

CANADA'S

IMMIGRATION & CITIZENSHIP

BULLETIN

Quebec Immigration Economic Stream - Part I (Selection rules for business immigrants)

By Colin R. Singer, Magali Desjardins, and Maria Parau, *Immigration.ca*

Introduction

Since the coming into effect of the Cullen Couture Agreement in 1978, as amended by subsequent accords between the Governments of Canada and Quebec (Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens, 1991; An act respecting immigration to Québec, R.S.Q., c. I-0.2), the Quebec government has extensive powers in immigration, to administer the admission of foreign nationals to its province.

On April 6, 2016, Quebec government tabled new legislation "Quebec Immigration Act". On July 18, 2018, it tabled new regulations "Quebec Immigration Regulation" providing for a significant overhaul of its immigration programs, which are both now in force.

The highlights of the new immigration programs include:

- Introduction of a federal style Expression of Interest immigration system "Arrima" for skilled worker applicants, replacing the former first-come, first-served process.
- New Skilled Worker selection grid, awarding points for a job offer across multiple regions of Quebec.
- Expansion of the Quebec Experience Program permitting workers or their spouse / de facto spouse to hold any skill level employment in Quebec.
- Introduction of a new Entrepreneur stream for entrepreneurs receiving support from a business accelerator, incubator or university entrepreneurship centre.
- Increase of Investor net worth and investment requirements.
- Introduction of start-up and security deposits for entrepreneur and self-employed worker programs.

The majority of foreign nationals are selected each year under the Economic Class. This comprises the following five programs:

1. Skilled workers: A foreign national who settles in Quebec to hold employment the foreign national is likely able to hold. This determination is made primarily on the basis of the candidate's education and experience as well as other selection factors.

2. Quebec Experience Program: A foreign national having worked in Quebec for a period of 12 months within the 24 months preceding the date of the application, or having obtained, within the three years preceding the application, an eligible diploma from a Quebec educational institution after completing at least half the duration of their program of studies in Quebec, and who can demonstrate an intermediate-advanced French language proficiency through means of standardized testing. The Quebec experience program is a sub-category of the skilled worker category.

3. Entrepreneur Program: A foreign national who comes to Quebec to 1) operate a business that he creates alone or with others and who received a service offer from a business accelerator, a business incubator or a university entrepreneurship center or 2) who creates (25% ownership) or acquires a business (control of at least 51% of the business).

4. Investor Program: A foreign national with suitable management experience of two years in the five years preceding the application, who alone or with his accompanying spouse or de facto spouse has net assets of at least \$2,000,000 obtained legally, excluding amounts recently gifted, who undertakes to invest \$1,200,000 for five years, in a prescribed investment.

5. Self-employed Worker Program: A foreign national who will come to Quebec to create employment for the applicant by practicing a profession defined in the National Occupational Classification.

The selection process is points based. The Quebec Department of Immigration (Ministère de l'Immigration, de la Diversité et de l'Inclusion "MIDI"), typically legislates by Ministerial Order, the number of points that can be allocated to each of the selection factors; the authority to create, eliminate and/or modify a mandatory minimum number of points which applicants can be required to obtain for each of the selection factors within each class of immigrants; and the authority to retrospectively enact regulatory amendments which could apply to applications submitted prior to an amendment and which have not proceeded to a specified point in the assessment process.

Under the current annual immigration plan, Quebec has legislative authority to admit near 50,000 immigrants, including approximately 30,000 economic class immigrants to its province, far more than any of the other provinces in Canada. The new Premier designate Francois Legault, of the Coalition Avenir du Quebec has proposed a reduction of annual levels by 10,000, beginning in 2019.

Each year the MIDI submits its annual report to the Quebec National Assembly outlining the number of immigrants to be admitted to the province in the following year. Where immigration levels are reached in a given year, across all levels or within sub classes of the immigration plan, the Minister may suspend the processing of existing inventory until the subsequent year.

Selection rules for business applicants

As in the case of skilled workers, entrepreneurs, investors and self-employed applicants are required to successfully complete a mandatory pre-screening evaluation.

Investor Program

An investor is defined as a foreign national with at least two years in the five years preceding the application, of management experience (duties related to the planning, management and control of financial resources and of human or material resources under the investor's authority, provided that such responsibilities and duties are not assumed in the context of an apprenticeship, training, or specialization process attested to by a diploma) in a legal farming, commercial or industrial business, or a suitable legal professional business (whose personnel include at least two full time employees excluding the owner and his spouse), or a government department.

The investor, alone or with his accompanying spouse or de facto spouse, must have net assets of at least \$2,000,000 obtained legally, excluding amounts received by gift within the period of six months prior to the submission of an application. The investor must undertake to invest \$1,200,000 for five years, in a prescribed investment.

Suitable management experience can derive from a commercial, industrial, professional enterprise or a government agency.

Previous policy changes have given investor's management experience a more liberal application to allow professionals such as doctors, dentists, pharmacists, accountants, lawyers and engineers who operate their own professional practices, which employ at least two full-time personnel, to qualify as an investor.

Under the Quebec program, immigrant investment proceeds are allocated to Quebec and guaranteed by way of a promissory note issued by Investissement Québec, a Quebec government owned corporation. The five-year investment period begins immediately following Quebec approval which often takes place long before the investor comes to Canada. If the investor is refused by the federal authorities for a medical or security inadmissibility, the investment less applicable financing charges is refunded.

The MIDI will receive a maximum of 1900 new investor applications during the period September 10, 2018 through March 15, 2019. From the 1900 available places, 1235 are reserved for applicants from China, Hong Kong and Macao. The remaining 665 applications are open for everyone else meeting the criteria.

Entrepreneur Program

Under the Quebec Immigration Regulation an entrepreneur is a foreign national who is of at least 18 years of age and who comes to Quebec to 1) operate a business that he creates alone or with others and who received a service offer from a business accelerator, a business incubator or a university entrepreneurship center or 2) who creates (25% ownership) or acquires a business (control of at least 50% of the business).

The new rules therefore create two application streams for the entrepreneur category.

Stream 1

This stream is for candidates receiving support from a business accelerator, a business incubator or a university entrepreneurship center, and who wish to open and manage a business in Quebec. It consists in operating a business in Quebec that the candidate created alone or with others, to a maximum of 3 foreign nationals.

The primary condition to apply for this stream is to obtain the threshold score in the selection grid.

The service offer from a business accelerator, a business incubator or a university entrepreneurship center will be evaluated based on the following factors:

- Nature of the business project, the area of activity concerned and the needs related to its implementation;
- Company's region of operation;
- Proposed support plan;
- Operation plan;
- Expertise of the business accelerator, a business incubator or a university entrepreneurship center.

Stream 2

Under this stream, the entrepreneur must control at least 25% of the shares of a new enterprise, or at least 51% of an acquired enterprise which must have a value equivalent or higher than the funds needed to start the business project.

The candidate must also operate the business and actively participate in its daily management.

The entrepreneur must give a start-up deposit of \$200,000 if the business is located outside the metropolitan area of Montreal, or \$300,000 for a business located within the metropolitan area of Montreal. This deposit is accessed by the Entrepreneur from the financial intermediary to carry out the business project.

A security deposit of \$200,000 must also be given with a recognized financial institution and kept as a guarantee until the realization of the business project. The deposit is returned after the minister is satisfied the terms of the project have been fulfilled. The minister can keep the security deposit if the business project terms are not fulfilled as provided by R56.

The entrepreneur must also prove the legal acquisition a qualifying net worth of \$900,000 alone or with a spouse/de factor spouse, where applicable.

If the business is acquired, it must have been operating for at least 5 years before the submission of the application and must not have been operated by a former entrepreneur within the meaning of the regulations in the 5 years preceding the submission date. Excluded businesses include those engaged in financing, insurance, real estate development, real estate brokerage, sale or distribution of pornographic or sexually explicit products.

Entrepreneur applicants, along with self-employed candidates and investors, are assessed under a selection grid comprising of several major factors including: education/training, experience, age, language, stay and family in Quebec, financial self-sufficiency, financial resources, and business project.

Under the federal *Immigration and Refugee Protection Act*, A9(1)(d), Quebec entrepreneurs and their dependants are subject to terms and conditions of landing which are regulated under Quebec law. Entrepreneurs must meet terms of admission for 12 consecutive months, within 3 years of arriving in Canada.

The MIDI will receive a maximum of 60 new entrepreneur applications during the period September 10, 2018 through March 15, 2019. This includes 25 under Stream 1 and 35 under Stream 2. However, candidates who demonstrate an intermediate-advanced knowledge of French language (by presenting French test results of level B2 in speaking and listening) may apply at any time and are not subject to any annual quotas.

Self-Employed Worker Program

A self-employed is primarily differentiated from skilled worker applicants in that to qualify the self-employed person must have two years of applicable experience, possess a personal net worth of \$100,000, have sufficient settlement funding and will come to Québec to create their own job by practicing a profession or engaging in commercial activities. Prospective applicants must also meet applicable occupational entry or licensing requirements.

They must also submit a start-up deposit of at least \$50,000 if the self-employed candidate is based in the metropolitan area of Montreal, and \$25,000 if the candidate is located outside of Montreal. This deposit is accessed by the applicant from the financial intermediary to carry out the business project.

Like skilled workers, the self-employed applicant is assessed under a selection grid, comprised of several factors.

The MIDI will receive a maximum of 50 new self-employed applications during the period September 10, 2018 through March 15, 2019. However, candidates who demonstrate an intermediate-advanced knowledge of French language (by presenting French test results of level B2 in speaking and listening) can apply at any time and are not subject to any quota.

Procedure

Applicants intending to settle in the province of Quebec are required to file an application for a Quebec Certificate of Selection.

Once an application is approved and a CSQ is issued, the applicant may apply for permanent residence with a federal Canadian visa office. The application is submitted to a centralized processing center and redirected to a visa office following review of completion.

After the applicant has successfully completed the federal statutory verification process comprising of health and security, the final disposition of the application will lead to visa issuance.

Processing delays

Current processing delays at the provincial level, vary from 8 to 12 months for investor applications, as MIDI centralized the processing of its business applications in Montreal. This has resulted in reduced processing delays. Processing times for entrepreneur and self-employed can surpass 36 months.

Contesting refused applications

The Quebec Superior Court in virtue of its superintending and reforming powers emanating from the rules of common law and Section 33 of the Quebec *Code of Civil Procedure* is the court of jurisdiction to contest by way of motion (evocation, mandamus, declaratory relief, etc.), administrative decisions emanating from the MIDI refusing applications for certificates of selection.

Such motions must be instituted within a reasonable delay from the final decision giving rise to the recourse. Given the complexities often surrounding an overseas immigration matter, a delay of up to six months to institute recourse in Quebec Superior Court following a refusal, has been considered permissible.

Applicants may also pursue an optional administrative review process by filing a request for reconsideration within 90 days from refusal. This is an informal process which in most cases upholds the initial refusal. Where the parties seek administrative review, the delay to file a judicial review of an unfavourable decision would be extended.

The Use of Directives

The MIDI manages its immigration program through the use of policies, guidelines and directives most of which appear in the Guide des procédures de d'immigration ("GPI"). The Quebec Court of Appeal has held that these guidelines are binding on the MIDI.

This article was initially published by immigration.ca (October 3, 2018). Republished with permission.

Colin R. Singer is immigration counsel for www.immigration.ca. He can be reached via Twitter: @immigrationca.

**To subscribe to this newsletter or to order
additional copies, contact:**

Thomson Reuters Canada
a Division of Thomson Reuters Canada Ltd.
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario, M1T 3V4
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Fax 1-416-298-5082 (Toronto)
Fax 1-877-750-9041 (Toll Free Canada Only)
Email CustomerSupport.LegalTaxCanada@TR.com

© 2018 Thomson Reuters Canada Ltd.

All rights reserved.

No part of this publication may be reproduced in any form
or by any means, including photocopying, without the
prior written permission of the copyright holder.

Published 10 times per year.