

Chapter 2

Selecting Foreigners for the Labour Market



In migration law, I tell you, if we had precise criteria, we would have an easy job!

Lawyer specialising in Swiss immigration law, personal communication, 20 March 2015 (The original text reads: “En droit des migrations, je ne vous dis pas, si on avait des critères précis, on ferait un métier facile!” All translations are by the author unless otherwise noted.)

Switzerland is characterised by a high demand for foreign labour, a liberalised labour market, and a system which allows the free movement of persons within the European Union (EU) and countries that are part of the European Free Trade Association (EFTA). On the other hand, the legal framework that regulates the entry, stay, and naturalisation of non-EU and non-EFTA citizens is one of the most restrictive in Europe (Cerna, 2013; MIPEX, 2015; Niederberger, 2004), which means that close to 25% of people in Switzerland have no political rights due to their foreign status.

This contrast between an open labour market that relies to a large extent on a foreign workforce and a restrictive immigration policy towards non-EU and non-EFTA citizens generates tensions between actors with different priorities and interests. From a state perspective, it raises a number of normative questions about the way immigration should be managed: What should be the role of foreigners in

This section is partly based on two previous articles by the author: Hercog, M., & Sandoz, L. (2018). Selecting the Highly Skilled: Norms and practices in the Swiss admission regime for non-EU immigrants. *Migration Letters*, 15(4), 503–515; Sandoz, L. (2016). The Symbolic Value of Quotas in the Swiss Immigration System. *Highlights*, e-magazine of the nccr – on the move 1(2016), 40–45, downloadable at <https://nccr-onthemove.ch/highlights-1/highlights-1-5/>. The field research and part of the analysis were conducted in collaboration with Metka Hercog.

Swiss society? Who should be allowed to enter, stay, and participate in the country? To what extent should the state intervene in this process? More generally, these questions go to the very heart of the organisation of the state, since they refer to the ways decision makers define the kind of society that they want, as well as which people are allowed to live and participate in it (Wedel, Shore, Feldman, & Lathrop, 2005). The discussion also addresses the issue of solidarity, since the question “who should be admitted?” connects with the issue of who will benefit the larger group and who profits from it (Wright, 2016).

At the beginning of my fieldwork, I was intrigued by the distinction between “highly skilled” and “low skilled” migrants that was often present in political discourses and societal debates, with a clear normative evaluation that “highly skilled” migrants are desirable while “low skilled” migrants are not. I observed that qualification level was a main criterion used by state authorities to select candidates for labour immigration, yet I could find no definition of these terms in Swiss policy documents.

For this reason, I decided – together with my colleague Metka Hercog – to start this research by analysing how immigrants are granted admission to Switzerland and how authorities define and determine their desirability. We wanted to evaluate which criteria matter most to state authorities in the context of an admission policy officially focusing on qualification level as a main criterion, and to understand how these authorities conceptualise “highly skilled migrants” through migration discourses and policy implementation.

We chose to analyse documents issued by the Swiss administration in order to understand how different categories of migrants are constructed by the state.¹ Because cantonal authorities have strong discretionary powers in admitting non-EU and non-EFTA workers to Switzerland, we also decided to analyse policy implementation in the cantons of Basel and Vaud, where large numbers of foreigners are hired each year in proportion to the resident population. We conducted interviews with actors involved in the admission procedure at the cantonal level and participated in several official events related to immigration in these cantons in order to contrast discourses and practices.²

¹These documents include the Foreign Nationals Act (FNA), which has regulated the admission and stay of non-EU and non-EFTA nationals since 2005, a set of guidelines for the interpretation of the Foreign Nationals Act (State Secretariat for Migration, 2015a), an explanatory document on the Foreign Nationals Act (Swiss Federal Council, 2002), a report on the free movement of persons (Swiss Federal Council, 2012), and a series of statistics on immigration issued by the state administration between 2013 and 2015.

²Semi-structured interviews of 1–2 h were conducted in Basel and Vaud with (a) two managers in the cantonal labour market departments; (b) a legal consultant, about her experiences supporting applications for permits; (c) three former recruiters, about their practices for selecting potential candidates for employment; (d) two employees of a chamber of commerce, about coordinating public and private institutions at the cantonal level; (e) a manager in a private institution for economic promotion, about collaborations between institutions dealing with immigration and economic promotion; (f) a human resources manager, about his practice of hiring non-EU/non-EFTA workers; and (g) a relocation agent, about the way she supports her clients in obtaining work and residence permits.

Our research shows that the immigrant selection process conducted by state authorities in Switzerland is organised around an ambiguous notion of “economic interest” which is central to enabling the admission of immigrants perceived as more profitable while legitimising the exclusion of others. The candidate’s qualification level is supposed to enable a fair selection based on merit, however, in practice qualification plays a marginal role in the selection criteria. More important is the way the authorities in charge of selection interpret the political, economic, and social context of the admission request. The admission process also fulfils non-economic objectives, such as providing the impression of state control over immigration, and of state protection of local populations by rhetorically constructing “highly skilled migrants” as culturally close and unthreatening.

I start this chapter by presenting the main rules that regulate immigration to Switzerland, as well as the logic behind these rules. I then describe the admission process for non-EU and non-EFTA workers and explain in more detail the role of the cantonal authorities’ discretionary power in this process. Finally, I analyse various possibilities for employers to overcome the administrative barriers associated with national regulations on immigration and the role of cantonal administrations.

The main research question for this chapter is:

How is the category of “highly skilled migrants” conceptualised and instrumentalised in Switzerland through policy objectives and implementation?

2.1 Swiss Admission Rules

For an anthropologist, analysing policies is interesting because it informs the ways various problems are constructed, and solutions legitimised. Hence, the central anthropological question guiding policy analysis is not “What is policy?” but “What do people do in the name of policy?” According to the anthropologist Janine Wedel and her co-authors, policies can be conceived as “myths” in the sense that they constitute “charters of action” that “[convey] assumptions, values, and meanings about how to live” (Wedel et al., 2005, p. 35). The analysis of policy definition and implementation in relation to the selection of immigrants thus enables a better understanding of how policy makers set the boundary between wanted and unwanted categories of foreigners.

Although Switzerland is mentioned in several studies that evaluate and compare the effectiveness of immigration policies in attracting “highly skilled migrants” (Beine, Docquier, & Özden, 2011; Ortega & Peri, 2013; Sheldon, 2001), it does not have a clear “highly skilled” immigration policy and there is no official definition of the term “highly skilled migrant” in Swiss law. Nevertheless, the admission policy for non-EU and non-EFTA workers does target a category of people that corresponds to a certain extent to the imaginaries usually associated with “highly skilled migrants”, since the law clearly states that “short stay and residence permits for

work purposes may only be granted to managers, specialists and other qualified workers” (art. 23, Foreign Nationals Act of 2005, FNA). Moreover, the dual categorisation of foreigners as either “highly skilled” or “low skilled” immigrants in Swiss policy discourses legitimises practices of inclusion and exclusion at both the local and national levels.

2.1.1 Historical Background

Since the creation of the Swiss federal state in 1848, the development of immigration policy has involved tensions between economic demands for access to foreign labour and popular demands for immigration control (Piguet, 2006). Immigration has always been a controversial issue in Switzerland, and immigration policy should be understood as a political attempt to find an equilibrium between contradictory objectives.

The conceptualisation of the current legislation on the admission of non-EU and non-EFTA citizens into Switzerland – the Foreign Nationals Act of 2005 (FNA) – began in 1992, when a parliamentary motion asked the executive government to revise the Law on the Stay and Establishment of Foreigners of 1931 in order to “better face the problems ... resulting from vast migrations of population” (Simmen, 1992).³ The development of the new immigration policy constituted a rupture from the previous model: since the mid-nineteenth century immigrants had been selected on the basis of their ability to take up jobs that Swiss citizens did not want to do, yet the new legislation established a selection system based on nationality (EU vs. non-EU) and qualifications (“highly skilled” vs. “low skilled”).

The focus on qualifications represented a shift in official definitions of the national “economic interest”. In fact, the new immigration policy was designed to favour internationalised economic sectors in need of highly specialised workers. In this context, the national “economic interest” came to be defined according to a foreigner’s ability to answer the needs of the knowledge-intensive economic sectors – rather than according to their ability to provide cheap, flexible, and non-specialised labour, as had previously been the case. At the same time, the new policy needed to reassure the electorate that adequate control over immigration could be maintained. Insisting on the need for specialised workers thus also involved constructing “highly skilled migrants” as a socially, culturally, and economically unthreatening group in policy discourses.

³“Le Conseil fédéral est chargé de présenter aux Chambres, dans un proche délai, un projet de loi qui constituera la base permettant de mieux faire face aux problèmes que posent à la Suisse, comme à d’autres Etats, les vastes migrations de population.”

A Transforming Context

Several reasons explain the policy shift towards a focus on highly qualified workers. The international political and economic context of the 1990s was the first incentive. The process of European integration, the quickening pace of globalisation, and the emergence of international economic regulatory bodies⁴ created new pressures on the Swiss economy to compete at an international level. During this period, many politicians expressed a sense of urgency about the need to comply with new international regulations and enable the liberalisation of exchanges (Afonso, 2004; Mach, David, & Bühlmann, 2011). At the same time, an important part of the Swiss population did not feel ready for these changes. This division between governing actors and general population became particularly apparent in 1992, when Swiss voters refused to join the European Economic Area (EEA) in a historical popular vote (Piguet, 2009). This decision forced the government to find alternatives to direct EU membership while remaining involved in European construction.

In parallel to this political transformation, important changes were happening in the Swiss business sector. Many firms started to internationalise their activities, which contributed to the dissolution of solidarity networks among Swiss economic elites and the redefinition of power relationships at a national level (Mach et al., 2011). Until 1991, labour migration to Switzerland was partly regulated by a quota system, which mostly satisfied the domestic economic sectors that relied on immigration (hotels, restaurants, agriculture, construction) because foreign workers were limited in their ability to change jobs and therefore dependent on their employers. This system also contributed to keeping salaries low in these sectors (Afonso, 2004; Dhima, 1991). However, firms representing the internationalised part of the Swiss economy generally favoured a more liberal immigration policy that would increase their attractiveness and competitiveness in the international labour market. The changing national and international context of the 1990s constituted an incentive for these economic sectors to become more involved in lobbying activities and to challenge the relative solidarity that had prevailed until then between national business elites (Afonso, 2004, 2007).⁵

Important ideological changes during the 1980s and 1990s regarding governing actors' perception of the role of Swiss immigration policy supported these lobbying activities. In their analysis of the power relations involved in the development of the new immigration policy, the political scientists Afonso (2007) and Mach (2003) stress the important role played by experts in this reform. According to these authors, an epistemic community of Swiss free-market economists was formed during the 1980s and 1990s, which actively advocated for reforms in several domains, including

⁴Such as the European Economic Area (EEA), the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), and the foundation of the World Trade Organisation (WTO).

⁵The main economic associations representing the internationalised sectors were Vorort and the Swiss Employers' Association (Union Patronale Suisse/Schweizerische Arbeitgeberverband) whereas the domestic market was represented mainly by the Swiss small business association (USAM/SGV).

immigration. These economists were influenced by international debates on highly skilled migration, arguing that immigrants should be selected based on potential economic value and thus advocating for skill-selective immigration policies (see for instance: Leutwiler & Schmidheiny, 1991; Schwarz, 1989; Sheldon, 2001; Straubhaar & Fischer, 1994). They also heavily criticised the government's choices regarding immigration by arguing that the active recruitment of unskilled workers during the past decades resulted in a negative impact on the Swiss economy. Several authors of these critiques actively involved themselves in public debates and lobbying activities by proposing policy reforms based on neoliberal principles. The creation of the State Secretariat for Economic Affairs (SECO) in 1999 – which employed several influential economists of this period – also contributed to disseminating their ideas within the state apparatus (Afonso, 2007).

Lastly, these legal revisions took place at a time of economic slowdown during which the unemployment rate of foreigners in Switzerland increased significantly (Piguet, 2009). This situation contributed to emergent discourses on the “integration problem” of foreigners and the subsequent negative impact on the welfare system (Riaño & Wastl-Walter, 2006). In this context, both nationalist parties and supporters of neoliberal ideas presented the low skilled immigrants who had come to Switzerland as workers in the past as economic burdens and potential social problems (Piguet, 2009). Transformations at the national and international levels led to new constraints that generated an impression of loss of control among part of the population and governing actors: the project of establishing the free movement of persons within the EU engendered fears of a massive influx of foreigners; the progressive strengthening of foreigners' residential rights raised new questions regarding integration and access to social benefits⁶; developments in international law reinforced individual rights to protection against racial discrimination, “non-refoulement”, and undue expulsion⁷; and finally, the reasons for migration (and the origin countries of immigrants) to Switzerland diversified, leading to an increase in the proportion of persons immigrating for family, humanitarian, and education-related reasons (Piguet, 2009).

These changes provided nationalist parties with fertile ground for advocating against immigrants in favour of better protections for local workers. On the other hand, most governing actors were convinced that the immigration policy was no longer suitable for the international context and that reform was a way to regain control, or at least to project the impression of control.

⁶Between the 1980s and 1990s, several important labour-supplying countries negotiated with the Swiss government to obtain facilitated access to long-term residence permits for their citizens living in Switzerland. For instance, between 1982 and 1983, the period for transforming an annual residence permit into a long-term residence permit was reduced from 10 to 5 years for Italian residents. Moreover, the period for obtaining a family reunion permit was reduced from 15 to 12 months. The same conditions were extended to Spanish residents in 1989 and to Portuguese residents in 1990.

⁷Switzerland ratified the UN Convention on the Elimination of All Forms of Racial Discrimination in 1994 and the European Convention on Human Rights in 1988. The principle of “non-refoulement” is defined in the 1951 Convention and 1967 Protocol relating to the Status of Refugees.

Cultural Proximity and Qualifications

A first step in immigration policy revision took place in 1991 with the “three-circle” policy, which preceded the current Foreign Nationals Act. Proposed by a commission composed of representatives of the Federal Office for Industry, Trade, and Work and the Swiss Federal Aliens Office, the objective was to propose a rapprochement with the EU that would be acceptable to the general population (Riaño & Wastl-Walter, 2006). In fact, this policy paved the way for the gradual removal of restrictions on mobility between Switzerland and the EU while creating new barriers for citizens of the rest of the world.

The policy defined three priority levels for recruiting foreign workers based on the idea that some nationalities would be easier to integrate – owing to supposed cultural similarities – while others would pose problems. Citizens of the European Economic Community took precedence, followed by countries with “a cultural milieu with living conditions close to ours” such as the United States, Canada, Australia, and New Zealand (Swiss Federal Council, 1991).⁸ The third circle included all remaining countries, from which only the most qualified workers could be recruited in exceptional cases (Swiss Federal Council, 1991). By appealing to an idea of “cultural proximity” with the first and second circle, and emphasising the importance of qualifications in the case of the third circle, the policy introduced the criteria of “qualifications” and “cultural proximity” as a means to define the desirability of certain immigrants (Hercog & Sandoz, 2018b; Riaño, 2003).

With this policy reform, qualifications became an official selection criterion in the Swiss admission system. This development is directly linked to the previously mentioned transformations during the 1980s and 1990s, which contributed to reconfiguring existing power relationships and led to a shift in immigration policy with regard to economic interest. Hence, economic interest in policy discourses came to refer not necessarily to the particular interests of local firms but rather to the position of the Swiss economy within a competitive international environment (Afonso, 2007; Amarelle & Nguyen, 2010; Piguet, 2006). At the same time, the new focus on the qualification level of immigrants addressed segments of the population who feared competition from less qualified workers or considered them to be potential economic burdens on the national welfare system.

Cultural proximity, in contrast, is associated with older debates in Switzerland. The German notion of *Überfremdung* – translated as “foreign infiltration” or “foreign takeover”⁹ – summarises an idea discussed since the early twentieth century, according to which a certain balance between Swiss and foreigners would be neces-

⁸The report speaks of countries with “un milieu culturel présentant des conditions de vie proches des nôtres”.

⁹The concept of “*Überfremdung*” is difficult to translate in other languages and neither of the proposed translations fully manages to grasp its meaning. It refers primarily to a feeling of overwhelming and harmful foreign influence on various aspects of society (culture, language, politics etc.).

sary to protect local cultural values from foreign takeover. In the first half of the twentieth century, discussions about *Überfremdung* focused on Jews emigrating from Eastern Europe, who were perceived as particularly difficult to integrate. In 1931, the term was codified into Swiss law: “The decision-making authorities have to take into account the spiritual and economic interests of the country, as well as the degree of *Überfremdung*.”¹⁰

Interestingly, during the years that followed the adoption of the three-circle policy, references to cultural proximity and *Überfremdung* progressively disappeared from policy documents, whereas the notion of qualifications became an increasingly important selection criterion. While some institutions – such as the newly created Federal Commission against Racism – criticised the three-circle policy for being unduly discriminatory (Piguet, 2009), other professional associations (in the fields of informatics, industry, and services) strongly advocated for more opportunities to hire professionals from the third circle (Riaño & Wastl-Walter, 2006). In fact, the notion of cultural proximity became politically incorrect, whereas the notion of qualifications appeared as a satisfactory compromise between the demands of the fast-growing economic sectors and the fears of those asking for more control over immigration. In addition, the notion of qualifications – because it was based on merit rather than cultural values – appeared as more neutral and less discriminatory than the notion of cultural proximity, yet it still enabled the selection of immigrants based on cultural capital. In her analysis of Swiss integration policy, the anthropologist Shirley Yeung (2016) shows how “culture” was gradually replaced by “skills” in policy documents while continuing to influence representations of immigrants. In this process, highly skilled migrants were rhetorically constructed as culturally close, while low skilled migrants were presented as culturally distant and therefore riskier from a social and cultural perspective. Hence, this discursive shift constituted a legitimisation strategy for the new policy by indirectly addressing the fear of *Überfremdung* expressed by some segments of the Swiss population.

EU versus Third Countries

In 1998, a “two-circle” policy distinguishing between EU and non-EU member states replaced the three-circle policy, thus officially removing the distinction between “culturally close” and “culturally distant” countries. This same year, the government established an expert commission composed of representatives of the state administration and migration specialists from universities. Interestingly, the

¹⁰Translated from “Bundesgesetz über Aufenthalt und Niederlassung der Ausländer” (ANAG), 26 March 1931, Art. 16: “Die Bewilligungsbehörden haben bei ihren Entscheidungen die geistigen und wirtschaftlichen Interessen sowie den Grad der Überfremdung des Landes zu berücksichtigen.”

expert commission proposed to implement a point system for non-EU workers inspired by Canada and Australia (Piguet, 2009). This system would have given preference to predefined criteria such as education, professional experience, language skills, and age – associating points with each criterion – and would have granted automatic admission to candidates with a sufficient number of points.

Parliament eventually rejected this proposition. In their report on the legal project, the Federal Council explained that a point system, even though it enabled a more objective and uniform practice, would have lacked flexibility because the existence of an automatic right to admission based on a given number of points would have reduced the authorities' capacity to review special cases and changing economic situations (Swiss Federal Council, 2002, pp. 3486–3487). Moreover, it would not have met one of the main objectives of the Federal Council, namely, “the reduction in the growth of the foreign resident population” (Swiss Federal Department of Justice and Police, 1997).¹¹

The finalised bill entered into force in 2008 after a long process of negotiation followed by a referendum. It provided authorities with significant discretionary power in the application of the law according to local and national priorities. Furthermore, it limited admission to “qualified workers from third countries who are absolutely needed”¹² (Swiss Federal Council, 2002, p. 3473 and 3485, my translation) by stipulating that “the admission [of third-country nationals] must serve the long-term economic interests of the country”. In this context, “third countries” referred to all non-EU and non-EFTA countries.

Even though political preferences reoriented towards a focus on highly skilled migration, this legal project shows that policy makers favoured a *selective* admission system over an *attractive* one by providing local administrations with tools for excluding even the most qualified workers (Hercog & Sandoz, 2018b). The bill also provided a legal framework for a dual admission system that granted EU and EFTA citizens with almost unrestricted access to the Swiss territory and labour market, whereas the admission of citizens from the rest of the world was limited to exceptional cases.

¹¹“Au cours de sa séance spéciale, le Conseil fédéral a constaté que les conclusions et propositions de la commission, commentées par le Département fédéral de justice et police, correspondent fondamentalement aux objectifs que le Conseil fédéral s’est fixés pour la présente législature dans le domaine de la migration. Ces objectifs englobent notamment un renforcement de l’intégration des étrangers et des étrangères établis durablement dans notre pays, une amélioration qualitative de la circulation des personnes avec l’UE, l’admission de réfugiés et de personnes ayant besoin de protection au sens de notre politique humanitaire des réfugiés ainsi que la réduction de l’accroissement de la population étrangère résidente.”

¹²“L’admission des ressortissants d’Etats tiers est limitée aux travailleurs qualifiés qui sont indispensables”.

Main Legal Norms Regulating the Admission of Foreigners in Switzerland

There are currently three main legal channels for foreigners to enter and stay in Switzerland. The Agreement on the Free Movement of Persons of 1999 allows EU and EFTA citizens to enter and reside in the country. The other two tracks are the asylum system, based on the Swiss Asylum Act of 1998, and the admission system, based on the Swiss Foreign Nationals Act of 2005 (FNA). In the third case, admission must be justified by a specific reason, such as an employment prospect, education, retirement, medical treatment, or a serious humanitarian reason that does not fall into the asylum track. In all these tracks, it is possible for admitted foreigners to have their closest family members join them. Reunified family members can be authorised to work, but the qualifications of reunified family members are not a criterion for admission.

With regard to admitting workers from countries that do not belong to the European Union (EU) or European Free Trade Association (EFTA) – the so-called “third countries” – Switzerland is a typical receiving country with a demand-driven system. The basic principle is that only “qualified workers from third countries who are absolutely needed” can be granted access to the Swiss labour market (Swiss Federal Council, 2002, p. 3473). This restrictive admission system contrasts with the Agreement on the Free Movement of Persons, which applies to citizens of EU/EFTA member states.

In fact, qualifications only play a role for non-EU and non-EFTA nationals who base their permit request on a clear intention to work in the country. In that case, several admission criteria apply: admission must be in the interest of the economy as a whole (art. 18a FNA); it must be supported by an employer willing to hire the candidate (art. 18b FNA); it must be the case that no one else could be found in the Swiss labour market or within the EU to do the job (art. 21 FNA); the salary and employment conditions must be standard for the location, profession, and sector (art. 22 FNA); the candidate must be either a “manager”, “specialist”, or “other qualified worker”; there must be a chance of lasting integration (art. 23 FNA); and suitable accommodation must be available (art. 24 FNA).

This demand-based system is further restricted by a system of quotas that limits the annual number of all non-EU and non-EFTA workers who reside in the country for more than 4 months (art. 20 FNA). In terms of this system, the national government determines the maximum number of available permits in advance, and quotas are assigned to the cantons according to their size and economic activity. An additional reserve of permits is available to cantons on demand, but their distribution is subject to approval by the federal administration (Sandoz, 2016b).

The restrictive admission system for non-EU and non-EFTA nationals contrasts with the open policy for EU and EFTA citizens based on free movement: non-EU/EFTA citizens can almost exclusively enter Switzerland as

(continued)

asylum seekers, reunified family members, or as “absolutely needed” qualified workers. Yet policy documents do not define terms such as “qualifications” or “economic interests” in detail, thus leaving an important margin of interpretation to the persons in charge of applying the law. Moreover, the law is implemented at the cantonal level, which means that each of the 26 Swiss cantons has an office in charge of selecting foreign workers. Hence, cantonal administrations possess significant discretionary power in the admission of non-EU/EFTA workers.

2.1.2 *Legal Definitions*

In order to delve deeper into the objectives of Swiss immigration policy, I focus specifically on the admission process for workers from non-EU and non-EFTA countries. This is the only category of foreigners selected by Swiss authorities on a case-by-case basis according to their qualifications and economic interest to Switzerland. Analysing this process enables a better understanding of how local authorities define economic interests and offers an interesting case study of the way international discussions on highly skilled migrants materialise in a specific context.

The Swiss admission system for non-EU and non-EFTA workers is based on relatively broad legal concepts, and their interpretation largely relies on the cantonal authorities in charge of applying them. According to the Swiss Foreign Nationals Act (FNA):

The admission of gainfully employed foreign nationals is allowed in the interest of the economy as a whole; the chances of lasting integration in the Swiss employment market as well as in the social environment are crucial. (Art. 3 FNA)

Although the notions of economic interests and integration are supposed to be central selection criteria, they are not clearly defined in Swiss law. For this reason, the FNA is complemented by a set of regularly updated guidelines issued by the State Secretariat for Migration that aims to unify cantonal practices by providing definitions and explanations of immigration law. These guidelines are binding for the administration, but they are not legal documents. Hence, they constitute an intermediary level between law and practice.

I will take a closer look at the definitions of economic interests and integration in both the FNA and the guidelines to understand better who can be admitted under the current system. As we will see, both of these notions implicitly refer to the qualification criterion, as well as to a dual construction of foreigners as either highly skilled or low skilled. However, this dual construction is not sufficient to understand how authorities select foreigners. According to policy definitions of economic interests, foreigners not only need to be qualified and able to integrate in order to be admitted, but also (and more importantly) they need to fill a gap that no one else is able to fill. This shifts the focus of attention from personal characteristics to the specific position

in the labour market for which foreigners are selected. For this reason, I argue that the term “highly skilled migrant” is not sufficient to grasp the complexity of the analysed situation. I thus suggest the term “wanted immigrants” be used in order to emphasise the importance of representation and context during the admission process.

The administrative guidelines define economic interests in the following way:

Third-country nationals are admitted in the Swiss labour market if their admission serves the economic interests of the country (art. 18 and 19 FNA). When evaluating the case, the situation of the labour market, the sustainable economic evolution, and the foreigner’s ability to integrate must be particularly taken into account. The purpose is neither to maintain an infrastructure with a low skilled workforce which agrees to work for low salaries, nor to support particular interests within the economy. Moreover, recently arrived foreigners in our country must not compete with Swiss workers in an undesirable way and, because of their readiness to accept poorer salaries and working conditions, cause a salary- and social dumping.¹³ (State Secretariat for Migration, 2015a, p. 90)

In addition to economic interests, the notion of “preponderant economic interest” appears in the guidelines. This particularly applies to non-EU and non-EFTA foreigners who studied in Switzerland and wish to work in the country after finishing their degree:

A gainful activity is of preponderant economic interest when there is a recognised need for workforce in the labour market in an activity sector that corresponds to the education, and when the orientation is highly specialised and matches the vacant position. Moreover, the occupation of the position immediately creates new jobs or generates new mandates for the Swiss economy.¹⁴ (State Secretariat for Migration, 2015a, p. 102)

These definitions reflect a specific understanding of the role of foreigners within the national economy. Thanks to very specific skills and qualifications, foreigners from non-EU and non-EFTA countries are expected to create new jobs and wealth by occupying economic niches. The first definition also refers to the previously mentioned shift in the focus of immigration policy: foreigners are no longer perceived as an interchangeable workforce taking jobs that Swiss workers *do not want*. On the contrary, they need unique skills in order to take jobs that Swiss workers *cannot do*. Furthermore, the authorities in charge of the selection need to consider the more general economic and labour market situation. This points to the contextual dimension of the admission process, as well as to the relatively significant discretionary power of authorities.

¹³“Les ressortissants d’Etats tiers sont admis sur le marché du travail suisse si leur admission sert les intérêts économiques du pays (art. 18 et 19 LEtr). Lors de l’appréciation du cas, il convient de tenir compte en particulier de la situation sur le marché du travail, de l’évolution économique durable et de la capacité de l’étranger concerné de s’intégrer. Il ne s’agit pas de maintenir une infrastructure avec une main-d’œuvre peu qualifiée disposée à travailler pour de bas salaires, ni de soutenir des intérêts particuliers. Par ailleurs, les étrangers nouvellement entrés dans notre pays ne doivent pas faire concurrence aux travailleurs en Suisse en provoquant, par leur disposition à accepter de moins bonnes conditions de rémunération et de travail, un dumping salarial et social.”

¹⁴“Une activité lucrative revêt un intérêt économique prépondérant lorsqu’il existe sur le marché du travail un besoin avéré de main d’œuvre dans le secteur d’activité correspondant à la formation et que l’orientation suivie est hautement spécialisée et en adéquation avec le poste à pourvoir. De même, l’occupation du poste permet de créer immédiatement de nouveaux emplois ou de générer de nouveaux mandats pour l’économie suisse.”

Besides contributing to the economic interests of the country, foreigners are expected to integrate. Specific criteria exist in Swiss law for defining integration, but in general it is stated that:

Foreigners contribute to their own integration in particular by respecting general juridical order and democratic principles, by learning a national language, and by manifesting their will to participate in economic life and acquire education.¹⁵ (State Secretariat for Migration, 2015a, p. 78)

In addition, according to Article 23, paragraph 2 of the Foreign Nationals Act:

The professional qualifications of applicants and their professional and social adaptability, language skills, and age must also indicate that there is a prospect of lasting integration in the Swiss job market and the social environment. (Art. 23 FNA)

This implies a connection between qualifications and integration which supports Yeung's argument that a discourse on skills has progressively replaced the discourse on cultural proximity, after the demise of the three-circle policy (Yeung, 2016). The fact that the following list of foreigners is exempt from the integration requirement follows a similar logic:

- (a) Investors and entrepreneurs who maintain existing jobs or create new jobs;
- (b) Recognised persons from the world of science, culture, and sport;
- (c) Persons with special professional knowledge or skills, provided there is a need for their admission;
- (d) Persons who are part of an executive transfer between internationally active companies;
- (e) Persons whose activity in Switzerland is indispensable for economically significant international business relationships. (Art. 23 FNA)

These exceptions suggest a specific understanding of the role of the aforementioned foreigner categories in Switzerland, which is connected to the notion of economic interests and used to legitimise special treatment. This special treatment is consistent with a representation of integration as transactional: foreigners who are admitted into Switzerland are accorded a benefit by the Swiss state and society, and should give something in return. The state can therefore demand their integration. The phrase "*fördern und fordern* [encourage and demand]", which guides integration measures in Switzerland, illustrates this view (Piñeiro, Bopp, & Kreis, 2009). However, foreigners with the specific skills and resources mentioned above are constructed as "contributors" who can repay their "debt" to the state and to society in other ways than by integrating.

Moreover, in several policy documents I found the assumption that qualified workers have less difficulty integrating than their low-skill counterparts. For instance, the website of the Swiss Secretariat for Migration states that:

¹⁵ "Les étrangers contribuent à leur intégration notamment en respectant l'ordre juridique et les principes démocratiques, en apprenant une langue nationale et en manifestant leur volonté de participer à la vie économique et d'acquérir une formation."

By decree of the Federal Council, workers from all other states – third states, as they are referred to – are admitted in limited numbers to the labour market in Switzerland, if they are well qualified. Experience has shown that this category of workers has a better chance of professional and social integration than less qualified persons. (State Secretariat for Migration, 2015b)

Another document issued by the federal government states that:

Highly qualified workers generally have more competences and also more resources to organise themselves.¹⁶ (Swiss Federal Council, 2012, p. 32)

These elements indicate a specific representation of “wanted immigrants”. In terms of the admission system, priority is given to foreigners who: (a) do not compete with local workers; (b) contribute to economic development; (c) adapt easily to their new environment; and (d) do not rely on the social security system. In official discourses of the state administration, “highly qualified immigrants” are constructed as corresponding to these criteria. Moreover, the integration requirement occupies a secondary position compared to economic interests. This is because the foreigners who correspond to an economic interest are constructed as “culturally close” and therefore more likely to integrate.

2.1.3 *The Symbolic Value of the Swiss Quota System*

The primary objective of the admission policy for non-EU and non-EFTA workers is not to *attract* highly skilled workers but rather to *select*, as strictly as possible, foreigners who are desirable from an economic perspective. The main tool that enables this selection is the quota system for non-EU and non-EFTA workers, which is more than a governing mechanism: it is also a political signal to the electorate, and indicates power relations between governing actors.

The admission of foreigners is regulated on both the cantonal and federal levels by a quota system that limits the annual number of all non-EU/EFTA workers who reside in Switzerland for more than 4 months (Art. 20 FNA). At the beginning of each year, the Swiss Federal Council publishes the maximum number of permits that can be allocated to these categories of foreigners. The numbers differ for residence (B) and short-term (L) permits. For instance, in 2015, a maximum of 4000 short-term permits (L) and 2500 residence permits (B) were allocated to non-EU/EFTA workers.¹⁷

A further distinction exists between cantonal and federal quotas for non-EU/EFTA workers: each canton is allocated a certain number of permits based on its size and needs, but a reserve of permits is also kept at the federal level for cantons

¹⁶“Les immigrés hautement qualifiés ont en règle générale plus de compétences et aussi plus de ressources pour s’organiser eux-mêmes.”

¹⁷ See the VZAE appendixes 1 and 2: <https://www.admin.ch/opc/fr/classified-compilation/20070993/index.html> (last consulted on 10 January 2019).

that have exhausted their quotas. Cantonal authorities that apply for additional permits from this reserve need to justify their request to federal authorities, which then make a decision on a case-by-case basis. The federal quota consists of 2000 L permits and 1250 B permits, meaning that the total number of permits for non-EU and non-EFTA workers is cut in half between the cantonal and federal level.

In official immigration statistics, labour migration accounted for 47% of the 150,459 entries into Switzerland in 2015 (State Secretariat for Migration, 2016). Of these, only 4.1% (6140 persons) belonged to the category of non-EU/EFTA workers subject to quotas. The majority of immigrants (67%) entered the country through the Agreement on the Free Movement of Persons. These numbers contrast with the impression of control generated by the quota system and Swiss immigration law, which states that “the admission of gainfully employed foreign nationals is allowed in the interests of the economy as a whole” (Art. 3 FNA). In practice, bilateral agreements and international treaties limit the extent to which the Swiss state can control immigration.

This situation exemplifies one of the paradoxes of migration management: on the one hand, an important dimension of sovereignty necessitates the state’s ability to control the admission and residence of foreigners in a given territory. On the other hand, performing this task is becoming increasingly difficult in a context in which immigration is largely driven by the economy (Piguet, 2006). Moreover, the development of supranational regulations, such as the free movement of persons within the EU and EFTA, and the enforcement of human rights, further restricts the power of states to control the entry and residence of foreigners. For these reasons, the Swiss government has extremely limited possibilities for reducing immigration without inhibiting its economic dynamism, internal cohesion, bilateral relations, or moral legitimacy. This situation explains why such an important share of state control mechanisms regarding immigration policy focuses on a small group of non-EU and non-EFTA nationals applying for work permits: they are among the few immigrants over whom the state administration has full control to either grant or refuse admission (Piguet, 2009).

In order to illustrate this idea, I propose taking a closer look at the implementation of the quota system for non-EU/EFTA workers using the cantons of Vaud and Basel-City as examples.¹⁸ As we have seen, the quota system regulating the number of workers allowed to enter Switzerland each year is divided into a cantonal quota and a federal quota. For instance, in 2015, the canton of Vaud was allocated 158 short-term permits and 98 residence permits. These numbers are relatively high compared to other Swiss cantons: Vaud closely follows Zurich and Bern in terms of quota numbers, and Basel-City has the ninth largest quota (out of 26 cantons) even though it is the fifteenth most populous canton. Internationalised economic activity in both cantons can help to explain this favourable distribution (Table 2.1).

¹⁸Basel-City is 1 of 26 Swiss cantons. Politically, it forms a half-canton together with the half-canton of Basel-Land. This means that each half-canton only sends one representative instead of two to the Council of State (one of the two chambers of the Swiss Federal Assembly). I write “Basel-City” instead of “Basel” when I want to refer to this canton specifically.

Table 2.1 Cantonal quotas for non-EU and non-EFTA workers and population size by canton in 2015^a

Swiss canton	Max. number of short-term permits (L)	Max. number of residence permits (B)	Permanent resident population (in thousands) ^b
Zurich	403	252	1466.4
Bern	252	157	1017.5
Vaud	158	98	773.4
Aargau	136	85	653.7
St. Gallen	121	76	499.1
Geneva	133	83	484.7
Lucerne	88	55	398.8
Ticino	91	57	351.9
Valais	65	40	335.7
Fribourg	52	32	307.5
Basel-Land	63	39	283.2
Thurgau	52	32	267.4
Solothurn	59	37	266.4
Graubünden	51	32	196.6
Basel-City	84	52	191.8
Neuchâtel	45	28	178.1
Schwyz	28	18	154.1
Zug	36	23	122.1
Schaffhausen	19	12	79.8
Jura	17	11	72.8
Appenzell Ausserrhoden	11	7	54.5
Nidwalden	9	6	42.4
Glarus	9	6	40
Obwalden	7	5	37.1
Uri	8	5	36
Appenzell Innerrhoden	3	2	16
Total	2000	1250	8327.1

^aSee “Ordonnance relative à l’admission, au séjour et à l’exercice d’une activité lucrative” (OASA), Appendices 1 and 2: <https://www.admin.ch/opc/fr/classified-compilation/20070993/index.html> (last consulted on 8 January 2018)

^bSee the website of the Swiss Federal Statistical Office: http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/02/blank/key/raeumliche_verteilung/kantone__gemeinden.html (last consulted on 8 January 2018)

These numbers become more interesting when one knows that, in 2015, Basel-City had already exhausted its cantonal quota of permits in March. Similarly, in Vaud, the cantonal office in charge of admitting non-EU and non-EFTA workers grants on average 500–600 residence permits per year – more than five times higher than the cantonal quota. This means that in both Vaud and Basel-City, the cantonal quota covers only a small part of their permit requests while the federal quota covers the main share.

It is legitimate to ask why such a notable difference exists between the officially allocated numbers and the actually granted permits, especially since the number of permits actually granted each year appears to be relatively stable according to the cantonal administrators. It appears that the number of permits officially allocated to each canton is not only based on practical needs: if cantons such as Basel-City or Vaud regularly receive four to six times the number of permits than is allocated to them based on the cantonal quotas, then other reasons must explain why cantonal quotas are set so low. I propose three interpretations of this phenomenon.

Firstly, keeping the official permit quota numbers low is a way to avoid potential criticism of unequal permit distribution between cantons. In a context where admission numbers are restricted, cantons compete for permits. In that sense, the quotas officially allocated to the cantons and the actual distribution of the federal quota reflect two different logics. The cantonal quota is mainly symbolic and represents fair distribution among the cantons. Resorting to the federal quota in the case of a shortage follows a more pragmatic approach based on the actual demands of the cantons. This example illustrates the importance of considering the specific organisation of the Swiss federal state when analysing the implementation of the immigration policy: federal and cantonal priorities may differ, and the current system is thus the result of a compromise.

Secondly, the interplay between the relatively low cantonal quotas and the federal quota reserve serves as a tool for the federal administration to better control cantonal permit-issuing practices and to ensure a degree of flexibility in the case of unexpected changes. Therefore, the distinction between cantonal and federal quotas constitutes a compromise between recognising cantonal specificities and retaining the federal government's authority to enforce its priorities with regard to economic and migration policies. Again, this points to differing priorities within the state administrations and highlights one of the tools used by the federal government to restrict cantonal authorities' discretionary power.

Finally, quotas signal political intentions to the general population. This symbolic function of quotas became particularly apparent in November 2014, shortly after the acceptance of the populist initiative "against mass migration" (Uebersax, 2015), when the Swiss Federal Council decided to reduce the maximum number of permits available for non-EU and non-EFTA workers and service providers from EU/EFTA countries in 2015 by 3250 permits.¹⁹ This decision was not required from a legal perspective since no legislative change had been introduced based on the initiative. However, the reduction of quotas clearly was the government's response

¹⁹The total number of quotas available in 2014 was 12,000, compared to 8750 in 2015.

to a popular demand for more immigration control. In practice, however, the quota reduction did not lead to a clear decrease in admitted workers.²⁰ In fact, the reduced quota of residence permits for non-EU and non-EFTA workers in 2015 was exhausted before the end of the year. This issue was resolved by resorting to quotas carried over from the previous year. The same situation happened again in 2016, and again the Federal Council agreed to release additional quotas.²¹ Thus, parallel to the political decision to reduce quotas, administrative solutions were found to satisfy employers' actual needs for permits.²²

This case study shows that quota numbers chiefly serve as signals of the government's power. By providing an impression of measurability and control, quotas strengthen the public's perception that their government is fully in charge of migration management. However, this control concerns only a small proportion of immigrants to Switzerland and, even in this case, the apparently rigid system does not function without ad hoc adjustments to meet practical needs.

A closer look at the function of Switzerland's direct democracy helps to understand this apparent contradiction: migration has been a hot political topic throughout the past century, and finding compromises between tendencies toward social closure and other priorities such as local economic needs, ethical values, and diplomatic relations has always been a central issue for the federal government. In this context, the system of direct democracy constitutes a kind of sword of Damocles for the government, since it enables dissatisfied citizens to launch and vote for populist initiatives that may challenge the political strategies in place.²³

Such a situation occurred in February 2014, for instance, when 50.3% of voters requested the reintroduction of quotas for all categories of foreigners through an

²⁰ Statistics of the State Secretariat for Migration indicate that, in 2014, 5827 workers were admitted through the quota system and 68,953 were admitted independently of the quota system. In 2015, these numbers were 6140 and 64,843 respectively. See <https://www.sem.admin.ch/sem/de/home/publiservice/statistik/auslaenderstatistik/monitor.html> (last consulted on 8 January 2018).

²¹ This is indicated in two footnotes on page 13 of the 2015 SEM report on immigration statistics (State Secretariat for Migration, 2016) and on page 14 of the 2016 SEM report (State Secretariat for Migration, 2017): "Sollicitation intégrale des contingents; la Confédération a couvert la demande excédant le nombre d'unités disponibles (2500) avec des contingents de la réserve de l'année précédente. [Complete exhaustion of the quotas; the Confederation has covered the demand that exceeds the maximum number with quotas from the previous year's reserve.]" If quotas from previous years were used to cover the needs in 2015, I do not understand how the same process could apply in 2016 since there were no remaining quotas from the previous year, and I could not find any documents explaining this decision. I wrote to the Swiss Secretariat for Migration to ask for an explanation, but never received a reply. I interpret this opacity and lack of information about ad hoc adjustments as another indication that the function of the quota system is primarily to communicate an impression of control.

²² In 2017, the official quota maximum was increased to 9750.

²³ Anyone with a right to vote in Switzerland can launch a popular initiative to modify the federal constitution. The initiative committee needs to gather 100,000 signatures within 18 months in order for the initiative to be submitted to a popular vote. The government can propose a counter-project to the initiative. In that case, the voters can accept both the initiative and the counter-project, but they need to indicate which one they prefer in a subsidiary question. An initiative is adopted when it obtains a majority of votes from both the people and the cantons. (see <https://www.admin.ch/ch/e/pore/index3.html>, last consulted on 6 September 2016).

initiative “against mass migration” (Uebersax, 2015). This vote put the Swiss government in a delicate position, in particular with regard to the EU. Introducing quotas for Europeans would have been difficult in terms of their compatibility with the principle of the free movement of persons, which underlies several other agreements between Switzerland and the EU. Hence, the Swiss government was left with little choice but to find a compromise that would both satisfy a sufficient number of voters and protect the economic and political interests at stake. The solution which was finally adopted – the legal introduction of a safeguard clause and a “light” system of national preference that could be activated in the case of a sudden increase in immigration, or rising unemployment in certain professional sectors – constituted such a compromise, even though its compatibility with both the Agreement on the Free Movement of Persons and the new constitutional article approved during the vote against mass migration was questionable (Boillet, 2016). This example illustrates the importance of public communication around migration issues, as well as the need for consensus in the Swiss political system.

The analysis of the quota system also highlights the power relations between governing actors. The Swiss federal state is a multitude of complex components that do not necessarily share objectives, and decision makers must therefore constantly negotiate between various political trends and interest groups. This delicate balancing act involves internal dynamics as well as specific positions within a wider international and globalised context.

The case study on quotas underscores the tensions between cantonal and federal administrations. Switzerland is a federal state with 26 regional cantons, each of which possesses relative autonomy. Regarding the admission process for non-EU and non-EFTA workers, some cantons are known for being more restrictive while others are known for being less so. In addition, the economy of some cantons largely depends on companies that employ significant numbers of specialists from outside the EU. This is the case, for instance, with the agribusiness company Nestlé, which has its headquarters in the canton of Vaud, and the pharmaceutical companies Novartis and Roche, with headquarters in the canton of Basel-City. Cantonal authorities generally consider it important to facilitate access to residence permits for these companies’ employees in order to maintain good relations and encourage them to stay in the canton. For this reason, cantonal authorities develop strategies to circumvent the restrictive admission rules defined by the federal government.

2.2 The Admission Process in Practice

If policies can be conceived as “myths” (Wedel et al., 2005, p. 35), then the study of their implementation is central to understanding how these myths are translated into practice. The anthropologists Thomas Blom Hansen and Finn Stepputat (2001) speak in this case of rituals that produce meaning. Policy implementation does not rely on the mechanical application of law but always involves an interpretation process (Bourdieu, 1999; Spire, 2008). Analysing the organisational setting in which policy is implemented, as well as the pressures that authorities in charge of policy

implementation have to contend with in practice, helps to understand this interpretation process (Fuglerud, 2004).

I have discussed the central role that the notion of economic interests plays in policy documents. We will now see that this term is used as a main legitimization tool by the authorities that apply the law. Interestingly, the interviewed cantonal authorities tend to take this notion for granted – as if it were in itself sufficient to legitimise their decisions without the need for further explanation. However, a more detailed analysis shows that interpretations of economic interests are complex and can comprise many dimensions, such as the protection of residents against competition by newcomers, demonstrations of state power and sovereignty, the promotion of local labour markets, or the search for balance between competing priorities, which includes, *inter alia*, the selection of “socially desirable migrants”. Each of these dimensions contribute to defining which kinds of foreigners can be admitted under the current system.

The Swiss admission process for non-EU and non-EFTA workers involves the three following main steps: It officially starts when an employer submits a permit request. Employers play a central role as sponsors, and they are the main intermediary between the candidates for admission and the cantonal authorities that issue the permits: in fact, cantonal authorities do not need to have direct contact with the candidates for admission during the admission process since their main interlocutor is the employer. The authorities’ decision is thus based on information given by the employer, and the field research shows that information exchange and negotiations between the cantonal authorities and the employers play a crucial role in the process.

When applying for permits for non-EU/EFTA workers, employers prepare a dossier to convince cantonal authorities of the economic interests of their application. In the dossier, employers must show the following: (a) why the company needs this specific employee (cover letter, plan for a business-creation project etc.); (b) steps undertaken to search for eligible applicants within Switzerland and the EU (job advertisements, contracts with staffing agencies etc.); (c) what employment conditions have been offered (employment contract); and (d) the potential employee’s qualifications (CV, diplomas, certificates). This dossier is submitted either to the municipality where the company has its seat or directly to the canton.²⁴

In the second phase of the process, cantonal authorities in charge of the labour market are supposed to check the admission criteria: (a) Is the admission in the interests of the economy as a whole (Art. 18a FNA)? (b) Are permits still available (Art. 20 FNA)? (c) Could no one else be found in Switzerland or the EU (Art. 21 FNA)? (d) Are the salary and employment conditions standard for the location, profession, and sector (Art. 22 FNA)? (e) Is the candidate qualified (Art. 23 FNA)? (f) Is there a chance of lasting integration (Art. 23 FNA)? (g) Is there suitable accommodation available for the candidate (Art. 24 FNA)? In practice, the authorities in charge of the labour market only check the five first criteria. The last two are

²⁴This description of the admission process is based on observations in Vaud and Basel-City. Some steps in the process may be different in other cantons, even though the primary legal requirements are the same for all of Switzerland.

left to the cantonal authorities in charge of migration and population and they usually do not factor into the admission decision.

Once an admission request has been approved by the cantonal authorities, the admission process can enter the third phase. The application is sent to the State Secretariat for Migration, who can veto the canton's decision or ask for additional information. After approval at the federal level, the candidate is allowed to enter the country and start working. The entire process usually takes between 1 week and 3 months (Table 2.2).

2.2.1 *The Authorities' Discretionary Power*

The interviews with cantonal authorities in charge of labour market control in Vaud and Basel-City, as well as with a lawyer specialising in admission processes in Vaud, highlight several aspects of the admission process that are not visible in policy documents. Firstly, they confirm the central importance of the authorities' discretionary power in evaluating an application's economic interests. The interviewee from the labour-market office in Vaud explains:

I think that we are lucky to have a rather open and flexible law ... insofar as there is no right, strictly speaking, to obtain a residence permit, we can make exceptions in order to deliver. There is an important discretionary power left to the authorities. And this discretionary power ... gives us flexibility to adapt to economic fluctuations, to the evolution of needs or technologies, to the settlement of companies here, and to the major tendencies of the economy The purpose of the law is to support the economy. Economic development: that's the general interest.²⁵ (Personal communication, 6 May 2015)

In order for an admission to represent an economic interest, the applicant's qualifications must match the job description. According to the same interviewee:

The notion of personal qualification is basically pretty mixed. It's the initial training – which often, in principle, is a university education – together with one or more professional experiences that determine a particular profile Then, the set of circumstances is taken into account: what does the company need? ... There are other things that can potentially come into play. The law is formulated quite broadly.²⁶ (Personal communication, 6 May 2015)

²⁵“Je pense qu'on a la chance d'avoir une loi qui est assez ouverte et assez souple Dans la mesure où il n'y a pas de droit à proprement parler d'obtenir un titre de séjour, c'est toujours par exception qu'on délivre. Il y a un pouvoir d'appréciation important qui est laissé à l'autorité. Et ce pouvoir d'appréciation ... permet aussi de s'adapter à certaines fluctuations économiques et à l'évolution des besoins ou des technologies, de l'implantation de certaines entreprises ici, aux grandes tendances de l'économie. ... Le but de la loi c'est quand même de soutenir l'économie. Le développement économique: c'est ça l'intérêt général finalement.”

²⁶“La notion de la qualification personnelle, c'est au fond un élément assez mixte. C'est la formation initiale – qui souvent, en principe, est une formation universitaire – additionnée d'une ou de plusieurs expériences professionnelles qui déterminent un profil particulier. ... Après, c'est l'ensemble des circonstances qui rentrent en compte: quel est le besoin de l'entreprise? ... Il y a d'autres éléments qui peuvent potentiellement entrer en ligne de compte. La loi est formulée de manière assez large.”

Table 2.2 Admission processes for labour migration based on case studies in the cantons of Vaud and Basel-City

	European citizens (EU-25 and EFTA ^a)	Non-EU and non-EFTA nationals
1	The foreigner and the employer agree on a job contract. The foreigner does not need any authorisation to enter and stay in Switzerland for up to 3 months	The foreigner and the employer agree on a job contract. The foreigner needs a visa to enter Switzerland
2	The foreigner starts working in Switzerland	The employer applies for a permit in the municipality where the company has its seat or directly to the cantonal office in charge of the labour market. The foreigner applies for an entry visa at an embassy
3	The foreigner registers in his or her municipality of residence and receives a residence permit (the permit can only be refused for reasons of public order, security, or health)	Municipal authorities in charge of population control send the application to the cantonal office in charge of the labour market (this step is bypassed in some cantons)
4		Cantonal authorities in charge of the labour market evaluate the request and situation, and make a decision based on: (a) economic interests; (b) the availability of permits; (c) priority for domestic and EU/EFTA workers; (d) appropriate salary and employment conditions; (e) personal qualifications; and (f) suitable accommodation
5		Cantonal authorities in charge of immigration can oppose a positive decision by the labour market unit for reasons other than labour market or economic considerations
6		The employer is informed about the cantonal decision
7		If the cantonal decision is positive, the application is sent to the federal authorities in charge of workforce and immigration. Federal authorities double-check the request and may veto the cantonal decision
8		The cantonal office for the labour market is notified about the federal decision. If this decision is positive, information about the foreigner is forwarded to the cantonal office in charge of immigration and an entry visa is issued
9		The foreigner can enter Switzerland and start working. They must register in their municipality of residence in order to receive a permit

^aCroatia, as the newest EU member state, is not yet included in the Agreement on the Free Movement of Persons in 2017, meaning that Croatian nationals are subject to the Foreign Nationals Act. However, there are special quotas (50 one-year B permits and 450 short-term L permits) for Croatian workers

This confirms that qualifications per se are not important. According to a lawyer specialising in admission issues, it is more important to prove “that only three persons in the world have these qualifications” and that “[the employer] could not find anyone else” (personal communication, 20 March 2015). The authority’s discretionary power consists in determining whether a real need exists for the employer, and whether the candidate for admission is the person best suited to meet this need. Moreover, the admission must bring a benefit that goes beyond the employer’s personal interests. For instance, if hiring a specific person is viewed as beneficial for both the company and the preservation of jobs in Switzerland, it fits the definition of economic interests. In contrast, a request may be rejected if the benefits are minor or limited to the company. During this decision process, the ability of the employer to convince the authorities (e.g. of the economic benefit that this person might yield, or the jobs they might create) is central. As we will see later, some employers invest considerable resources in producing applications.

The other criteria are also evaluated on the basis of documents provided by the employer. In general, the cantonal authorities need to evaluate whether the employer has made an adequate effort to search for eligible applicants in Switzerland or the EU, and whether they are offering the same employment conditions that would be offered to a Swiss citizen. In terms of evaluating salaries, specific resources exist which vary from canton to canton. For instance, the Federal Statistical Office has developed an online tool based on population data, which indicates average salaries in Switzerland according to several criteria (location, economic sector, professional group, and position).²⁷ Some cantons have refined this tool by financing extra data collection for their canton, which they use to decide whether a salary is standard for the location, profession, and sector. These controls aim to ensure that the employer does not hire a non-EU/EFTA national for dishonest reasons, such as facilitating the admission of a personal acquaintance, or trying to hire an employee at a lower salary and less favourable working conditions than the standard. The fight against abuses of the system thus plays an important role in the admission process.

Finally, the admissions criteria do not have equal weight in the decision-making process. While economic interests play a central role, the notion of integration, as defined in the law, is hardly considered because it is intertwined with representations of a candidate’s social status, economic resources, and cultural capital. According to an interviewee from Basel-City’s labour-market office:

For the highly qualified, the salaries and working conditions are very good. I think that there is no danger that they won’t find an apartment or have other problems So integration for these people is not so dramatic. ... It is often the case that these English-speaking people keep to themselves. ... That’s of course not ideal. But in the end, this is not within my field of activity.²⁸ (Personal communication with Metka Hercog, 28 May 2015)

²⁷The “Salarium” is available under this link: <https://www.gate.bfs.admin.ch/salarium/public/index.html#/start> (last consulted on 8 January 2018).

²⁸“Die Hochqualifizierten, also die Lohn- und Arbeitsbedingungen sind ja auch sehr gut für diese Leute. Das ist jetzt glaube ich nicht die Gefahr, dass die jetzt keine Wohnung finden oder sonst Probleme haben. ... Also Integration für diese Personen ist nicht so dramatisch. ... Das ist halt oft so, dass diese Englischsprechenden halt unter sich bleiben. ... Das ist sicher nicht ideal. Aber das ist schlussendlich nicht mein Tätigkeitsbereich.“

This observation is consistent with the argument that integration is often perceived as less important for highly skilled migrants for reasons related to representations of social contribution and cultural proximity. In addition, each of the criteria tend to be checked with more or less scrutiny depending on the authorities' perceptions of the application's economic interests. According to the lawyer who specialises in admission processes:

The employer must have done some research to prove that they could not find someone else. But at the same time, if the person is really qualified to do something very specific, it is clear that one or two job postings are sufficient. The less the person is qualified, the more [the authorities] will demand.²⁹ (Personal communication, 20 March 2015)

This further highlights the significant discretionary power of the authorities. In this context, the broad but central concept of economic interests can be used either in favour of or against a given candidate depending on how the person responsible for the decision interprets the situation. Since there is no right to admission for non-EU/EFTA workers, candidates have limited possibilities to appeal an administrative decision. In this regard, vague definitions form an integral part of Swiss immigration policy, acting as tools that enable authorities to easily reject unwanted candidates and to select those regarded as most useful according to immediate needs.

2.2.2 The Practical Meanings of “Economic Interests”

The analysis of discourses and practices related to the admission policy underscores at least three dimensions of “economic interests” in the context of the admission process for non-EU and non-EFTA workers. Firstly, the authorities responsible for selection evaluate characteristics associated with both the candidate's employment conditions and the employer's economic situation, showing that the implementation of economic interests is connected to political objectives to promote local interests, protect the local labour market, and fight abuses of the system. Cantonal authorities must ensure that selected candidates will advantage the canton and that their employment conditions will not endanger local workers by causing social or salary dumping. However, the selection process of workers concerns only 5% of all immigrants entering Switzerland. In this sense, the stated objective of the admission policy to protect the local labour market constitutes first and foremost a political message that state authorities will safeguard the interests of the local population.

²⁹“Pour l'employeur, c'est d'avoir fait les recherches, de prouver qu'ils n'ont trouvé personne d'autre. Mais en même temps, si c'est vraiment quelqu'un de très qualifié, quelque chose de très pointu, c'est clair qu'il suffit d'avoir mis une ou deux annonces, d'avoir fait quelques recherches, voilà. Après, moins c'est qualifié, plus ils seront exigeants au niveau des recherches.”

Secondly, the notion of economic interests as practised in Switzerland is balanced by a restrictive understanding of admission rules, which is conceptualised in the quota system: cantonal authorities must remain selective when dealing with admission requests, even in cantons with a relatively open attitude towards immigration. Nevertheless, the broad definition of legal terms allows them to adapt easily to political and economic changes within the cantons. This combination of flexible cantonal practices and restrictive federal rules reconciles different priorities at the federal and cantonal levels.

Thirdly, admitting non-EU/EFTA nationals based on economic interests results in the unequal treatment of Swiss/EU nationals compared to workers from the rest of the world. In 2007, the United Nations Committee on the Elimination of Racial Discrimination officially recognised this inequality as legitimate based on interstate treaties; however, legitimate inequality changes over time. For instance, maintaining a “cultural balance” between Swiss citizens and foreigners was an explicit goal of the Ordinance on the Restriction of the Number of Foreigners (SR 823.21), which governed the admission process and quota system until 2007. Although speaking of cultural balance is now considered discriminatory, several elements of the earlier models are still present in the Foreign Nationals Act. The cap on permit quotas remains a relevant element of restriction. At the same time, several bilateral agreements with countries in the former “second circle” still put certain citizens in a favourable position compared to other non-EU/EFTA nationals. Remnants of the previous system suggest that the selection of “socially desirable migrants” and the need for protection against a hypothetical “foreign takeover” remain valid objectives of the admission policy. For these reasons, the emphasis on qualifications in discourses on admission, together with the assumption that wealthy and educated immigrants integrate more easily, indicates that the preference for qualified immigrants in Switzerland is not simply a rational economic choice but also results from an evaluation of the (un)desirability of certain categories of immigrants from a cultural perspective (Hercog & Sandoz, 2018b; Yeung, 2016). Beyond promoting national economic interests, migration policies related to admission inherently perform “the dirty work of inequity and exclusion” (Dauvergne, 2009, p. 333).

2.2.3 Strategies of Employers for Overcoming Administrative Barriers

The Swiss admission system for non-EU and non-EFTA workers, while apparently strict and restrictive, does offer some flexibility to those with the right connections and knowledge to work with and around the policy. Interestingly, strategies to circumvent the admission system are not perceived as problematic by the relevant authorities as long as they are justified by an economic interest. During my field

research, I was surprised by the fact that the interviewed cantonal authorities talked very openly about strategies for overcoming administrative barriers. Their intermediary role between employers and the federal administration contributes to explaining this openness.

To develop this aspect further, I conducted interviews with various people who have experienced the admission process for non-EU and non-EFTA workers in Basel or Vaud, either because they were themselves candidates for admission or because they supported an admission request. These people included professional recruiters, human resources managers, chamber of commerce employees, relocation agents, a manager at a private institution for economic promotion, and academically trained non-EU/EFTA nationals who immigrated to Switzerland for various reasons. I also attended various informational events about admission processes and international mobility for human resources staff.

My field research shows that cantonal authorities in charge of labour markets do not only control admissions; part of their job is to inform companies about the process and to support their applications. In Vaud and Basel-City, cantonal authorities try to accommodate companies in different ways depending on their specific economic interests. For instance, they often inform and advise employers about admission requirements so that their applications meet the State Secretariat for Migration's expectations. They also negotiate for additional quotas from the federal reserve, particularly when specific projects require significant numbers of permits that exceed the cantonal quota. When they cannot approve a permit request, cantonal authorities sometimes propose alternative solutions, for instance by offering short-term permits instead of long-term permits. Finally, cantonal authorities collaborate with institutions for the purpose of economic promotion in order to facilitate the establishment of new businesses. We will see in the next chapter that the canton of Vaud finances an organisation that offers free services to companies, including support for work permit applications. Cantonal authorities in charge of the labour market thus try to maintain good relations with companies by helping them to find satisfying compromises between their employment needs and the constraints of the immigration policies. In the words of an employee from the labour market office in Vaud:

The labour market office is part of the Department for the Economy, so we are also here to support companies in Vaud and to offer them services. If we cannot meet their wishes exactly in terms of permits, we try to propose intermediary solutions or other pathways to meet their needs.³⁰ (Personal communication, 6 May 2015)

On the other hand, the interviews and observations suggest that the experiences of admission processes differ greatly between employers. During the field research,

³⁰“Ici c’est le département de l’économie, au service de l’emploi, donc on est là aussi pour soutenir les entreprises vaudoises et leur offrir un service. Donc si on n’arrive pas à répondre exactement à leurs vœux en termes de permis, on essaie de leur proposer des solutions intermédiaires ou de leur proposer un autre cheminement pour répondre à leurs besoins.”

all the interviewees who were questioned about this issue admitted that large employers have an advantage when hiring non-EU/EFTA workers. While multinationals employ internal teams and external consultants for handling recruitment and immigration processes, employers in smaller companies are often less aware of admission rules and practices. When presenting convincing arguments to governing authorities is the key to obtaining the necessary permits, companies with more resources and expertise to invest in admission processes and lobbying activities have a clear advantage. Moreover, cantonal authorities have priorities in terms of the firms that they wish to satisfy: in Vaud and Basel, some economic sectors have been politically defined as priority development areas, meaning that companies active in these sectors take precedence. According to several interviewees, large employers with more negotiating power also tend to be privileged: an employee of the office in charge of the labour market in Basel-City explained that it is important to them “that the big companies stay here, and that they can provide their services, and that they also obtain the workforce they want” (personal communication to Metka Hercog, 28 May 2015). Following this logic, in 2013 the cantons of Basel-City and Basel-Land opened an office on the Novartis campus specifically dedicated to processing permit applications for their employees (Scherrer, 2013). They justified this special treatment by arguing that Novartis hires a significant number of foreigners each year and is among the canton’s most important employers.

Besides the preferences of cantonal authorities, the admission system relies to a certain extent on the inventiveness of the private sector (Groutsis, Van den Broek, & Harvey, 2015). For instance, one employee of the labour market office in Basel-City admits that “The quota system is a kind of science in itself. Who is subject to quotas, who is not? ... I don’t even know all these tricks” (Personal communication to Metka Hercog, 28 May 2015).³¹ This employee refers to the many “special cases” present in the law and detailed in the administrative guidelines regarding the Foreign Nationals Act (State Secretariat for Migration, 2015a). Indeed, it is another specificity of the Swiss admission system that there are many exceptions to the general rules, for instance, for academics, non-EU/EFTA nationals who completed their studies in Switzerland, interns, and intra-company transferees, among others. There are also exceptions for specific professional sectors such as the health, tourism, artistic, and sports sectors. These exceptions can enable some candidates to avoid the quota system or the priority principle for Swiss and EU workers.

Because of the complexity of the system, experts who can navigate and take advantage of its intricacies are of particular value to companies in need of foreign workers. For instance, several job announcements for consultants and lawyers specialising in immigration were posted online shortly after the 2014 vote on the initiative “against mass migration”, indicating that companies were recruiting in this field in anticipation of tougher admission processes. In the same vein, an interviewee

³¹“Also es ist, dass mit den Kontingenten ist so ein bisschen eine Wissenschaft für sich. Eben, welche sind kontingentiert, welche nicht? ... Die kenne ich eben auch nicht alle, diese Tricks.”

from Basel-City's labour market office mentioned that most big companies use the services of external consulting firms specialising in immigration issues. These specialists, who are experts in cantonal and federal admission requirements, can prepare clear, complete, and convincing applications, or negotiate with the authorities on behalf of an employer. However, these services can be prohibitively expensive, and are therefore not available to all employers.³²

Examples of job announcements for immigration specialists in Switzerland³³

Wir suchen Sie als Consultant (w/m) Immigration in Zürich

Aufgaben, die Sie voranbringen:

- Eine vielseitige, anspruchsvolle Tätigkeit mit fachübergreifenden Fragestellungen in einem lebhaften, internationalen Umfeld.
- **Erstellung zahlreicher Gesuche um Arbeits- und Aufenthaltsbewilligungen**
- **Tägliche Zusammenarbeit mit Personalabteilungen, Steuerspezialisten, Expatriates und Behörden bei nationalen und internationalen Fragestellungen.**
- Weltweite Kontakte.
- Mitarbeit an grossen und kleineren Mandaten in allen Projektphasen.

Ihr Profil, um gemeinsam etwas zu bewegen:

- Bachelor in Rechtswissenschaft oder kaufmännische Ausbildung mit Erfahrung im Ausländerrecht
- Ein Muss: Interesse am Thema Immigration, ein Plus: **Erste praktische Erfahrung im Ausländerrecht, namentlich beim Einholen von Arbeitsbewilligungen (Global Mobility Programme multinationaler Unternehmen).**
- Erfolgsgaranten, die Sie bei uns weiterbringen: Sie sind ein Organisationstalent und arbeiten gerne im Team, sind selbständig, sehr flexibel, belastbar, engagiert und zuverlässig. Als internationales Unternehmen setzen wir gute bis sehr gute Deutsch- und Englischkenntnisse voraus.

³²The daily rate for this kind of consultancy is between 2000 and 4000 Swiss francs (1760 and 3520 euros).

³³A colleague sent me the first job announcement in April 2015 from the website of the hiring company. I found the two other job announcements in September 2017 on the website OptionCarriere (<https://www.optioncarriere.ch/emploi-immigration.html>) with the keywords "immigration" and "Suisse". The first and third announcements are from global consulting and audit companies while the second is from a relocation company.

Jurist/Rechtsanwalt (m/w) Immigration Law mit Managementfunktionen

Unser Immigration Team braucht Verstärkung:

Aufgaben, die Sie begeistern

- Sie beraten unsere nationale und internationale Kundschaft in allen Belangen des Ausländerrechts und zeichnen verantwortlich für Grosskunden oder spezifische Kundengruppen.
- Sie haben Freude an der Zusammenarbeit mit den Ämtern und pflegen und bauen diese stetig weiter aus.
- Sie sind die primäre Anlaufstelle für ausgewählte „Global Immigration Partners“, für die wir in der Schweiz tätig sind.
- Sie kommunizieren Gesetzesänderungen und sind eine aktive Fachunterstützung für unser Verkaufsteam.
- Durchführen von Compliance Tests und Implementierung der notwendigen Prozesse bei Kunden.
- Als Sprach- und Kommunikationstalent schätzen Sie es sehr, im In- und Ausland Fachreferate zu halten, Konferenzen zu besuchen, Fachartikel zu schreiben und Schulungen bei Kunden durchzuführen.
- Im Bereich Ansiedlungsmanagement sind Sie auch aktiv bei Firmengründungen und im Steuer- und Sozialversicherungsrecht involviert.

Fähigkeiten, die Sie mitbringen

- Guter juristischer Universitätsabschluss
- Mindestens 3 Jahre erfolgreiche Berufserfahrung in ähnlicher Position (**ein Muss**).
- Ausländerfahrungen wären wünschenswert.
- Sie sind eine gewinnende Natur mit ausgeprägter Kundenorientierung.
- Sie sind eine integre und vertrauenswürdige Persönlichkeit mit Sinn für effiziente, pragmatische und lösungsorientierte Arbeitsweise.
- Wichtig sind uns Ihre exzellenten Sprachkenntnisse vornehmlich in Deutsch und Englisch in Wort und Schrift (bilingual von Vorteil). Jede weitere Sprache wie zum Beispiel Französisch oder Italienisch schätzen wir sehr.
- Sie haben die Fähigkeit, sich mündlich und schriftlich strukturiert, knapp und prägnant auszudrücken, sind kreativ und haben Freude im Umgang mit Menschen.
- Sie schätzen es, in einem unkomplizierten und entscheidungsfreudigen, dynamischen Team zu arbeiten.
- Einsatzbereitschaft, ausgeprägtes Qualitätsbewusstsein und schnelle Auffassungsgabe, analytisches Denkvermögen, präzises Arbeiten, Flexibilität, Belastbarkeit, Loyalität, Durchsetzungsvermögen, selbständige Arbeitsweise, Zuverlässigkeit und Verantwortungsbewusstsein sind weitere Eigenschaften, die Sie auszeichnen.

SPEZIALIST/IN ARBEITS- UND AUFENTHALTSBEWILLIGUNGEN IHRE AUFGABEN

- Sie beraten unsere nationalen und internationalen Kunden im Bereich Schweizer Arbeits- und Aufenthaltsbewilligungen und wickeln sämtliche administrativen Aufgaben in Ihrem Zuständigkeitsbereich eigenverantwortlich ab
- Sie nehmen regelmässig an internen und externen Fachvorträgen, Messen und Veranstaltungen teil, erweitern Ihr professionelles Netzwerk und vertreten unsere Dienstleistungen
- Sie erstellen Offerten und führen Präsentationen, Schulungen sowie Workshops durch
- Sie informieren sich proaktiv über politische und gesetzliche Veränderungen und erarbeiten Newsletter für unsere Kunden
- Sie unterstützen die Weiterentwicklung des Bereichs Immigration Services im internationalen XXX Netzwerk

IHR PROFIL

- Sie bringen mehrjährige Erfahrung im Bereich Global Mobility, insbesondere im Spezialgebiet Schweizer Arbeits- und Aufenthaltsbewilligungen mit
- Sie kennen die Anforderungen und Erwartungen an Ihre Beraterrolle aus beruflicher Praxis und zeichnen sich aus durch eine selbstständige, genaue sowie zuverlässige Arbeitsweise
- Aufgrund Ihrer Fachkompetenz, hohen Flexibilität und Organisationsstärke meistern Sie sowohl komplexe Aufgabenstellungen im Tagesgeschäft als auch parallellaufende Projekte jederzeit qualitätsbewusst, effizient und fristgerecht
- Stilsichere mündliche und schriftliche Ausdrucksfähigkeit in Deutsch und Englisch setzen wir voraus; weitere Sprachkenntnisse sind ein Plus

Besides the consultants and lawyers that specialise in immigration, relocation agencies are another important type of intermediary. Large employers sometimes mandate external service providers that specialise in relocation issues to organise their (future) employees' mobility (Ravasi, Salamin, & Davoine, 2015). The negotiated relocation packages can cover many aspects of daily life and cost between a few thousand and several tens of thousands of Swiss francs, depending on the position of the employee and the importance of their skills for the company. Residence permits are usually included in these relocation packages. In that case, the relocation agency either takes charge of the admission request itself or collaborates with another agency, as shown in this interview excerpt with a relocation specialist in Basel:

Relocation specialist: I always tell my clients, if they want to set up a business here: Do it in Basel-City, because it's much easier than anywhere else [The cantonal administration] just need good reasons, why these people have to come. You have to follow all the rules There is a portal for advertising jobs for third-country people. We do all of that.

Interviewer: So you do it for the company?

Relocation specialist: I work with a lawyer and we do it together ... we collect all the information and all the normal stuff and if there is a special reason why we have to do something differently, [the lawyer] explains why.

Interviewer: Do you have examples of situations where it didn't work?

Relocation specialist: Never. (Personal communication, 18 November 2015)

Interviews with people who struggled to obtain a permit mitigate the confident view of this relocation specialist about the accessibility of residence permits in Basel-City. Nevertheless, the involvement of external service providers points to the importance of knowing the subtleties of the admission process.

In addition, perseverance and personal contact with the administration are important, as shown in this interview with a human resources manager in the banking sector:

When you try to recruit someone, it's practice, you come to understand the intricacies of the system. But, in the case of the Brazilian we brought in, it was an easy situation but I can tell you that it took three to four months It works, but I had to push a lot, phone a lot. I had friends here, friends there: What's happening? Give me information, what can we do? It's laborious.³⁴ (Personal communication, 11 April 2015)

These elements highlight the importance for admission candidates to be sponsored by employers with both the willingness and the resources to undertake the admission process. Hence, the field research suggests that even if the candidate's qualifications do play a role in determining the outcome of an admission request, more significant is the negotiating power of the employer sponsoring the request – which depends to a large extent on the authorities' perception of this employer's importance – as well as their ability to mobilise knowledge about the process, either internally or externally. The development of a "migration industry" (Gammeltoft-Hansen & Nyberg Sørensen, 2013) composed of lawyers, consultants, and relocation specialists who facilitate admission processes for non-EU/EFTA workers in Switzerland, indicates that both employers and service providers understand the importance of expertise and contacts in this process and have adapted their practices accordingly. Their knowledge and networks enable them to reach their objectives. These findings are reminiscent of Alexis Spire's research on the practices of tax authorities in France (2012), which shows that personal contacts, the mobilisation of knowledge about relevant laws, and the use of specialists for dealing with authorities enables wealthier taxpayers to obtain more favourable treatment than taxpayers

³⁴“Quand tu cherches à recruter quelqu'un, c'est par la pratique, tu comprends les arcanes. Mais dans le cas du brésilien qu'on avait fait venir, c'était une situation simple, mais je peux te dire que ça a pris 3-4 mois ... et puis la procédure elle est ... si tu veux il n'y a personne qui lead. Il n'y a pas quelqu'un dans la procédure qui vérifie que le dossier circule. Ça fonctionne, mais j'ai dû beaucoup pousser, beaucoup téléphoner. J'avais des copains ici, des copains là: où est-ce que ça en est? Donne-moi l'information, qu'est-ce qu'on peut faire? Donc c'est laborieux!”

with fewer resources. In contrast to taxpayers, however, candidates for admission are dependent on their employer for obtaining a permit. What matters most is not the relation between the *candidate* and the administration, but rather the relation between the *employer* and the administration. While some employers are well equipped for managing the admission requirements, others lack the experience, resources, or motivation for engaging in such processes. Therefore, the position of a candidate's employer within the system can result in very different experiences of access to the Swiss labour market and territory.

2.2.4 *Portrait: Administrative Obstacles for a Brazilian Engineer*³⁵

Case studies can offer a glimpse into how admission processes are experienced by candidates. The following story is about a young Brazilian man – Luca³⁶ – who sought to transform his legal status from student to worker. Since January 2011, non-EU and non-EFTA graduates of Swiss higher education institutions are entitled to stay in Switzerland for 6 months after graduation and may obtain a longer-term residence permit if they find employment that represents “an overriding scientific or economic interest” for the country (Art. 21 § 3 FNA). In that case, the admission process is similar to the one for non-EU/EFTA workers, except that the employer sponsoring the work permit does not need to prove that an eligible Swiss/EU/EFTA candidate couldn't be found. This exception simplifies the process for both the employer and the administration. Nevertheless, despite this privileged position with respect to legal admission norms, Luca encountered many difficulties.

Luca is in his 30s and had been living in Switzerland for 4 years when I met him. We were introduced through a mutual friend who knew about my research interests. Luca told me that he had always wanted to live abroad, although he had never left South America before visiting France on a study trip. He grew up in an upper-middle-class family. Since kindergarten, he had received a bilingual Portuguese/English education. His parents worked in sales and owned several shops in Brazil. Although this provided them with a comfortable lifestyle, it did not enable them to fully support their son during his stays abroad, meaning that Luca was partly dependent on scholarships and paid jobs to realise his travel dreams.

When he started his university studies in material engineering in Brazil, Luca wanted to study in Europe for one or two semesters and subsequently obtained a scholarship from his school to go to France. This experience gave him the opportunity to discover other European countries during weekends and holidays, including Switzerland. He was also accepted for an internship at a French company, gaining his first work experience abroad.

³⁵This interview was conducted by Laure Sandoz in October 2015. An earlier version of this portrait was published in French in *terra cognita* n 29 (Sandoz, 2016a).

³⁶Research participants' names have been changed to maintain their anonymity.

Eager to experience living in another country again, Luca applied for and was accepted to a master's degree programme at a Swiss university. He chose Switzerland because of the high quality of education and the low tuition fees. In addition, he already knew some French and thought that it would be easier for him to move to a region where he spoke the language. The fact that his parents had sufficient resources enabled him to easily obtain a student visa for Switzerland once he had been accepted at a university.

During his 2 years of study in Switzerland, Luca held several part-time jobs at the university in order to support himself. His financial situation was complicated during his 2nd year when his father became ill and had to leave his job. Nevertheless, Luca managed to graduate as an engineer. He then sought employment and was offered a 3-month contract at a Swiss company. Unfortunately, the human resources manager cancelled the offer when he realised that Luca did not have a valid work permit.

At this point Luca returned to Brazil, where he continued looking for positions in Europe. Soon afterwards, he was contacted by a Swiss company where he had applied for an internship during his studies. This time, he was more careful about communicating his residence status and did not tell them that he was not in Switzerland. He simply sent a copy of his still-valid student residence permit without further information. He was subsequently invited to an interview and managed to travel in time to be there in person. At the end of the interview, he was offered a position which he accepted.

Luca immediately contacted the human resources department of his employer to help solve the administrative issues related to his foreigner status, but soon realised that they did not know how to hire a non-EU/EFTA citizen. The company advised that he send his student permit to the municipality where its headquarters were located, thinking that it could be renewed there. After waiting a few weeks, however, they realised that this process was incorrect: the permit application should have been sent to the cantonal authorities in charge of the labour market.

More time went by and Luca decided to go back to Brazil to spend Christmas with his family. On arrival, he received disappointing news: his request had been accepted, but the permit he received was valid only for 1 year. Under these circumstances, the company did not wish to hire him because they needed someone for a longer period. Nevertheless, a human resources employee promised to enquire whether the permit could be renewed after a year.

By mid-January, Luca had received no news either from his potential employer or the canton. Nonetheless, he decided to go back to Switzerland with a return visa which was valid for 21 days. He spent this time at a friend's and was finally forced to leave the country. While in transit in London, waiting for his flight to Brazil, he checked his emails and discovered that the company had finally agreed to hire him because they had received confirmation from the canton that renewing his permit after 1 year would not be difficult. Luca cancelled his flight to Brazil and immediately travelled back to Switzerland.

Luca still had to obtain his permit. An employee of the municipality informed him that he first needed to apply for a new visa because his 21-day visa was no

longer valid, but the kind of visa he needed could only be delivered in his country of origin. Fortunately, Luca managed to negotiate an exception: instead of going back to Brazil, he was allowed to pick up the visa in Paris.

Back in Switzerland, Luca discovered that he also needed to find an apartment in the canton that had approved his permit request, as the permit was tied to the canton and forced him to live there. He had not expected this new constraint but had no other choice than to conform. After a few days of research, he found an apartment to rent. He considered himself lucky, because obtaining a lease without a permit is not easy in Switzerland: landlords usually prefer tenants with long-term authorisation. Luca went back to the municipality and finally received his permit. After 4 months of administrative setbacks, he could start working.

During the interview, Luca explained that he was satisfied with his work but still felt trapped by his legal situation. Since the beginning of his contract, his first work permit had been renewed, but only for another year. Although he could reasonably expect to obtain a longer-term permit at the next renewal, the fact that his situation depended so much on the goodwill of cantonal authorities worried him. Moreover, the economic situation of his company was tense, and Luca knew that if he lost his job, he would lose his permit as well. He wished to stay in Switzerland, especially since he had fallen in love with a person living in the same town. He described his situation as follows:

Sometimes you become more obedient. Sometimes you come to agree more with the bosses. It's not my personality, but sometimes you do it because you are afraid. You do what they want, the boss, or the company, because if you lose your job, it's over It's very stressful. (Personal communication, 6 October 2015)

* * *

Although Luca experienced the admission process as difficult and stressful, his case shows that he could count on several strengths that helped him deal with the obstacles he encountered.

Firstly, Luca found an employer who agreed to sponsor his request, which is a necessary condition for applying for a work permit. Luca's previous experiences, as well as those of other interviewees, show that employers are often reluctant to engage in administrative processes that necessitate commitment and time without any guarantee of success. In addition, the human resources employee in charge of his case took a proactive approach, persisting on his behalf even after the initial setbacks. This shows again that the employer's support is of crucial importance. Secondly, Luca studied engineering at a renowned Swiss university. This places him in a special legal category with facilitated access to a permit. Moreover, an official shortage of engineers has been identified in Switzerland (Arquint, Reber, & Bauer, 2011), which made it easier for him to find a position corresponding to his field of expertise. The combination of these elements contributed to making his case stronger and the authorities were easily convinced of the overriding economic interests of the request. Thirdly, Luca had the necessary resources and flexibility to adapt to the changing situation: even though he is not rich, he had enough money to travel

between Switzerland and Brazil and he was able to react quickly when the municipality asked him to find an apartment or to get a visa in Paris. His proficiency in the local language and his social skills also contributed to facilitating these actions.

Despite its strengths, Luca's case took several unexpected turns. This is partly due to the employer's lack of experience with the admission process, which points again to the importance of systemic knowledge. The initial procedural mistake caused unnecessary delays. Then the employer refused to hire Luca, because he had received a short-term permit instead of a long-term one. Only once the employer was reassured that the short-term permit could be renewed did he reconsider his decision. The employer did not know that granting potentially renewable short-term permits is common practice because the quota for short-term permits is larger than the quota for long-term permits. Finally, obtaining the permit after the decision had been taken was more complicated than expected. Here again, the fact that Luca did not know about the restrictions associated with his permit meant that he could not anticipate them – for instance, by searching for an apartment in advance. In addition, the employer did not offer any relocation support services. Luca thus experienced the situation as very stressful and constraining.

This case also illustrates Luca's limited control over the procedure. During the main decision process, the employer was in charge of communicating with the canton and Luca had few opportunities to participate. Only once the permit request had been approved could he meet the municipal employees in charge of checking the last administrative requirements before issuing the permit. This absence of contact between the selecting authorities and the candidates highlights once again the central importance of the employer in the process. This observation supports the argument that the candidate's qualifications are not an important selection criterion *per se*; more significant is the candidate's ability to convince the employer of their value, as well as the authorities' perception that the employer's needs must be met.

Finally, this case draws attention to Luca's dependence on his job. Because the permit was tied to the position and depended on a decision by the responsible canton, Luca was constrained in both his spatial and professional mobility; if he decided to change his job or residence, he would have to go through the whole process again with no guarantee of success. This situation has serious economic and psychological consequences, since it restricts career development opportunities and creates stress as well as planning difficulties. It is also reminiscent of the old Swiss immigration system: although the policy focus has changed from non-specialised workers to highly qualified workers, some mechanisms still contribute to keeping foreigners dependent and insecure.

2.3 Highly Skilled or Highly Wanted Migrants?

This examination of the norms and practices in the Swiss admission process for non-EU and non-EFTA workers highlights various tensions in how immigration policies are designed and implemented over time. The historical overview shows

that the current policy consists of a compromise between different interests and perceptions of immigration: it was designed in a time of globalisation when participation in international processes was perceived as crucial by many decision makers in Switzerland. At the same time, governing actors had to comply with a popular demand for more immigration control, as well as with the refusal to become part of the EU. Hence, they had to find alternatives to achieve their internationalisation objectives. Bilateral agreements between Switzerland and the EU/EFTA countries were the result of one compromise, while another was to limit immigration from the rest of the world to a strict minimum.

Opening the borders of Switzerland to EU/EFTA nationals also meant closing them to others. Yet international firms based in Switzerland demanded that they be able to hire specialists globally, and many decision makers were sensitive to the idea that the country needed to be attractive to highly skilled migrants. Hence, several exceptions were introduced into law that granted “most needed” foreigners access to the Swiss labour market. Moreover, Switzerland had to respect international regulations, meaning that access to the territory had to remain open to some extent for family reunification and humanitarian cases. Finally, other interests and constraints contributed to further expanding the range of people with access to the Swiss territory (e.g. students, researchers, renters, investors, people falling within the scope of bilateral treaties). The Swiss immigration policy can thus be seen as an attempt to reconcile opposing tendencies towards openness and closure (Piguet, 2009). This tension is visible in the broad formulation of the law, which offers flexibility to adapt to changing situations. The important discretionary power granted to cantonal authorities also contributes to creating a balance between federal and cantonal priorities. At the same time, the policy needs to convey an impression of control in order to reassure voters in favour of more restrictive immigration.

In this context, there is no right of admission for non-EU/EFTA workers. Indeed, in a restrictive immigration system such as Switzerland’s, the main issue for policy makers is not so much defining clearly who can be admitted into the country on the basis of personal characteristics, but rather providing legal means for the authorities in charge of the admission process to exclude people they consider unnecessary. Broad and vague definitions of economic interests form an integral part of Swiss immigration policy, since they can be used either in favour of or against a given candidate, depending on how the person responsible for the decision interprets the situation. In a similar vein, the “indispensability” of candidates is evaluated in direct relation to concrete situations. For this reason, the skills of a given person are not valued in and of themselves, but are rather weighted in relation to a specific context. Given the competing political agendas of various interest groups, this system appears restrictive by stressing the importance of selection and the low annual quota for each canton; however, it also appeases economic interests with flexible cantonal practices that involve using federal reserve quotas or proposing alternative solutions to interested employers.

Candidates for admission have limited opportunities to influence the decision process. Interactions happen mainly between the employers and the cantonal authorities in charge of the selection, which makes candidates dependent on the

ability and willingness of their sponsor to support the admission request. Furthermore, in the absence of clear admission criteria, candidates have no guarantee regarding the procedure's outcome, and are left in a state of uncertainty until the final decision. In this sense, even if the cantonal authorities in charge of the labour market in some cantons like to present themselves as service providers, their services chiefly concern the businesses that contribute to the canton's economy, not the foreigners themselves.

This analysis, although specific in many regards to the Swiss case, contributes to enlightening dynamics of migration policy that transcend the borders of Switzerland. As already discussed in the introduction, globalisation has not created a borderless world, but it has encouraged governments to become more aware of who they want to attract and who they want to keep out (Mau, Gülzau, Laube, & Zaun, 2015; Yuval-Davis, Wemyss, & Cassidy, 2018). A main challenge has been to develop strategies to promote economic dynamism while maintaining sovereignty over borders. Meeting the demands of internationalised economic actors while responding to populist calls for more immigration control has become a challenge in many industrialised countries. One response to this issue has been to implement highly skilled migration policies because these selection tools tend to be less controversial than other immigration policies. Moreover, most researchers, politicians, and decision makers seem to consider that selecting immigrants based on their potential economic interest for the host country is legitimate and unproblematic.

Nevertheless, the absence of controversy about this specific type of policy contributes to the production and reproduction of power structures that advantage certain actors and exclude others. It participates in shaping a world in which "migrants" and "natives" are treated differently because the former are expected to meet the needs of the latter in order to obtain the right to coexist. This view grants considerable power to certain actors for selecting potential migrants and influencing local demographic structures. Furthermore, the insistence on economic interests overshadows other important dynamics at hand in immigration policies and competes in some instances with objectives of social justice, cohesion, and basic human rights.

As the analysis shows, it is difficult to rigidly define who highly skilled migrants are. While a distinction between "highly skilled" and "low skilled" clearly exists in Swiss policy discourses on immigration, the actual differences in how qualifications are valued are not obvious, and these categories do not really help to form an understanding of how authorities in charge of admission processes select foreigners. On the one hand, the category "highly skilled migrant" serves to legitimise a fair admission process based on merit and to provide reassurances of the profitable and unthreatening nature of immigrants. On the other hand, the actual selection depends more on the admission context than on the candidate's personal characteristics and skills.

This problem of definition is not limited to the Swiss case. In most countries, skills are only one of many dimensions that are taken into account during the admission process (Hercog & Sandoz, 2018a). As other authors have shown, age, nationality, gender, and social background all influence selection (Kofman, 2014; Kulu-Glasgow, Schans, & Smit, 2018; Tannock, 2011). Moreover, governments are

increasingly implementing demand-based migration policies that define immediate employability as the decisive selection criterion (Van den Broek, Harvey, & Groutsis, 2016). Even Canada, which is famous for its points-based supply-driven immigration system, is currently shifting to an approach that aims to address short-term regional labor market shortages (Ferrer, Picot, & Riddell, 2014).

Hence, the term “highly skilled migrant” does not seem appropriate for describing the analysed situations. The skill level of the candidate is not the decisive criterion; more important is how they are perceived by decision makers and how they fit into the specific context for which they are selected. This observation, although based on the Swiss case, is valid to varying degrees in other countries as well. I propose the term “wanted immigrant” instead of “highly skilled migrant” to better highlight this contextual dimension.

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