

CANADA'S

IMMIGRATION & CITIZENSHIP

BULLETIN

Editor: James P. Egan, Egan LLP, Business Immigration Lawyers Allied with Ernst & Young

QUEBEC IMMIGRATION RULES: Economic Immigration Stream – Part II

By Colin R. Singer, Lawyer, www.immigration.ca

Selection rules for business applicants

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

Entrepreneur

Under the *Regulation respecting the selection of foreign nationals*, R.Q., c. I-0.2, r. 4, s. 21(b), an entrepreneur is defined as a foreign national with at least two years (within the five years preceding the submission of the application) of management experience in a lawful and profitable agricultural, industrial or commercial enterprise who creates, acquires or participates in the active management of a lawful and profitable agricultural, industrial or commercial enterprise that will immediately employ at least one full-time resident of Quebec (30 hours/week), other than the foreign national and his/her accompanying dependants. The entrepreneur must control at least 25% of the shares of the new enterprise which must have a value of at least \$100,000 of the business in which he/she participate.

Entrepreneur applicants, along with self-employed and investors, are assessed under a selection grid comprising of nine major factors of consideration including: education/training, experience, age, language, stay and family in Quebec, financial self-sufficiency, adaptability, financial resources, and business project (R.Q., c. 1-0.2, r. 4, ss. 31, 32, 38 and Sch. A). However, the MICC intends to remove the adaptability factor for the economic class.

The allocation of points for each of the factors is outlined in the *Regulation respecting the weighting applicable to the selection of foreign nationals*, R.Q., c. 1-0.2, r. 2, subclass III. Applicants are encouraged to conduct a business exploratory visit with a maximum of five points to be awarded for a business visit of at least one week in duration. Successful candidates must obtain 50 out of a possible 110 points with at least 18 points (out of a possible 30) derived from the factor, business project which evaluates the sub factor, applicant's ability to carry out a business project in Quebec. Where the business is already in operation, successful candidates must obtain 60 points out of the possible 110 with at least 30 points (out of the possible 30) derived from the sub factor factor — "acquisition of an enterprise in Quebec".

To succeed at the pre-selection stage, the applicant must have a minimum of two years of applicable experience in the operation of an enterprise, possess a personal net worth of at least \$300,000 acquired legally and have sufficient additional settlement funding to cover the cost of the applicant's first three months of living expenses in Quebec, over and above the business project requirements.

Following a successful pre-selection, entrepreneur applicants are convoked to interview, where the remaining selection factors, including the business project or the acquisition of an enterprise will be assessed. The aptitudes to carry out a business project are assessed under three sub-criteria, including market research, feasibility of the project and financial resources. Under the federal Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 9(1)(d), Quebec entrepreneurs and his/her dependants are subject to terms and conditions of landing which are regulated under Quebec law. However, enforcement and removal issues are federally regulated pursuant to s. 98(1) and (2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

Investor

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 who alone or with his/her accompanying spouse or de facto spouse and has net assets of at least \$800,000 obtained

In This Issue

**Quebec Immigration Rules: Economic
Immigration Stream - Part II.....1**



legally, excluding amounts received by gift within the period of six months prior to the submission of an application and who undertakes to invest \$400,000 for five years, in a prescribed investment (R.Q., c. 1-0.2, r. 4, s. 1(e.2), s. 21(d) and s. 34.1).

Recent legislative and policy changes have given investor's management experience a more liberal application than historically applied in order to allow professionals such as doctors, dentists, pharmacists, accountants, lawyers and engineers who operate his/her own professional practices, which employ at least two full-time personnel, to qualify as an investor. Under previous policy such practitioners were excluded.

Quebec promotes its own \$400,000 immigrant investor program under the authority of the Canada-Quebec Accord and the federal *Immigration and Refugee Protection Regulations*. The prescribed investment is irrevocably deposited into an escrow account with a licensed investment dealer or a financial institution acting as the fund manager on behalf of the investor. The Quebec program is virtually the same as the federal program with the following important distinctions: immigrant investment proceeds are allocated to Quebec and guaranteed by way of a promissory note issued by *Investissement Québec*, a Quebec government owned corporation; suitable management experience can derive from a commercial, industrial, professional or a government agency; and 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 the applicable financing charges is refunded.

Historically, the Quebec investor program has been far more popular than the federal program because the MICC and Quebec brokers work closely with agents from source countries. The applications are processed much faster and brokers are able to pay 12.5% commission fees immediately following Quebec approval.

In 2007, Quebec received 1700 investments totaling \$680,000,000. In 2008 Quebec received \$580,000,000 from 1450 investments. In February 2009, on the strength of enhanced processing procedures for investors the MICC has ambitiously targeted 2400 investments for current and subsequent years (source: *Investissement Québec*).

Self – Employed

Self-employed applicants are primarily differentiated from skilled worker applicants in that to qualify the self-employed must have two years of applicable experience, possess a personal net worth of \$100,000, have sufficient settlement funding and will come to Quebec to create employment for the applicant by practicing a profession defined in the National Occupational Classification, *Regulation respecting the weighting applicable to the selection of foreign nationals*, R.Q., c. 1-0.2, r. 2, subclass II. Prospective applicants must also meet applicable occupational entry or licensing requirements. Like skilled workers, the self-employed applicant is assessed under a selection grid comprised of nine factors (R.Q., c. 1-0.2, ss. 31, 32 and Sch. A). Successful single applicants must obtain 38 points out of a possible 80 points during pre-selection and 47 points out of a possible 88 points on

selection. Applicants with a spouse or de facto spouse must obtain 47 points out of a possible 98 points at pre-selection and 56 points out of a possible 106 points at selection.

Procedure

As a general rule, applicants intending to settle in the Province of Quebec are required to file an application for a Quebec Certificate of Selection with one of seven Quebec government offices located outside of Canada. Once an application has proceeded to a positive selection decision, the applicant is invited to submit an application for permanent residence with a Canadian visa office outside Canada. Once the applicant has successfully completed the federal statutory verification process comprising of health and security components, the final disposition of the application will lead to visa issuance.

The filing procedures and documentation required vary substantially between Quebec government offices.

Processing delays

Processing delays vary significantly between Quebec government offices and between source countries within a particular territory. These variations are largely dependent upon the size of a territory, the availability of simultaneous processing procedures at a visa office, the number of Quebec area mission trips being conducted within a particular territory and Ministerial directives that are occasionally implemented. There has been a steady increase in the numbers of applications being filed through certain Quebec offices (such as Hong Kong, Paris, Montreal and Damascus) with corresponding lengthy delays to approval that historically have approached 30 months in duration. However, the Quebec government has recently undertaken several measures to accelerate the process while ensuring overall program integrity. This has resulted in processing delays being reduced to 6-9 months for Quebec approval.

Additionally, business applicants from selected categories, i.e., investor and entrepreneur, who are willing, may opt for a Montreal based selection interview which can significantly reduce overall processing times.

It is interesting to note that the MICC acknowledges the role of Quebec immigration lawyers and allows for an applicant to be assisted by a member of the Quebec Bar during the selection interview.

Contesting refused applications

The Quebec Superior Court, in virtue of its superintending and reforming powers emanating from the rules of common law and s. 33 of the Quebec *Code of Civil Procedure*, R.S.Q., c. C-25, is the court of jurisdiction to contest by way of motion (evocation, mandamus, declaratory relief, etc.), administrative decisions emanating from the MICC 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, delays of six months to institute such recourse in Quebec Superior Court following a refusal, is permissible.

Applicants must first proceed with an administrative review process by filing a request for reconsideration within 90 days from refusal. This is an informal process which in more than 70% of the cases upholds the initial refusal.

The use of directives

The MICC 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 MICC.

Skilled Workers Grid

Factors	Criteria	Pts
1. Training	1. Training	Maximum 29
	1.1 Education Level	Maximum 13
	a) secondary school general diploma	2
	b) secondary school vocational diploma	6
	c) postsecondary school general diploma (2 years)	4
	d) postsecondary school technical diploma - 1 year	6
	e) postsecondary school technical diploma - 2 years	6
	f) postsecondary school technical diploma - 3 years	10
	g) undergraduate diploma – 1 year	10
	f) undergraduate diploma – 2 years	10
	g) undergraduate diploma – 3 years +	11
	i) Master's degree	13
	j) Doctorate	13
	1.2 Quebec diploma	Maximum 6
	a) diploma issued in Quebec	6
	b) diploma recognized as equivalent by regulatory body concerned	6
	1.3 Areas of training	Maximum 12
a) Secondary/postsecondary/university section A	12	
b) Secondary/postsecondary/university section B	9	
c) Secondary/postsecondary/university section C	5	
d) Secondary/postsecondary/university section D	1	
e) Secondary/postsecondary/university section E	0	
1.4 Second specialty	Maximum 2	
a) specialty obtained in the 10 years preceding the application	2	
2. Experience	2. Professional experience	Maximum 9
	a) 6 to 11 months	2
	b) 12 to 23 months	4
	c) 24 to 35 months	6
	d) 36 to 47 months	7
	e) 48 months +	9
3. Age	3. Age	Maximum 18
	18 to 35 years of age	18
	36 years of age	14
	37 years of age	10
	38 years of age	6
	39 years of age	4
	40 years of age	2
	41 to 45	1
46 + years of age	0	
4. Language Proficiency	4.1 French	Maximum 16
	a) oral expression	8
	b) oral comprehension	8
	4.2 English	Maximum 6
a) oral expression	3	
b) oral comprehension	3	
5. Stay and Family In Quebec	5.1 Stay in Quebec	Maximum 6
	a) Study for 1 regular full time semester	4
	b) Study for 2 regular full time semesters	6
	c) Work for 3 months	4
	d) Work for 6 months	6
	e) Training for 3 months +	0
	f) Business trip (at least one week)	0
	g) other stay (2 weeks to 3 months)	1
	h) other stay (exceeding 3 months)	2
	5.2 Family in Quebec	Maximum 3
a) Spouse / child / father / mother / brother / sister	3	
b) Grandparent	3	

6. Characteristics of Accompanying spouse	6.1 Training	Maximum	18
	a) Education Level	Maximum	3
	a.1) secondary school general diploma	0	
	a.2) secondary school vocational diploma	2	
	a.3) postsecondary school general diploma (2 years)	1	
	a.4) postsecondary school technical diploma - 1 or 2 years	2	
	a.5) postsecondary school technical diploma - 3 years	3	
	a.6) University Degree	3	
	b) Quebec diploma	1	
	c) Areas of training	Maximum	3
	c.1) Secondary/postsecondary/university section A	3	
	c.2) Secondary/postsecondary/university section B	2	
	c.3) Secondary/postsecondary/university section C	1	
	c.4) Secondary/postsecondary/university section D&E	0	
	d) Second specialty	1	
6.2 Professional experience	Maximum	1	
6 months or more	1		
6.3 Age	Maximum	3	
18 to 35 years of age	3		
36 to 38 years of age	2		
39 to 40 years of age	1		
41 +	0		
6.4 French	Maximum	6	
Oral expression	3		
Oral comprehension	3		
Employability cutoff score :			
50 pts for Applicant without spouse /de facto spouse			
57 pts for Applicant with spouse /de facto spouse			
7. Employment offer	7. Validated employment offer	Maximum	10
	a) Validated employment offer in the metropolitan area of Montreal	5	
	a) Validated employment offer outside the metropolitan area of Mtl	10	
8. Children	8. Children	Maximum	8
	12 years of age or younger– per child	4	
	13 to 21 years of age– per child	2	
9. Financial	9. Financial self-sufficiency	Maximum	1
Self-sufficiency	3 months or more	1	
Preliminary processing cutoff score			
53 pts for Applicant without spouse /de facto spouse			
60 pts for Applicant with spouse /de facto spouse			
10. Adaptability	10. Adaptability	Maximum	8
	10.1 Personal qualities regarding professional activities		
	10.2 Steps taken to facilitate integration		
	10.3 Knowledge of Quebec		
Selection passing score			
59 pts for Applicant without spouse /de facto spouse			
68 pts for Applicant with spouse /de facto spouse			
TOTAL			

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

© CANADA LAW BOOK
A Division of The Cartwright Group Ltd.
240 Edward St., Aurora, Ontario L4G 3S9
(905) 841-6472 Toll-free 1-800-263-2037
or 1-800-263-3269
www.canadalawbook.ca



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. Annual subscription rate: \$205.00