

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Actions Division)
S U P E R I O R C O U R T

N° 500-06-000660-130

RAHIM

-and-

SYED MUHAMMAD ALI RIZVI

Plaintiffs

v.

MINISTER OF IMMIGRATION, DIVERSITY
AND INCLUSION and the GOVERNMENT
OF QUÉBEC, represented by the
ATTORNEY GENERAL OF QUÉBEC

Defendants

SETTLEMENT AGREEMENT

- A. **WHEREAS** on February 19, 2018, the Court authorized a class action against the Minister of Immigration, Diversity and Inclusion (the "**Minister**") and the Government of Québec, represented by the Attorney General of Quebec (collectively, the "**Defendants**") for the following class of persons (the "**Authorization Judgment**"):

Group 1: *All individuals who filed an application with the Ministère de l'Immigration et des Communautés culturelles du Québec for a selection certificate in the "skilled worker" category prior to July 8, 2013; whose application had not reached the preliminary processing stage as of August 1, 2013; whose application included form A-1520-AA or A-1520-AF containing the phrase "Your application for a selection certificate will be processed based on regulations in effect when it was submitted" or similar language; and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the August 1, 2013 amendments to immigration regulations, the individuals no longer accumulated enough points to pass preliminary processing or to be selected;*

Group 2: *All individuals who filed an application with the Ministère de l'Immigration et des Communautés culturelles du Québec for a*

selection certificate in the "skilled worker" category prior to July 8, 2013, whose application had not reached the preliminary processing stage as of August 1, 2013; and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the August 1, 2013 amendments to immigration regulations, the individuals no longer cumulated enough points to pass preliminary processing or to be selected;

Group 3: All individuals who filed an application with the Ministère de l'Immigration, Diversité et Inclusion Québec for a selection certificate in the "skilled worker" category, whose application had not reached the preliminary processing stage as of March 8, 2017, and whose application, as at the date of final judgment herein, has been refused by the Minister because, due to the retroactive application of the March 8, 2017 amendments to the immigration regulations, the individuals no longer cumulated enough points to pass preliminary processing or to be selected;

(collectively, "**Class Members**" or the "**Class**").

- B. **WHEREAS** on September 26, 2018, the Court authorized a timetable for subsequent proceedings and fixed a ten-day trial scheduled to begin on March 18, 2019;
- C. **WHEREAS** Rahim and Syed Muhammad Ali Rizvi (collectively, the "**Plaintiffs**") allege that the Defendants were unjustly enriched, committed a fault, and acted in bad faith by refusing to offer to reimburse the Application Fees of Class Members whose CSQ Applications were doomed to failure as a result of the application of amendments to the the *Regulation respecting the weighting applicable to the selection of foreign nationals*, CQLR c. I-0.2, r. 2 (the "**Weighting Regulation**");
- D. **WHEREAS** the Defendants and the Plaintiffs now wish to settle this Class Action without prejudice or admission whatsoever, by way of mutual concessions, pursuant to the terms hereof:

1. Definitions

The following terms are defined for the purposes of this Settlement Agreement, including the Recitals:

- a) "**Plaintiffs**" refers to Rahim and Syed Muhammad Ali Rizvi;
- b) "**Approval Notice**" means the notice that will be approved by the Court as part of the Approval Order;
- c) "**Approval Order**" means the order of the Court approving this Settlement Agreement;

- d) "**Authorization Judgment**" means the judgment of the Court authorizing the institution of a class action in Court File 500-06-000660-130;
- e) "**Claims Period**" refers to the 90-day period that commences on the day after the communication of the Approval Notice by the Defendants to the Class Members;
- f) "**Class Counsel**" refers to the law firms IMK LLP and Campbell Cohen LLP;
- g) "**Class Member**" means a member of the Class that did not exclude himself, herself or itself in accordance with the provisions of article 580 of the *Code of Civil Procedure* or who was not declared to be excluded by a decision of the Court in the present file. A list of the persons who have opted-out is appended to this agreement;
- h) "**Class Action**" means the legal proceedings in *Rahim & Rizvi v. Minister of Immigration, Diversity and Inclusion* (Court File: 500-06-000660-130), pending in the Superior Court of Quebec, district of Montreal;
- i) "**Compensation**" means the monetary amount to which an Eligible Class Member is entitled, as set forth in Section 9(5) of this Settlement Agreement;
- j) "**Court**" means the Superior Court of Quebec;
- k) "**CSQ**" means a Certificate of Selection for Quebec;
- l) "**CSQ Application**" means the application filed by all Class Members to receive a CSQ in the Skilled Worker Program;
- m) "**Defendants**" means the Minister of Immigration, Diversity and Inclusion and the Government of Quebec, represented by the Attorney General of Quebec;
- n) "**Eligible Class Member**" means a Class Member eligible to receive Compensation, as set forth in Section 9(3) of this Settlement Agreement;
- o) "**Fonds**" means the *Fonds d'aide aux actions collectives*;
- p) "**Minister**" means the Minister of Immigration, Diversity and Inclusion;
- q) "**Parties**" means, collectively, the Plaintiffs and Defendants;
- r) "**Pre-Approval Notice**" means the notice that will be a) substantially in the form of Appendix A hereto and b) approved by the Court;
- s) "**Pre-Approval Order**" means the order of the Court approving the Pre-Approval Notice;

- t) **"Released Claims"** means any and all claims, demands, rights, liabilities, and causes of action that either of the Plaintiffs, or any member of Groups 1, 2, or 3, has or may have against the Released Persons arising out of or in any way related to the claims asserted in the Class Action;
- u) **"Released Persons"** means the Minister of Immigration, Diversity, and Inclusion, the Government of Québec and the Attorney General of Quebec; as well as their successors, agents, officers, representatives, administrators, agents, officers, servants, employees, as well as any person who may be connected to them in any way whatsoever;
- v) **"Settling Parties"** means, collectively, the Released Persons, the Plaintiffs and all Class Members.

2. Recitals and Definitions Included

The Recitals and Definitions form an integral part of this Settlement Agreement.

3. Nullity If Not Approved

If this Settlement Agreement is not approved by the Court or the Settlement Agreement is terminated, it will become null and void and will not generate any other rights or obligations either for the Parties or the Class Members; the Settling Parties will be restored to their respective positions in the Litigation before the Settlement Agreement was executed.

4. No Admission of Liability

Neither the Settlement Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Defendants.

5. Application for Pre-Approval Order

After the signature of this Settlement Agreement, the Plaintiffs will apply to the Court for the Pre-Approval Order. The hearing of this application will take place on March 18, 2019.

6. Communication of the Pre-Approval Notice

Within fifteen (15) days after the Pre-Approval Order is entered, the Defendants will send a copy of the Pre-Approval Notice to the same parties and by the same means as the notice that was sent at authorization to all potential class members.

The Defendants and Class Counsel will also post such notice on their respective websites in English and French.

7. Application for Approval Order

Within 30 days after communication of the Pre-Approval Notice, the Plaintiffs will apply to the Court for the Approval Order and request that the Court:

- a) declare that this Settlement Agreement is fair, reasonable and in the best interests of the Class Members;
- b) approve this Settlement Agreement and order the Parties and the Class Members to comply with it;
- c) approve the legal fees to be paid as part of the Settlement Agreement;
- d) order that the Approval Notice be communicated to the Eligible Class Members by email to their last known email address or, if no email address is available, by mail to their last known mailing address within thirty (30) days after the Approval Order is entered;
- e) order that the Defendants send to all Eligible Class Members two reminders of the Approval Notice at the 30th and 60th days of the Claims Period, by email to the Class Members' last known email address or, if no email address is available, by mail to their last known mailing address;
- f) order the Minister to issue the compensation within forty-five (45) days upon receipt of a completed and signed claim form from Eligible Class Member containing details as set forth under Section 11 of this Settlement Agreement, unless there are exigent circumstances, in which case they will issue payment as soon as possible after the claim is made using their best efforts;
- g) declare that the Class Action against the Defendants is settled out of Court; and
- h) order any other measure it should deem required to facilitate the approval, implementation or administration of this Settlement Agreement, subject to the incompatibility of these measures with the limits of the mandate of settlement authorized by the defendants.

8. Releases

Upon the Approval Order becoming Final, the Plaintiffs and each of the Class Members will be deemed to have, and by operation of the Approval Order will have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims.

9. Compensation to the Eligible Class Members

(1) Whereas all Class Members were required to pay an Application Fee to the MIDI in order to submit their CSQ Applications;

(2) Whereas the amount of the Application Fee varied depending on the year in which the Class Member filed a CSQ Application and on the number of dependents included in a CSQ Application;

(3) Whereas the Parties have agreed to an individual recovery process in which Eligible Class Member, who fulfill the following conditions, may apply to receive Compensation:

- a) **Group 1:** Individuals whose CSQ Applications were filed between February 1, 2012 and May 31, 2013; whose CSQ Application contained an immigration form A-1520-AA or A-1520-AF indicating that their CSQ application would be processed in accordance with the regulations in force at the time of filing with the MIDI or the language "Your application for a selection certificate will be processed based on the regulations in effect when it was submitted"; and whose CSQ Application was refused subsequent to the entry into force of the selection grid on August 1st, 2013.
- b) **Group 2:** Individuals whose application for a CSQ was filed before February 1st, 2012 or between June 1st, 2013 and July 7th, 2013; and whose CSQ application was refused subsequent to the entry into force of the selection grid on August 1st, 2013.
- c) **Group 3:** Individuals whose application for a CSQ was filed between July 8th, 2013 and March 8th, 2017; and whose CSQ application was refused subsequent to the entry into force of the selection grid on March 8th, 2017.

(4) Whereas the Parties agree that group membership will be closed on the date of the Approval Order, the hearing of which is scheduled for **June 19, 2019**.

(5) Therefore, as full and final compensation for the Released Claims, each Eligible Class Member will receive Compensation from the MIDI as follows:

- a) Group 1: 50% of the amount each Group 1 Class Member paid to submit his or her CSQ Application;
- b) Group 2: 25% of the amount each Group 2 Class Member paid to submit his or her CSQ Application; and
- c) Group 3: 25% of the amount each Group 3 Class Member paid to submit his or her CSQ Application.

10. Communication of the Approval Notice

Within thirty (30) days after the Approval Order is entered, the Defendants will send a copy of the Approval Notice to all Eligible Class Members by email to their last known email address or, if no email address is available, by mail to their last known mailing address.

The Defendants and Class Counsel will also post the notice on their respective websites in English and French.

11. Delivery of Compensation

(1) Eligible Class Members who wish to receive Compensation must respond to the MIDI's Settlement Approval Notice and provide within the specified Claims Period, by email or regular mail (if not possible by email), along with their completed and signed claim form, proof of identification (their passport or another identifying document that has been approved by the Minister) as well as all information necessary for the Minister to effect payment of the Compensation by wire transfer or by the issuance of a cheque if banking coordinates are not available;

(2) Within forty-five (45) days of receiving the above-mentioned documentation from a Class Member, the MIDI will effect a wire transfer in the amount of the Compensation, in \$USD if the Member is domiciled outside of Canada or in \$CAN if the Member is domiciled in Canada when responding to the MIDI's Settlement Approval Notice, according to the banking coordinates provided by the Eligible Class Member or, where no such coordinates are available, issue a cheque in the amount of the Compensation to the last known mailing address of the Eligible Class Member if the Member is domiciled in Canada, or a bank draft if the Member is domiciled outside of Canada. The MIDI will use all reasonable means to deliver Compensation to Eligible Class members residing in countries subject to economic sanctions;

(3) In the event of any dispute about the sufficiency of the form of identification or other information provided to the Minister by an Eligible Class Member, the Minister will inform Class Counsel, who will attempt to work with the Minister and the Eligible Class Member to reach a resolution. Any identification issues that cannot be resolved in this manner will be adjudicated upon by the Court.

12. Amounts to be paid to the *Fonds d'aide aux actions collectives*

The Minister will calculate the amount to be paid to the *Fonds* for each individual claim from an Eligible Class Member (stipulated to be 2% on any liquidated claim of less than \$2000, in accordance with section 1(3)(a) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, c. F-3.2.0.1.1, r. 2) and will pay the total amount directly to the *Fonds*, after the expiry of the Claims Period and issuance of the last payment to a Class Member.

13. Class Counsel Fees and Expenses

(1) The Defendants agree to pay Class Counsel, in full and final compensation for its fees, the amount of six hundred and fifty thousand dollars (\$650,000.00) plus applicable taxes, payment of which shall be remitted in equal amounts to IMK LLP and Campbell Cohen LLP within thirty (30) days after the judgment of the Court approving such fees.

(2) Class Counsel will provide the Defendants with an invoice from each firm containing the full amount to be paid.

(3) Class Counsel will be responsible for filing and presenting an application before the Court requesting payment of its fees.

(4) This Settlement Agreement is in no way conditional upon the approval of Class Counsel's fees by the Court. Any order or proceeding relating to Class Counsel's fees and expenses, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement.

14. Other Costs

The Defendants will pay to Class Counsel, in equal amounts, \$7,500 representing their judicial costs.

15. Cooperation and Best Efforts

The Parties agree to cooperate to the extent reasonably necessary to give effect to and implement all terms and conditions of this Settlement Agreement and to exercise best efforts to fulfil the foregoing terms and conditions of this Settlement Agreement.

16. Negotiated Agreement

The Parties intend the Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Class Action. The Parties agree that the consideration provided to the Class Members and the other terms of the Settlement Agreement were negotiated at arm's length and in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

17. Not Admissible as Evidence

(1) Neither the Settlement Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, regulatory or administrative action or proceeding against the Released Persons.

(2) Notwithstanding the above, the Settlement Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Settlement Agreement, to defend against the assertion of Released Claims, and as otherwise required by law.

18. Notices

Any notification, request, instruction or other document to be given by one Party to the other (other than class-wide notification) shall be in writing (including email) and transmitted to:

If to the Plaintiffs: c/o M^e Catherine McKenzie
IMK LLP

Place Alexis Nihon | Tower 2
3500 De Maisonneuve Boulevard West, Suite 1400
Montréal, Québec H3Z 3C1
cmckenzie@imk.ca

If to the Defendants: c/o M^e Thi Hong Lien Trinh
Bernard, Roy (Justice-Québec)
1 Notre-Dame Street East, suite 8.00
Montréal, Québec, H2Y 1B6
bernardroy@justice.gouv.qc.ca

19. Jurisdiction of the Superior Court

The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement Agreement.

20. Governing Law

This Settlement Agreement is a transaction pursuant to sections 2631 and following of the *Quebec Civil Code* and will be construed and enforced in accordance with and governed by the laws of the Province of Quebec.

21. Miscellaneous Provisions

- a) The plural of any defined term in this Settlement Agreement includes the singular, and the singular of any defined term in this Settlement Agreement includes the plural, as the case may be.
- b) All of the Appendices to this Settlement Agreement are material and integral parts hereof and are fully incorporated by this reference.
- c) This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties.
- d) This Settlement Agreement and the Appendices attached constitute the entire agreement among the Parties, and supersedes prior exchanges, oral or in writing, between counsel for the Attorney General of Québec and Class Counsel.
- e) Each counsel or other person executing this Settlement Agreement or any of its Appendices on behalf of any Party hereby warrants that such person has the full authority to do so.
- f) This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.

- g) The Parties hereby acknowledge that they have requested that this Settlement Agreement be drawn up in English and French. *Les Parties reconnaissent avoir exigé que la présente transaction soit rédigée en anglais et en français.*

Signed in AUSTIN on March 4th, 2019



RAHIM

Signed in _____ on March ____, 2019

SYED MUHAMMAD ALI RIZVI

Signed in Montreal on March 01st, 2019

Bernard, Roy (Justice - Québec)

Bernard, Roy (Justice-Québec)

Me Thi Hong Lien Trinh

For the ATTORNEY GENERAL OF QUÉBEC

- g) The Parties hereby acknowledge that they have requested that this Settlement Agreement be drawn up in English and French. *Les Parties reconnaissent avoir exigé que la présente transaction soit rédigée en anglais et en français.*

Signed in _____ on March ____, 2019

RAHIM

Signed in KARACHI on March 04, 2019

SYED MUHAMMAD ALI RIZVI

Signed in Montreal on March 01st, 2019

Bernard, Roy (Justice - Québec)

Bernard, Roy (Justice-Québec)

Me Thi Hong Lien Trinh

For the ATTORNEY GENERAL OF QUÉBEC