliance with public security is defined as not violating legally protected rights (e.g. life, health, freedom, property, etc.) of other people and of state institutions.

Compliance with public order means, on the one hand, the absence of criminal acts of a person (proven for example by a police clearance certificate), and, on the other hand, the observance of the general social and political order (e.g. no debts, no unpaid taxes, cooperation with the authorities, etc.).

2. COMPLIANCE WITH THE VALUES OF THE SWISS FEDERAL CONSTITUTION

Values of the Swiss Federal Constitution are the fundamental principles of the State, the fundamental rights and the obligations towards the State.

Infringements of constitutional values are for example:

- Breach of fundamental rights or individual freedom, e.g. by encouraging forced marriage;
- Non-compliance with gender equality;
- Non-observance of the duty of children to attend mandatory school.

3. LANGUAGE SKILLS

Language skills as integration criterion are basically defined as the ability to communicate in daily life in the language spoken at the place of residence in Switzerland.

Language skills are verified according to the “Common European Framework of Reference for Languages” (CEFRL).

The language skills may be proven by submitting a language passport⁶ or a language certificate from an acknowledged language school⁷. There will however be a transition period: until the end of 2019, language certificates from any language school (and not only from the acknowledged ones) may be used.

⁶ <https://www.fide-info.ch/en/sprachnachweise>

⁷ The list of acknowledged language schools is available under the following link and will be updated on a regular basis: https://www.fide-info.ch/doc/08_Sprachenpass/fideDE08_ListeAnerkannteSprachzertifikate.pdf

The required level of language skills depends on the immigration status sought by the foreign national and are usually as listed below. **It is, however, to be noted that in case the authority decides to conclude an integration agreement with the foreign national, other than the below listed language skills requirements may apply.**

For granting or extension of an L permit, in principle, neither the *principal permit holder* nor any *dependent family members* are subject to any language skills requirements (exceptions may be possible).

For granting or extension of a B permit, *principal permit holders* are in principle not subject to language skills requirements (exceptions may be possible).

For granting or extension of a B permit under family reunification, *foreign national spouses of B or C permit holders* will have to prove a **A1 level** of language skills or submit a **confirmation of enrollment in a language course**. *Foreign national single children (under 18 years old) of B or C permit holders* are not subject to any language skills requirements.

For granting of a C permit under ordinary circumstances (i.e. after 10 years of continuous residence⁸), *principal permit holders and dependent family members*⁹ have to prove **A2 (spoken)** and **A1 (written)** levels of language skills.

For the anticipated granting of a C permit (i.e. after only 5 years of continuous residence, when there are no reasons for revocation of the current permit, and when all integration criteria are met), the required levels of language skills are **B1 (spoken)** and **A1 (written)**.

Note: the language skills requirements for C permits are not applicable to citizens from EU/EFTA countries which are party to a treaty on permanent residence with Switzerland, i.e. Belgium, The Netherlands, Italy, France, Austria, Germany, Denmark, Spain, Portugal, Greece and Liechtenstein. Citizens of these countries have the right to a C permit after 5

⁸ Exception: for citizens of Andorra, Finland, Ireland, Island, Canada, Luxemburg, Monaco, Norway, San Marino, Sweden, Vatican City, USA and UK, the time period for ordinary granting of a C permit is 5 years.

⁹ Exception: children under the age of 12 have the right to receive a C-permit without fulfilling any integration requirements.

years of continuous residence in Switzerland without proof of language skills being required.

4. PARTICIPATION IN ECONOMIC LIFE OR ACQUIRING OF AN EDUCATION

Participation in economic life means that the foreign national is able to financially support him-/herself and his/her family. Indications of participation in economic life are, for example, a valid employment contract, financial independence, or active job search.

With regard to integration, acquiring of an education equates participation in economic life. However, this is valid only for so-called “formal education”, meaning educational programs leading to specific types of professional diplomas (e.g. bachelor, master, PhD, diploma from certain professional schools, apprenticeship).

The acquiring of an education can be proven by submitting a confirmation of enrollment in an educational institution (e.g. university registration confirmation, apprenticeship agreement etc.).

5. EXCEPTIONS

Foreign nationals who are unable to meet the integration criteria of language skills (section 3 above) and participation in economic life or acquiring of an education (section 4 above) due to “significant personal circumstances” (e.g. disability, serious or long-lasting illness, serious difficulties to learn, read or write, situation of poverty despite a full-time job, etc.) may be granted an exemption.

III. ADDITIONAL UPDATE OF THE SEM DIRECTIVES ON LANGUAGE REQUIREMENTS IN CASE OF GAINFUL ACTIVITY

According to the law (both former and new versions), only managers, specialists and other qualified workers may obtain an L or a B permit for gainful activity (work permit). A B work permit can only be granted when the foreign national, based on his/her professional and personal profile, including language skills, has good chances for long-term integration in the Swiss labour market and social environment.

The SEM Directives have been updated with regard to the above mentioned regulation and newly pro-

vide that, in the context of a global labour market (multinational companies), good English language skills may be sufficient as basis for long-term integration in the Swiss labour market for highly qualified specialists working in highly specialized sectors or enterprises.

By contrast, in sectors where local language skills are crucial to job performance, e.g. in hospitality or health professions, adequate knowledge of a Swiss local language remains a determinant criterion.

IV. “REVOCATION” AND “DOWNGRADING” OF C PERMITS

According to the FNIA (also under the former FNA), a C permit may be revoked in severe cases under strict conditions (for example, if the permit holder represents a threat to internal or external security or permanently requires care and social services support).

Under the former law, revocation options were limited in cases of 15 years of uninterrupted and lawful residence in Switzerland. Under the new law, these limitations have been abrogated: C permits may now be revoked at any time.

Under the new law, the authorities are entitled to “downgrade” a C permit (i.e. replace it with a B permit) in cases where C permit holders do not comply with integration criteria.

Downgrading has a preventive function and aims to improve integration of the concerned permit holder by influencing his/her behaviour. The downgrading decision must specify the integration efforts the permit holder is expected to make.

In case of downgrading, the foreign national receives a B permit and may apply again for a C permit only after a five-year period, subject to the conditions that there is no reason for revocation of his/her current permit and that the integration criteria according to article 58a para 1 FNIA (including level of language skills A2 spoken and A1 written) are met.

Note: If the (stricter) conditions for revocation are met, authorities must revoke the C permit and may not downgrade it.

Disclaimer: The content of this Newsletter does not represent legal advice and may not be used as such. For further information or for a personal consultation, please get in touch with your contact at Suter Howald Attorneys at Law.



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