LE PROTECTEUR DU CITOYEN
Assemblée nationale
Québec

January 27, 2015

The Honourable Kathleen Weil
Minister of Immigration, Diversity and Inclusiveness
360, rue McGill, 4e étage
Montréal (Québec) H2Y 2E9

Subject: Draft *Regulation to amend the Regulation respecting the selection of foreign nationals*, published on December 17, 2014

Madam Minister:

Within the framework of its mandate, the Québec Ombudsman reviews all bills and draft regulations introduced in the National Assembly or published in the *Gazette officielle*. When it deems necessary, it intervenes under section 27.3 of its constituting act, which empowers it to call the attention of the government or a chief executive officer of a public body to legislative, regulatory or administrative reforms it deems to be in the public interest. I therefore analyzed the draft *Regulation to amend the Regulation respecting the selection of foreign nationals*, published on December 17, 2014.

After analyzing the draft regulation, I understand that the purpose of most of the amendments it introduces is, on the one hand, to counter certain fraudulent or abusive applications of the current Regulation and, on the other, to relax requirements for the issuance of Québec certificates of acceptance or selection, goals which we endorse.

That said, I would like to express certain concerns regarding the filing of applications for a selection certificate (CSQ) as a skilled worker. These concerns stem from the fact that, as of the spring of 2015, these applications will have to be filed with the Ministère de l'Immigration, de la Diversité et de l'Inclusion (MIDI) by Internet, and regard:

- elimination of the procedure allowing the main applicant's spouse to be substituted for the applicant (section 4 of the draft Regulation);
- non-consideration of the diplomas obtained between the time an application for a selection certificate is filed and the time it is assessed by MIDI in order to award points for the education level criterion (first and third paragraph of section 9) and for the areas of training criterion (second and fourth paragraph of section 9).

525, boulevard René Lévesque Est, bureau 1.25, Québec (Québec)
Téléphone : 418 643-2688 Sans frais : 1 800 463-5070 Télécopieur : 418 643-8759
protecteur@protecteurducitoyen.qc.cahttp://www.protecteurducitoyen.qc.ca

Procedure allowing the main applicant's spouse to be substituted for the applicant

Pursuant to section 31 of the current Regulation, upon receipt of an application for a selection certificate made by a foreign national in the economic class, the Minister assesses the foreign national's application or the application of the foreign national's accompanying spouse, whichever application is the most advantageous. This is the exchange principle which an immigration consultant may employ in assessing an application for a selection certificate.

According to the people we spoke with at MIDI, exchange would no longer serve any purpose if applications have to be filed by Internet because the points would be calculated by the computer system based on the data entered by the applicant. Granted, manual exchange should no longer be necessary in most cases, provided the system functions correctly.

I have already commented on the obligation to file applications for selection certificates as a skilled worker by Internet, introduced by the draft Regulation published in the *Gazette officielle* of July 23, 2014. As I wrote in my letter of August 29, 2014, concerning this draft Regulation, while I can see the positive aspects of doing things this way, I remain convinced that we should plan for situations in which filing by Internet will be impossible or require manual correction. I also recommended that, in certain circumstances and according to the terms and conditions prescribed by regulation, it be possible to mail in CSQ applications. My recommendation was aimed at taking into account situations in which it would be impossible for certain candidates to apply by Internet, either because they do not have Internet access or because of problems with the computer system itself.

Furthermore, since applications filed by Internet will be monitored, especially for document conformity, the final tally could be different from that calculated by the system. For example, what will happen if points are calculated based on a diploma that, in the end, is not recognized during the assessment by the agent because it has not been evaluated yet or has no Québec equivalent? If the spouse has more points than the applicant, exchange would be advantageous to that couple. If the proposed regulatory amendment goes through, will it still be possible to apply exchange?

According to the data obtained from MIDI, out of a total of 7,200 CSQ applications as a skilled worker with a spouse, an average of 200 CSQ applications per year benefit from exchange leading to approval of the application. It is therefore a measure that has a positive impact for many applicants.

Consequently, I recommend that the provision allowing the main applicant's spouse to be substituted for the applicant be maintained to take into account situations requiring manual processing or correction.

Whereas it is necessary to take into account the possibility that some applications will require manual processing or correction;

Whereas it should be possible for the applicant's spouse to be substituted for the applicant if this proves more advantageous.

Consequently, the Québec Ombudsman recommends:

R-1 **That** the possibility, provided for in section 31 of the *Regulation respecting the selection of foreign nationals*, be maintained of allowing the main applicant's spouse to be substituted for the applicant in the event that a CSQ application as a skilled worker is processed manually, if this proves more advantageous in the awarding of points.

Taking into account diplomas obtained between the time an application for a selection certificate is filed and the time it is assessed by MIDI in order to award points for the education level criterion and for the areas of training criterion

Currently, MIDI is grappling with a significant backlog of CSQ applications, with processing delays of more than four years in some cases. Given these delays, applicants' files must be updated when the time comes for them to be assessed. If the applicant has obtained new diplomas in the meantime, MIDI must take them into account if they increase the score for the education level criterion and, therefore, the probability of the CSQ being granted.

The draft Regulation stifles this possibility by providing that, henceforth, only diplomas earned before applications are submitted will be taken into consideration. According to MIDI, Internet filing will speed up application processing and prevent the recurrence of lengthy delays of the kind MIDI is now experiencing, making this update pointless in theory. So, the purpose of the specification made in the draft Regulation is to take the new procedure into account.

This amendment appears reasonable insofar as application processing times will indeed decrease significantly and be trimmed down to a few months at most. It is important that there be a processing deadline and the rule be clear to everyone. However, there is no guarantee that other unforeseen factors—whether computer problems, a higher cap on the number of applications authorized for a given year, or staff shortages—will not arise, causing new significant delays.

Even if these situations should remain exceptional, I believe that it would be useful to continue to make it possible for the Minister to take into account diplomas obtained between the time an application for a selection certificate is filed and the time it is assessed in the event of problems that lengthen processing times. This would spare certain applicants harmful situations caused by delays attributable to MIDI.

The same is true of the awarding of points for areas of training. The draft Regulation provides that, henceforth, all diplomas obtained before applying will be considered and no longer just those earned in the five years preceding the application, as is the case now—a relaxing of requirements that will improve certain applicants' chances of obtaining a CSQ. These candidates are often very highly skilled, as the files handled by the Québec Ombudsman show.

I note, however, that the new provision maintains the current requirement whereby diplomas must have been obtained before the application date and not before assessment of the application. For the same reasons stated concerning the education level criterion, it seems to me that, should new processing delays arise, the Minister should be empowered to also take into account diplomas obtained in the meantime.

Whereas it is reasonable at first sight to provide that only diplomas obtained before the application date be taken into account insofar as Internet filing of CSQ applications as a skilled worker will speed up processing considerably;

Whereas, it will nonetheless be necessary to update applications before they are assessed if significant delays recur.

Consequently, the Québec Ombudsman recommends:

R-2 **That** the Regulation provide for the possibility for the Minister, under circumstances and conditions to be prescribed therein, notably if significant processing delays arise, to take into account the diplomas obtained between the time the CSQ application is filed and the time the application is assessed.

In closing, I reiterate that most of the amendments introduced by the draft Regulation appear to me to be warranted. I also note with satisfaction the prospective easing with regard to the awarding of points for the areas of training criterion. My concerns have to do primarily with the amendments regarding CSQ application filing by Internet.

Yours respectfully,

Original signed

Raymonde Saint-Germain
Ombudsperson

c.c.: Mr. Robert Baril, Deputy Minister of Immigration, Diversity and Inclusiveness
Ms. Dany Hallé, Secretary, Committee on Citizen Relations
Ms. Anik Laplante, Secretary, Committee on Institutions