

Abridged version

Admitted but excluded?

Provisional admission in Switzerland



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with the assistance of
Annika Fauck

Research paper by
the Swiss Forum for
Migration and
Population Studies
(SFM) commissioned
by the Federal
Commission against
Racism (FCR)

September 2003

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Foreword

It is now some time since private and non-governmental organisations brought the problem of provisional admission (Resident Status F) to the attention of the FCR, calling for a campaign against the apparent “injustices” of this system, the hardships it causes and prejudices that society holds against people with this status.

The FCR takes these concerns seriously. However, issues that relate in general terms to legislation concerning foreign nationals do not fall within its area of responsibility. The FCR does, however, have the task of drawing attention to areas in which institutionalised discrimination exists and where the exclusion from society of people of different origins occurs. It is its duty to demonstrate the mechanisms that result in disadvantages to any specific group of people. In particular, it aims at drawing the political attention to the group of around 26,000 people who are subject to provisional admission (Status F), who, without figuring in the awareness of the general population, live in our country under extremely difficult conditions.

The sociological study carried out by the Swiss Forum for Migration and Population Studies SFM (authors Kamm, Efonayi-Mäder, Neubauer, Wanner, and Zannol) investigates the living situations of persons subject to provisional admission; it does this both in general terms and by means of the specific examples of three cantons. It demonstrates that the restrictions to which these people are subject interconnect a variety of forms of disadvantages which, while not intended, have hitherto been accepted, and lead to fundamental long-term exclusion from society, making normal family life impossible. This study was conducted with the support of the Federal Commission for Foreigners and the Federal Commission for Refugees.

The expert legal opinions by Regina Kiener and Andreas Rieder of the Universities of Bern and Fribourg come to the conclusion that on the basis of its residence status, a group does not fall within the groups protected by the prohibition of discrimination (Art. 8 para. 2 Cst.). The constitutionally relevant restrictions to which people with F status are subject in the areas of family life, employment, welfare and integration can be justified if they are only of short duration. If they remain in place for a longer period of time, however, this may affect the basic legal guarantee of human dignity, which is also enshrined in the Federal Constitution (Art. 7 Cst.). Under Art. 35 Cst., the authorities are also

required to ensure compliance with constitutional civil rights at all levels of society.

What does the FCR wish to achieve through these two studies? It will make them available for public discussion, particularly in parliament, which is to debate the revision of the Asylum Act in the coming months. The FCR would like to support the efforts of the legislature to improve the status of provisionally admitted persons, to offer those affected genuine opportunities for integration and thus enable these people to live in our society with basic human dignity. The FCR was pleased to hear that plans for a new Ordinance on the Integration of Foreigners will also allow those with status F to benefit from integration measures. This would fulfil a recommendation that has resulted from the research study presented here.

Georg Kreis, President of the Federal Commission against Racism (FCR)

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Introduction

Provisional admission is used as a substitute measure when it is not possible to deport a foreign national from Switzerland. Foreign nationals are granted provisional admission, also known as an F permit, when deportation to their country of origin cannot be carried out for humanitarian or technical reasons or reasons related to international law. Approximately 26,000 people with an F permit currently live in Switzerland. Under the terms of their provisional admission, these people have limited rights in relation to matters such as family reunification, social welfare, integration services or mobility. Access to the labour market and to education is also significantly restricted. This situation raises numerous issues primarily for stays of longer duration, and confronts authorities, specialist agencies and all those concerned with a number of difficulties arising from the complex administrative rules and regulations on provisional admission.

A variety of indications of this problem prompted the *Federal Commission against Racism (FCR)* to commission the *Swiss Forum for Migration and Population Studies (SFM)* in the summer of 2002 to conduct a socioscientific study. Their goal was to carry out a situational analysis of provisional admission and to examine its specific procedures in detail. The research results are included in this report and constitute the first methodical assessment of provisional admission in Switzerland. In addition, legal experts were commissioned to provide a legal opinion on provisional admission from the standpoint of its conformity with constitutional and civil rights.

Procedure

The results of this investigation are based on a total of 48 qualitative interviews with federal experts, cantonal authorities, non-governmental agencies as well as with provisionally admitted persons. The survey was preceded by a detailed examination of the relevant legal provisions, which clearly revealed the legal complexity of provisional admission.

The residence modalities were systematically researched *on the basis of three case studies in the cantons of St. Gallen, Vaud and Zurich*. The choice of cantons was guided by the aim of including the broadest possible spectrum of administrative mechanisms. For example, St. Gallen, a medium-sized canton, favours a distinctive communal autonomy in relation to placement and social welfare, whereas canton Zurich, which is the largest canton in Switzerland, has a semi-centralised support and placement system. In contrast, canton Vaud has strongly centralised both these fields of activity.

What is a provisional admission?

Provisional admission received wide publicity at the beginning of the 1990s with the collective admission of refugees from the former Yugoslavia. Refugees were granted a limited time of protection for the duration of the conflict in their country of origin. Today, provisional admission is granted on the basis of four criteria:

- Provisional admission is primarily granted to people who have been denied asylum but who cannot be expected to return to their country of origin because the situation there does not permit them to do so (violent situation, threat to certain groups or persons, etc.). F permits can also be granted to persons with medical conditions whose health would be put at risk due to a lack of proper treatment in their country of origin in the event of deportation. At present, approximately *two thirds* of all provisional admissions fall into this category.
- In second place are those who have been denied asylum and whose deportation would result in *serious personal hardship* as they have lived in Switzerland for so long and have become integrated in Swiss society. This group accounts for a good *fifth* of provisional admissions.
- A comparatively small group comprises provisionally admitted persons for whom deportation is technically *impossible* for an extended period of time, for reasons that are beyond their control – for example, where a country does not cooperate in the return of its nationals, or where no flights are available (*7% of all provisional admissions*).
- Even rarer are cases where deportation is *unlawful* under international law, as the people seeking asylum would risk persecution, torture or other inhuman or degrading treatment. This group accounts for *3%* of all

provisional admissions, with the majority of cases involving recognised refugees *without* asylum.¹

For this reason, provisional admission fulfils three different functions that should be kept apart: Firstly, it has the function of *subsidiary protection* (when deportation is unreasonable and not permitted) independent of and complementary to asylum status.² Secondly, provisional admission has the function of providing a *humanitarian arrangement over a long period of time* (personal hardship), with the aim of improving the integration and living conditions of the persons concerned in Switzerland. Third, and far more infrequently, provisional admission functions as a *temporary residence arrangement* where deportation is technically impossible. This arrangement should not, however, be confused with the case of people who have been denied asylum, and whose deportation can be pending for an extended period of time because they fail to cooperate in the procedure, for example.³ As a rule, F permits are only issued after thorough investigations by the authorities and after a certain period of residence in Switzerland. The requirements covering the granting of these permits are strict, which is why asylum seekers who commit criminal offences or persons who fail to cooperate in providing their documents, for example, are excluded.

Lack of awareness

The different requirements necessary for granting provisional admission regularly cause confusion. Added to this is the lack of awareness regarding F permits, which is revealed by the ignorance or partial awareness of the background and the legal status of F permits, even in the case of people working in the field of asylum. Statements made by interviewees reveal a general tendency towards reducing provisional admission to the lowest common

¹ As opposed to recognised refugees *with* asylum, refugees *without* asylum fulfil the status of refugee, but due to specific reasons (so-called reasons for being disqualified from receiving asylum or subjective grounds for claiming refugee status arising after flight) they are not granted asylum, but receive provisional admission instead.

² To provide an example where a person is recognised as being eligible for subsidiary protection, but is not granted asylum, we can cite the case of a woman who risks being stoned to death in her country for having committed adultery. This is a matter of private and not public persecution, which is the prerequisite of asylum status in Switzerland.

³ These people are not granted provisional admission. On 31.12.2002 the number of people denied asylum with pending return to their country of origin or residence regulation amounted to 13,420 (source: FOR)

denominator. This relates more to the *provisional solution of residency* having superseded a decreed deportation than to the complicated approach of *eligibility for subsidiary protection* or *humanitarian treatment*. This perception is emphasised by the use of the term “provisional” and the legal term “substitute measure”.

From this point of view, provisional admission has a negative connotation in that the person concerned has *not* been granted asylum and is apparently staying in Switzerland without proper authorisation, at best for a temporary period. This leads to the erroneous conclusion that provisional admission is a form of illegal immigration that is temporarily tolerated. What is misunderstood is that a person may be perfectly entitled to protection, even if he or she does not fulfil all the criteria for being granted asylum.

Political discourse that lumps provisional admission together with “violations of asylum law,” is a clear example of such interpretations. It is therefore hardly surprising that during interviews the situation of provisionally admitted persons is almost exclusively seen in a negative light as being comparable with the status of asylum seekers (N permit) or even illegal immigrants, whose residential situation is even more precarious than that of provisionally admitted persons.

The way provisional admission is perceived by the public is important to the extent that it can have a direct impact on the persons concerned when they establish contact with the authorities, potential employers, counsellors, organisers, neighbours, landlords, etc. Individual opinions play a major role particularly when it comes to an apartment or a job, attending a course of studies or training, applying for aid or simply opening a bank account.

Characteristics of the group

The number of persons provisionally admitted in Switzerland, who today number some 26,000, account for about a quarter of all persons seeking asylum (94,000).⁴ This figure is equal to the number of accepted refugees (26,000), slightly lower than the number of asylum seekers with an N permit (28,000) and double the number of rejected asylum seekers awaiting deportation (13,000). The most important groups of origin with F permits include people from the current Federal Republic of Yugoslavia and from Sri Lanka (approx 30% each), followed

⁴ “Persons seeking asylum” can be distinguished from “persons from a foreign country” and include people with N and F permits and accepted refugees. “Asylum seeker” is used as a generic term for provisionally admitted persons (with F permits) and for asylum seekers (with N permits).

by people from Somalia (13%) and Bosnia-Herzegovina (8%). At 45%, children and teenagers account for a strikingly high proportion of the total.

As regards the length of stay, approximately 60% of all provisionally admitted persons have been living in Switzerland for more than five years, while 21% have been living here for more than ten years. More than half of the provisionally admitted adults from Sri Lanka have been living here for more than ten years (53%), and two-thirds of these people are gainfully employed.

Residence restrictions

The legal status of provisionally admitted persons is characterised in the same way as the legal status of asylum seekers (with N permits) by a series of social, employment and other restrictions in accordance with the law on the residence rights of foreign nationals. Research has shown that these restrictions are in the majority identical in practice for both subgroups. An exception is the slight advantage in access to the labour market for provisionally admitted persons as compared to asylum seekers in certain cantons. A significant improvement in the residence situation is usually only achieved with a *humanitarian B residence permit*.

The most important restrictions for provisionally admitted persons include:

- a) Family reunification: Family members or partners of provisionally admitted persons may only come to Switzerland once the admitted person has been granted a B residence permit.
- b) Access to the labour market: National priority stipulates a preference for hiring resident human resources (Swiss citizens or persons with a residence permit) as well as people from EU/EFTA countries to fill job vacancies. Under the regulations applicable to specific trades and professions, in certain cantons asylum seekers are only allowed to work in specific sectors such as agriculture, the hotel and restaurant industry, manufacturing or the cleaning industry.
- c) Access to further education and training: Having completed compulsory education, provisionally admitted persons are subject to restrictions on access to vocational training and further education, remedial courses and to apprenticeships.
- d) Social benefits: Social benefits for asylum seekers are usually 40-60% lower than those given to permanent residents. While flat rate benefits (not

including accommodation and health) for individuals of the resident population amount to CHF 1030 per month,⁵ asylum seekers receive a monthly amount between CHF 400 and 500. This special provision is based on the presumed short duration of stay and on the resultant assumption that integration is not required.

- e) Integration: No integration measures are provided for persons with an F permit. Only foreigners with a long-term residence permit or a permanent residence permit qualify for integration services.
- f) Mobility: In general, provisionally admitted persons may not leave the canton to which they have been assigned. They are subject to a travel ban to foreign countries during the period of their stay, and may only visit their relatives abroad in exceptional cases.

The F permit is always granted and extended for a period of twelve months, but deportation is possible at any time. The resulting uncertainty creates enormous stress for provisionally admitted persons, although – or precisely because – in the majority of cases they stay in Switzerland for years and will in all probability remain here permanently. The heavy burden is manifested in bouts of reactive depression that are a direct consequence of limited expectations of a better life, as well as the fear of being deported. Uncertain residence permit status constantly recreates a traumatic situation for people suffering from war trauma.

The integration paradox

Changing a provisional admission to a humanitarian B residence permit is at the discretion of the cantons and is based on the criteria of *integration*. The better an individual or a family have integrated into the local community having lived there for a certain period of time, the better their chances of obtaining a residence permit. Decisive criteria for such a change include *duration of stay, educational and social integration*, as well as *dependency on public assistance and gainful employment*. Given the fact that the authorities do not make integration of persons seeking

⁵ This amount is in accordance with SKOS guidelines: “The basic requirement for subsistence corresponds to the minimum that is required for a decent existence in Switzerland *based on the duration of stay* and it is permitted to fall below this minimum only in exceptional cases and for limited periods of time.” Emphasis added by the author. (Guidelines on the Definition and Assessment of Welfare Benefits)

asylum a goal of their temporary stay in Switzerland, there is what we call an underlying *integration paradox*.

The duration of stay ranks among the most important criteria for this change of status. This is why a family has to have lived in Switzerland for at least *four* years and the children should be enrolled in school before a change can be considered. For individuals, the minimum duration of stay in Switzerland is in the range of *9 years*. The cantons decide whether and when to grant applications for change of status according to a variety of criteria, and refer these petitions to the *Federal Office of Immigration, Integration and Emigration (IMES)*. The canton of Zurich, for example, requires that families have a minimum duration of stay of 8 (instead of 4) years since the time they applied for asylum. The required duration of stay for individuals varies from canton to canton from 8 to 10 or more years.

The requirement for *educational and social integration* is primarily limited by the lack of professional and social perspective resulting from provisional personal status, restricted access to traineeships, education and further education, limited mobility, as well as the lack of support that a family environment could provide if family reunification were possible. To make matters worse, it is extremely difficult for provisionally admitted persons to find an apartment. Holding a provisional residence permit at a time in which there is shortage of free rental property on the housing market creates serious disadvantages. Landlords are interested in tenants with a secure residence permit status, but the temporary F permit creates the impression of a provisional and precarious situation.

With regard to employment, the study indicates that access to the employment market for provisionally admitted persons is relatively open.⁶ Nevertheless, the limitation to understaffed occupations coupled with the effective priority given to permanent residents creates clear restrictions that impact on the integration process of the persons concerned. Among other things, this leads to an employment rate for provisionally admitted persons of 49% that is lower than that for active age national residents at 66%. This must not, however, be put down to administrative hurdles alone, but also to the employment market situation and the professional skills of the persons concerned.

The priority given to national residents and the restriction of vacancies to understaffed occupations are a particular handicap to two groups of persons. Firstly, highly qualified people do not have the opportunity to further

⁶ The employment rate for asylum seekers at 22% is half the rate for provisionally admitted persons at 49%.

themselves by using their skills in the labour market. Secondly, some provisionally admitted persons who have suffered traumatic experiences in their country of origin are not physically or psychologically fit to work under the prevailing working conditions of industries such as the hotel and restaurant industry or manufacturing.

The experts interviewed generally agreed that the restrictions on the labour market including mobility barriers within Switzerland for provisionally admitted persons would need to be lifted to allow young people who stay here for longer periods in particular to integrate more quickly into the labour market.

The criterion for a change of status relating to *welfare dependency* is thus exacerbated because provisionally admitted persons tend to work in low-wage industries. This is particularly the case for families, for whom low wages – less the 10% surety deduction – leave them in difficult circumstances that often need to be compensated through additional public assistance.⁷

Very precarious financial (low wages, reduced social assistance) and social living conditions (accommodation difficulties, lack of professional prospects, depression), which might be acceptable during a transitional phase, conceal a serious debt and poverty risk with long-term effects. These conditions make social integration even more difficult for the persons concerned, with the result that provisionally admitted persons also lose any chance of obtaining a B residence permit, for which integration is a major criterion. The fact that integration is not made a goal for provisional admission, while at the same time being expected from the very outset – even though successful integration is likely to become possible only once a B residence permit has been obtained was dubbed by the experts interviewed as the “vicious circle of non-integration”.

The difficulty for provisionally admitted persons in obtaining a B residence permit can be gauged by the above-mentioned figures for the duration of stay. On the other hand, a number of cantons feel the need to classify certain integration criteria as *soft criteria* and to apply these in a flexible manner because they know that it is virtually impossible for admission applicants to fulfil all the integration requirements.

⁷ Asylum seekers must stand surety for social assistance, repatriation and enforcement costs. A 10% deduction is made directly from gainfully employed asylum seekers' pay and transferred to a surety account.

Children and young people

Provisionally admitted persons depend in several respects on the goodwill and the willingness of individuals for help in finding a traineeship place or a job, for German lessons, counselling, accommodation or neighbourly support. This is particularly true for children and young people who account for approximately 45% of provisionally admitted persons. At the end of 2001, 18% of provisionally admitted children and young people were aged between 10 and 19, and had spent a large part of their lives in Switzerland. Adolescents, who are at a crucial developmental stage, are particularly hard hit by integration difficulties, which are directly linked to the limitations that are imposed on them in terms of their F permits. The restrictions make it more difficult for them to find their place in a society that places great value on education, profession and mobility, from which they are all too clearly excluded. In addition the discrepancy between the traineeship places and jobs that are theoretically available and those that can in fact be obtained consistently gives rise to conflicting information.

Just how difficult it is for provisionally admitted young people to find a traineeship place for example, is shown by the fact that the *Swiss Federal Statistical Office (SFSO)* registered only 230 trainees among provisionally admitted young people in Switzerland in 2001. This corresponds to a mere 5.4% of all provisionally admitted young people aged between the age of 15 and 24 (4,270).

In addition to professional restrictions, reduced social welfare is problematic for young people who have grown up in Switzerland and who are constantly in touch with other young people. It is common practice, especially in adolescence, for people to compare themselves and their situation in life to that of others. Numerous social workers refer to problems experienced by young people that they can be directly associated with provisional admission. Adults mainly react to the status of provisional admission by showing signs of depression or withdrawal, whereas young people react to the lack of perspective with rebellious or deviant behaviour in public.

A wide variety of resources are being mobilised, and expatriate associations play a key role in the search for a joint strategy. In recent years, for example, the Somalian community, (almost all Somalian people have received an F status) has, for example, appealed repeatedly to the press and the public on its own initiative to call attention to the residency situation of Somali people in Switzerland.

Areas of conflict between authorities

The case studies illustrate that in connection with provisional admission there are significant areas of conflict between the various levels of government (federal, cantonal and communal authorities) and between cantonal policies. This stems from the fact that cantonal immigration offices and employment market authorities do not have the same interests and are faced with different issues than those dealt with by the social security offices and the education system. While the immigration offices and labour market authorities tend to use the potential restrictions of the F permit to protect the domestic employment market or to give dissuasive signals, these same restrictions are often the subject of criticism by the social security and education offices.

In principle, social welfare has an integrative and autonomy-promoting agenda that becomes contradictory in the long run to the regulatory conditions for residency and the exclusion of provisionally admitted persons from receiving integration services. The lack of integration carries the risk of long-term consequential costs for society as a whole. The education system is even more sceptical with regard to the limitations of stay, in particular with respect to the sensitive transition from school to professional life. Social integration is a crucial factor in the development of the personality and skills of children and young people. During the demanding phase of adolescence, contradictory impulses associated with the integration paradox hamper the learning aptitude of young people. It has been proven to be extremely difficult to motivate young people at school when they know that their stay in Switzerland is uncertain and that access to traineeship places, vocational training and jobs is limited. This occasionally leads those responsible for education to make insistent calls for the abolition of the F permit for children and young people.

A longer duration of stay generally benefits the social integration of immigrants regardless of the type of permit they hold because the competent authorities also have an interest in supporting social integration to avoid social exclusion and the resulting costs. This regulation mechanism only works to a limited degree in the case of provisionally admitted persons because it depends, among other things, on the institutional division of power (between the Confederation and the cantons) in relation to asylum-related issues as well as on political imperatives. Whereas the Confederation is primarily responsible for bearing the costs related to asylum matters, the cantons bear the costs of matters involving foreigners. This leads to a differing of interests at cantonal and federal level in which the cantons, based on financial considerations for example, show

little interest in granting B residence permits to provisionally admitted persons as they then run the risk of having to provide social assistance.

Prospects

The basic concern of improved integration for provisionally admitted persons was expressed during the consultation process for the forthcoming partial revision of the Asylum Act. The Federal Council proposes the creation of two new statuses in lieu of the current provisional admission:

- *Humanitarian admission* for asylum seekers who do not qualify for refugee status, but whose deportation is considered to be impermissible or unreasonable, or could give rise to serious personal hardship;
- *Provisional admission* (referred to as “toleration” in the first draft) for persons whose deportation cannot be enforced for technical reasons or because the country of origin fails to cooperate, for example.

Legal status will be improved by *humanitarian admission*, in particular because the present restrictions for accessing the labour market will be abolished. Requirements for access to the labour market and the option of family reunification will in principle accord with similar requirements that apply to the B residence permit. Furthermore, the new permit type includes integration measures, which are not included in the present arrangement. Humanitarian admission can, however, just as the present provisional admission, be revoked at any time, if its prescribed requirements are no longer met. Cantons will continue to be in charge of granting residence permits.

In view of the results of this study, the improvement of the legal status for persons receiving humanitarian admission is no doubt a step in the right direction because this is precisely how problems associated with the integration paradox or the vicious circle of non-integration can at least partially be solved.

The issues relating to the provisional nature of residency, however, remain unresolved in the planned partial revision. It is probable that the fear of impending deportation experienced by the persons concerned will still be an issue. This fear creates a significant obstacle to integration, can have a detrimental long-term effect on health, makes medical treatment more difficult and is responsible for disorientation with regard both to prospect of continued residence in Switzerland and to a possible return to the country of origin. This was one of the main arguments that led some of the specialists interviewed for

this study to reject the new proposed solution and to recommend granting B residence permits instead.

The aim of the present study is to contribute to designing a policy close to reality for dealing with provisionally admitted persons. We are assuming that a pragmatic policy that is founded on compliance with human rights is ultimately in the interests of all persons concerned.

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Editor	Federal Commission against Racism (FCR) GS EDI, 3003 Bern Coordination: Doris Angst Yilmaz
Graphic Design	Monique Kummer, Unterägeri
Translations	Marie-Claude Arneberg, Anna Neubauer (French) Lorenzo Lafranchi, Adriano Bazzocco, Tiziano Giabardo (Italian) Stephen Frost, Corinne Dill, Kenneth MacKenzie (English)
Internet version	http://www.ekr-cfr.ch/d/publikationen.htm
For orders of printed editions	Office of the FCR, GS-EDI, 3003 Bern Phone 031 324 12 93; Fax 031 322 44 ekr-cfr@gs-edi.admin.ch http://www.ekr-cfr.ch
Price	Complete study (150 pages): CHF 10.– Abridged version (16 pages): CHF 5.–