

Selecting the highly skilled: norms and practices of the Swiss admission system for non-EU immigrants

Abstract

This article problematizes the concept of highly skilled migrants through an analysis of policy documents and interviews with key informants involved in the admission process in Switzerland. Current political discourse classifies foreigners differently according to their country of origin and skill level. Existing legislation prioritizes immigrants from the European Economic Area and is very restrictive towards third-country nationals. By examining the implementation of the admission policy for labour migration, this article evaluates which criteria matter most to state authorities when determining if someone is a desirable immigrant. Despite its stress on qualifications and economic interest, the admission process for third-country workers was also found to fulfil non-economic objectives such as providing the impression of state control over immigration and of state protection of local populations from migrants. Building on this observation, the article argues that more in-depth studies are required to better understand how states reconcile the different objectives of immigration governance in practice.

1. Introduction

While it is commonly agreed that skilled migration benefits receiving countries (Boeri, Brücker, Docquier, & Rapoport, 2012; Iredale, 2001; Millar & Salt, 2007; OECD, 2002; Triadafilopoulos, 2013), questions about who and what constitute skilled migrants are only starting to emerge in the literature (Boucher & Cerna, 2014; Favell, Feldblum, & Smith, 2006; Isaakyan & Triandafyllidou, 2015; Parsons, Rojon, Samanani, & Wettach, 2014; Scott, 2006; Tannock, 2011; Yeoh & Huang, 2011). The notion of skill itself is problematic to the extent that, presented as a measurable and marketable product, it has become highly fetishized in current business and political discourses (Urciuoli, 2008). Building on these

observations, this article offers insights into how state authorities conceptualize ‘highly skilled migrants’ through migration discourses and policy implementation in a case study from Switzerland. Given that skills serve as selection criteria only for third-country nationals who come to Switzerland on work permits, we argue that symbolic functions of this policy dimension supersede its economic objectives.¹ Beyond official political discourses based on economic needs and interests, we observe that the restrictive policy towards third-country workers also serves to reassure the broader public of adequate control over immigration.

As a small country with few natural resources, the economic development of Switzerland has largely been built on immigration and internationalisation. Currently, more than half of the working age population arriving from abroad has completed tertiary education (Swiss Federal Statistical Office, 2016) and in the period between 2006–07 and 2012–13, Switzerland was one of the OECD countries with the steepest increase in numbers of highly educated migrants (OECD/EU, 2015). With high R&D spending and as home to many European or world headquarters of multinational enterprises, it is a global centre for business and research and an attractive environment for a highly skilled workforce. At the same time, foreign workers are at the centre of political debates pressing for a reduction of immigration. This makes Switzerland a perfect laboratory to disentangle different understandings of the commonly used concept of ‘highly skilled migrants’.

Within this context, this article evaluates which criteria matter most to state authorities to determine if someone is a desirable immigrant in the context of an admission policy officially focusing on skills as a main admission criterion. We explore the goals of labour migration policies in Switzerland and analyse how the use of skill-based selection for

¹ In Switzerland, the term “third-country nationals” refers to people who are not citizens of a member state of the European Union (EU) or of the European Free Trade Association (EFTA).

third-country nationals contributes to articulating and reconciling immigration policies. First, we discuss the increasing use of skill-based immigration systems and the possible objectives of such systems. In the second part, we frame admission policy for labour migration to Switzerland within the broader economic and political context. The third part focusses on economic interests as the guiding principle of immigration control. Finally, the conclusion discusses practical definitions of ‘highly skilled migrants’ in Switzerland and their more general impact on immigration policy.

2. Selective immigration policies

Most receiving countries try to limit low-skilled immigration, while at the same time allowing or encouraging high-skilled immigration (Czaika & Parsons, 2015). Countries with knowledge-based economies design their immigration policies not only to control and select who is allowed to enter the country, but also to send a signal of welcome to ‘highly skilled migrants’ (European Commission, 2007). Specialized fast-track procedures and points systems with advantageous conditions for admission and post-entry rights are the most common policy tools used to recruit economically desirable migrants. However, reducing the objectives of skilled-immigration policies to a simple ‘race for talent’ (Shachar, 2006) is too simplistic; although economic interests are often presented as the main reason for introducing skill-based policies, governments take into account various priorities when defining an immigration strategy.

One basic objective of labour migration policy is to meet labour demands without creating negative effects on the labour market for residents (OECD, 2009). Regardless of whether the system is supply or demand driven, skilled migrants are seen as a resource to boost national development. They are viewed to be less welfare dependent and more suited to the labour market needs than unskilled labour (Boucher & Cerna, 2014). Points-based supply-

driven systems are credited with eliciting more desirable immigration candidates in the long run (Tani, 2014) while demand-based systems respond to short-term economic needs in which immigration mainly serves to reduce current labour-market shortages (Chaloff & Lemaitre, 2009; Parsons et al., 2014). Nowadays, most countries use demand-driven systems; even countries with long histories of point systems have moved in that direction by giving preference to immigrants with a job offer (Gelatt, 2017).

Besides addressing immediate shortages in the labour market, immigration policies often pursue longer-term economic objectives such as balancing demographic development or stimulating innovation and investment. In order to keep the working-age population at a constant size, points-based systems favour younger immigrants. Some policies address specific goals such as seeking migrants who could spur innovation and expand the talent pool for long-term economic growth (Freeman, 2005). For instance, Germany assigns foreigners with STEM degrees their own residence category. By establishing lists of occupations with skill shortages, and by giving people within these occupations favourable treatment, immigration policies go beyond filling current labour gaps.

Immigration policies also have strategic and symbolic objectives. For instance, foreign-policy interests may lead to favourable admission possibilities for nationals from countries that are strategic for trade. In addition, selective policies that aim to impact the skill composition of migrant flows may favour migrants based on social desirability (Czaika & De Haas, 2013; Simon-Kumar, 2015). Thus, immigration policies also imply symbolic statements about who is wanted and who is not, especially when the numbers and types of migrants who should be admitted to a country are commonly discussed (Anderson, 2012). Therefore, insisting on the need for specialised talent can be used as a covert measure to favour migrants from groups that are not perceived as a threat (Bast, 2012) and create an appearance of control (Massey et al., 1998, p. 288).

Overall, we view immigration policies as part of a broader framework. Immigration policies affect more than just the composition and volume of immigration flows which, in turn, are affected by more than just immigration policy. Policies on labour markets, science and innovation, and foreign investment all influence migration. Therefore, it is important to look at the whole system and not just the narrow immigration schemes that are aimed at the highly skilled. For this reason, the next sections analyse admission policy for labour migration to Switzerland and frame the discussed procedures within general economic and non-economic objectives.

3. Admission procedures for third-country workers in Switzerland

Switzerland has a dual system for the admission of foreign workers. The Agreement on the Free Movement of Persons allows citizens of EU/EFTA member states to enter and find employment on par with Swiss citizens. In contrast, citizens of third countries (countries that are not part of the EU or EFTA) can only be granted residence and work permits under strict conditions. With regard to admitting third-country workers, Switzerland has a typical 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). There is no open track for low-skilled workers in the normal admission system, which implies that *only* highly skilled workers can, under certain conditions, be admitted into Switzerland. Since the introduction of the Agreement on the Free Movement of Persons, the demand for low-skilled workers has been met, to a large extent, with immigration from the EU and by integration of the workforce already present in Switzerland and in the EU.

Switzerland does not belong to the group of countries that prospect worldwide for ‘the best and the brightest’ (Kapur & McHale, 2005) by using advantageous options within the

immigration system. The admission track for EU nationals does not offer any special treatment for skilled migrants, and the one for third-country workers is far from attractive. Several admission criteria apply for them: admission must be in the interest of the economy as a whole (art. 18a Foreign Nationals Act); it must be supported by an employer willing to hire the candidate (art. 18b FNA); 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 for the migrant (art. 24 FNA). In addition, a system of quotas limits the annual number of permits that can be issued to third-country nationals. The national government assigns the maximum number of available permits to the cantons according to their size and economic activity and keeps an additional reserve, available on demand. For instance, in 2017, a maximum of 4,500 short-term permits and 3,000 residence permits could be allocated to non-EU/EFTA workers.

Nevertheless, the focus of the admission policy for third-country workers is – whether despite of or because of such a restrictive approach – clearly on highly skilled migrants. For example, the Foreign Nationals Act (FNA) states that ‘short stay and residence permits for work purposes may only be granted to managers, specialists and other qualified workers’ (art. 23 FNA). Certain foreigners with special skills are also exempt from the requirement to indicate their prospect for lasting integration in the Swiss job market and social environment. Investors, entrepreneurs, distinguished people in the fields of science, culture and sport, people with professional skills in demand, managers within international companies and people who are key to international business do not need to prove their national language skills, which otherwise holds primacy in integration requirements (art. 23 FNA).

Despite such a selective approach, policy documents do not clearly define who qualifies as a highly skilled worker. Unlike point systems, which award points according to measurable criteria, or in specialized schemes such as the EU Blue Card or the Dutch knowledge migrant scheme, which specify either a minimum salary threshold and/or specific occupations, the Swiss labour migration policy remains ambiguous in its description of eligible ‘qualified workers’. The next section explains why this is the case by analysing how highly skilled migrants are defined through discourses and practices associated with the Swiss admission system for third-country workers.

In order to analyse Swiss immigration policy at the federal level, we chose several documents issued by the state administration: a) the Foreign Nationals Act of 2005 (FNA), which regulates the admission and stay of third-country nationals; b) a set of guidelines for the interpretation of the FNA (2015); c) an explanatory document on the FNA (2002); and d) a report on immigration by the Federal Council (2012).

Within the federal organization of the state, cantons are responsible for implementing the federal immigration law according to their needs and priorities. We selected two cantons – Basel-City and Vaud – where a large number of third-country nationals are hired each year in proportion to the resident population, mainly due to the strong presence of multinational companies. We interviewed 11 key informants involved in the admission process and participated in several events related to immigration in order to contrast discourses and practices. Semi-structured interviews of one-to-two hours were conducted with a) two managers in the cantonal labour market departments; b) a legal consultant about her experiences supporting applications for permits; c) two 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 third-country workers; g) a relocation agent about the way she supports her clients into obtaining work and residence permits; and h) a person in charge of diversity management and integration at the cantonal level.

4. Who are the ‘highly qualified workers’ in Switzerland?

The FNA, the main document administering admission of third-country nationals, associates the qualification criterion with two notions – the general admission principle of ‘economic interest’ and the notion of ‘integration’:

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)

Our analysis, however, shows that, in practice, the two notions do not have the same weight. While the notion of economic interest plays a central role, the notion of integration is hardly taken into account in admission decisions in the cantons that were studied. Several policy documents assume that highly skilled workers have less difficulty integrating than low-skilled workers. For instance, the Swiss Secretariat for Migration website states:

By decree of the Federal Council, workers from [third states] 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. (SEM 2015b)

Another document issued by the federal government states that: ‘Highly qualified workers generally have more competences and also more resources to organise themselves’ (Swiss Federal Council, 2012, p. 32). It thus suggests that they are less likely to rely on social

benefits while integrating. According to our interviewee from Basel-City's labour market office:

For the highly qualified, the salaries and working conditions are very good. I think that there isn't any 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. In Basel, they have everything, from schools to churches. That's of course not ideal. But in the end, this is not within my responsibility. (Personal communication, 28 May 2015).

Although debates have started to emerge in the past decade in Basel and other Swiss cities about 'expat bubbles' and gentrification due to the arrival of foreigners with high-level positions (Schneider-Sliwa, 2013), the primary concern of selecting authorities is to decide who is allowed to enter the local labour market. The notion of 'economic interest' is central for legitimising this selection process in both studied cantons. According to an interviewee from the cantonal office in charge of selecting labour immigrants in Vaud, 'the needs of the economy are, in reality, materialised by the needs of a company and its prospects for growth' (personal communication, 28 May 2015). However, our analysis of the notion of 'economic interests' in the practice of the Swiss admission system for third-country workers highlights at least four dimensions that go beyond purely economic concerns.

First, 'economic interest' is closely connected to the idea of protecting the local labour market. Indeed, our research shows that employers are only allowed to recruit third-country workers if they can convince the authorities that hiring a specific person will have positive repercussions on the local job market or that not hiring this person will have negative local repercussions. Moreover, cantonal authorities must ensure that the employment conditions offered to foreign employees do not endanger local workers by causing social or salary dumping. The idea that states must protect the interests of their own citizens is thus part of

this notion of economic interest. In the current dual system of admission, this protection is extended to foreigners who are already present in the country with a right to work (SEM, 2015, pp. 90-91).

Second, the notion of ‘economic interest’ as practiced in Switzerland is balanced by a restrictive understanding of admission rules. Over the past 60 years, state authorities have had to deal with several waves of strong anti-immigration sentiments among population segments (Manatschal, 2015). Therefore, they have needed to find compromises between promoting economic development, fulfilling international obligations, and reducing immigration growth (Piguet, 2006). Rapprochements with the EU have not easily been accepted in Switzerland, and a 2014 popular initiative that demanded the reintroduction of quotas for all categories of foreigners challenged the Agreement on the Free Movement of Persons (Uebersax, 2015). In this context, the government needs to send signals to the population that it is able to control immigration. For instance, in 2015 the annual quota for third-country workers was reduced by 2,000 permits, despite opposition at the cantonal level. Because the quota is, in general, set low, cantonal authorities must remain selective when dealing with admission requests, even in cantons whose economic development largely depends on the immigration of highly skilled workers.

Third, despite restricted access to permits, the notion of economic interest grants cantonal authorities significant flexibility. Indeed, the broad definition of this notion allows them to adapt easily to political and economic changes within the cantons. Our two case studies in Vaud and Basel-City show that cantonal authorities in charge of the admission process collaborate with cantonal authorities in charge of economic promotion. In both cantons, the office in charge of the admission process for labour immigrants belongs to the department for the economy, and the selecting authorities primarily consider cantonal economic development. Reassuring major companies that sufficient numbers of permits will

be available is one of the office's important tasks. The departments in both cantons are also involved in lobbying activities to convince the federal government to increase the number of permits for specialists from non-EU states (The Local, 2017). Moreover, part of their job is to inform companies about admission rules and support them in their permit applications. In this sense, cantonal authorities do not only control admissions, they also serve as intermediaries between companies and the federal law and act as defenders of local interests. This combination of flexible cantonal practices and restrictive federal rules, which reflects different interests at the federal and cantonal levels, helps explain why Switzerland, despite many attempts to reduce immigration at the national level during the last century, has never been able to significantly reduce immigrant flows through policy measures (Piguet, 2006).

Finally, immigration policies also inherently perform 'the dirty work of inequity and exclusion' (Dauvergne, 2009, p. 333). Admitting third-country nationals based on economic interest results in unequal treatment of Swiss/EU nationals and workers from the rest of the world. Maintaining 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. Between 1991 and 1998, Switzerland adopted a 'three-circle' immigration policy, which defined circles of priority for the recruitment of foreign workers: first priority was given to EU citizens; second priority applied to 'traditional recruitment sources' such as Canada and the United States; and third priority concerned citizens of the rest of the world, from which only the most highly skilled workers could be recruited in exceptional cases (Swiss Federal Council, 1991). State authorities legitimised this policy by appealing to a notion of 'cultural proximity' with the first and second circle and by emphasising the importance of qualifications in the case of the third circle, which was supposed to guarantee the better integration of immigrants. Because

of strong criticism from employers, trade unions, and anti-racism movements, the three-circle policy was replaced by the current dual-admission system (Piguet, 2009).

Although ‘cultural balance’ and ‘cultural proximity’ are no longer used as objectives in the current law, remnants of the previous system point to the objectives of social desirability for certain migrants based on their country of origin and cultural capital (Yeung, 2016). The numerical cap of the quota system remains a relevant element of restriction for third-country nationals. At the same time, bilateral agreements with countries of the former second circle, in particular Canada and the United States, still put their citizens in a favourable position when granting settlement permits. ‘Culture’ was gradually replaced by ‘skills’ in policy documents, while at the same time continuing to influence representations of immigrants. In fact, the notion of ‘highly skilled’ appeared as a satisfactory compromise between the demands of the fastest growing economic sectors and the fears of those asking for more control over immigration (Yeung, 2016).

Given these different elements of admission policy and practice, we define ‘highly skilled migrants’ in the Swiss admission system as those who: a) do not compete with local workers; b) contribute to local economic development; c) integrate easily into their new environment; and d) are socially desirable because of their cultural capital.

5. Conclusion

In general, third-country nationals can only be admitted as workers into Switzerland as ‘highly-skilled’ exceptions (Yeung, 2016). We have shown that even if the qualification criterion is presented as one of the main selection tools for third-country workers in Switzerland, it is subordinate to a notion of economic interest, which refers to the general country situation rather than to the characteristics of the candidate. In this sense, skills are not valued in and of themselves; they are, rather, weighed in relation to a specific economic,

social and political situation. Because immigrants must be immediately efficient in the labour market, their ‘indispensability’ is evaluated in direct relation to concrete situations. For this reason, the level of qualification of a given person is not important per se: specific skills can lead to admission only if they have the potential to fill an identified employment gap and if cantonal authorities believe that this gap needs to be filled.

In this regard, broad and vague definitions form an integral part of Swiss immigration policy. During the elaboration of the current law on foreigners in the 1990s, the expert commission seriously debated the introduction of a point system for the admission of third-country workers. This system was finally rejected because of its lack of flexibility (Swiss Federal Council, 2002, pp. 3486-3487). Indeed, clear criteria for admission based on personal characteristics would not be compatible with the restrictive annual ceiling: if the criteria for required personal characteristics were clearly stated, then the system would have to allow an undefined number of applicants who fulfil those criteria to enter. In a system that aims to restrict admission of third-country nationals, authorities do not need tools for favouring admission, but rather tools for justifying rejection. These tools are provided by broad notions such as ‘economic interest’, which can be used either in favour or against a given candidate depending on how the person responsible for the decision interprets the situation. The entire situation and criteria for admission thus contribute to defining ‘highly skilled migrants’ on a case-by-case basis.

Due to economic factors and well-established professional networks, Switzerland does not have any difficulty attracting the skilled labour it needs. A great majority of migrants come to Switzerland from the EU/EFTA area. Third-country workers represent a very small share of the immigrants entering Switzerland (only 5%), which shows that we should look beyond the stated policy objective of protecting the local labour market. By emphasising selections based on the level of qualifications, state authorities also send a political message

that they take care of their people's economic interests. This discourse reinforces the impression that the sovereign state is able to control immigration (Lavenex, 2007). However, regional agreements that expand areas of free movement and international obligations that protect migrants' rights (families, endangered individuals, and so on) limit the leeway for labour-migration policies (OECD, 2014). State authorities are therefore reduced to controlling the immigration of non-EU/EFTA workers, which explains why this form of admission is given increased attention despite the fact that it encompasses a small minority of the total immigrants.

Understanding that the Swiss immigration policy for third-country nationals aims to be as restrictive as possible is important. In discussions on the 'global war for talent', comparisons between Switzerland and other skilled immigration systems are misguided by the assumption that all countries aim to attract more qualified workers using their admission policies. Recognizing that the objective of the Swiss immigration policy is to restrict influx and select according to immediate needs explains why Switzerland ranks close to the bottom for the openness of its skilled immigration policy (Cerna, 2013). Given the competing political agendas of various interest groups, this system appears restrictive by stressing the importance of the selection system with its low annual quota for each canton, but at the same time it appeases economic interests with flexible cantonal practices of using federal reserve quotas or proposing alternative solutions to interested employers.

We believe that a comparison between this system and the tools used in other selective systems would be a valuable addition to improve our understanding of how states reconcile the different objectives of immigration governance in practice and to take into account the non-economic objectives of admission policies, such as how to create an appearance of control over immigration for the local population. Future comparative research should therefore take into account the various official invocations of 'highly skilled migrants'

in policy discourses and contrast them with the situational evaluation of ‘skills’ in practice in order to make the mechanisms and logics of the policy systems visible.

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