



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. A. v Minister of Employment and Social Development*, 2019 SST 1616

Tribunal File Number: GP-18-418

BETWEEN:

**M. A.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Antoinette Cardillo

Claimant represented by: Gilbert Nadon

In person hearing on: June 13, 2019

Date of decision: August 27, 2019

## **DECISION**

I find that the evidence does not demonstrate that the Appellant resided in Canada after his return in June 2008.

## **OVERVIEW**

[1] The Appellant's application for the Old Age Security (OAS) pension was date stamped by the Respondent on February 12, 2009<sup>1</sup>. On August 5, 2010, the Minister approved the Appellant's OAS pension, at the rate of 14/40 effective in March 2010. He was also entitled to the Guaranteed Income Supplement (GIS). After a review, the Minister determined that the Appellant was never eligible to receive OAS benefits. Consequently, a reimbursement of all benefits received was requested in the amount of \$74,649.99 for the period of March 2010 to October 2015. The Appellant requested a reconsideration of the Minister's decision. The Minister denied the reconsideration request and the Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

## **ISSUE**

[2] The issue in this appeal is whether the Appellant has settled in Canada on June 26, 2008, and if he maintained his Canadian residence since that date.

## **ANALYSIS**

### ***i. OAS Act and Regulations***

[3] Subsection 3(2) of the *Old Age Security Act (OAS Act)* provides that to receive a partial pension, an applicant must have resided in Canada for at least 10 years if he or she resides in Canada on the day before the application is approved. An applicant who resides outside of Canada on the day before the application is approved must prove that he or she had previously resided in Canada for at least 20 years.

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<sup>1</sup> GD2-173

[4] Subsection 11 (7)(d) of the *OAS Act* provides that no supplement may be paid to a pensioner for any month throughout which the pensioner is not resident in Canada, having ceased to reside in Canada, either before or after becoming a pensioner, six months before the beginning of that month.

[5] The definition of residence is set out in subsection 21(1) of the *Old Age Security Regulations (OAS Regulations)* and provides that a person resides in Canada if he makes his home and ordinarily lives in any part of Canada and a person is present in Canada when he is physically present in any part of Canada.

*ii. Documentary evidence*

[6] Pursuant to the case law, the residence analysis involves a fluid approach, with each case determined on its own facts (*Canada (Minister of Human Resources and Development) v. Ding*, 2005 FC 76 (“*Ding*”). In *Ding*, the court set out factors to be taken into account in determining whether a person makes his or her home in and ordinarily lives in Canada. In the present appeal, I find these factors to be relevant and helpful in determining the issue before me. They are as follows:

- a) ties in the form of personal property (bank accounts, business, furniture, automobile, credit card);
- b) social ties (membership with organizations or associations, professional membership);
- c) other fiscal ties to Canada (hospital and medical insurance coverage, driver's license, property tax statements, public records, immigration and passport records, federal and provincial income tax records);
- d) ties in another country;
- e) regularity and length of stay in Canada and the frequency and length of absences from Canada;
- f) the lifestyle of the person or his/her establishment in Canada.

[7] The Appellant was born on February 1, 1945. He turned 65 years of age in 2010. He arrived in Canada on June 30, 1975 and became a Canadian citizen in 1982<sup>2</sup>. He indicated on his OAS application file on February 12, 2009 that he lived in Canada from June 30, 1975 to 1990, he then left for Egypt. He returned to live in Canada from June 29, 2008 to December 2009 and from May 2010.

[8] The Appellant provided the following evidence to support his years of residency in Canada since his return in 2008:

a) 2008

- an airline confirmation for a flight from Cairo to Montreal on June 26, 2008<sup>3</sup>;
- a personal effects accounting document dated on June 26, 2008<sup>4</sup> indicating mainly clothes in the amount of \$200;
- a Statutory Declaration dated July 7, 2008 indicating that he was living in Laval (Quebec) when he returned to Canada in 2008<sup>5</sup>;
- a lease for an apartment in Montreal for the period from September 2008 to August 2009<sup>6</sup> ; and
- a Quebec Healthcare Plan (RAMQ) card valid until February 2013<sup>7</sup>, and a report from the RAMQ<sup>8</sup> from June 2008 to January 2016 showing seven (7) visits in 2008, five (5) in 2009, two (2) in 2010, one (1) in 2011, three (3) in 2012, two (2) in 2013, two (2) in 2014 and one (1) in 2015.

b) 2009

- a Canadian passport<sup>9</sup> issued in Cairo valid from January 30, 2005, to January 30, 2010;

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<sup>2</sup> GD2-60

<sup>3</sup> GD2-58

<sup>4</sup> GD2-57

<sup>5</sup> GD2-55

<sup>6</sup> GD2-51

<sup>7</sup> GD2-60

<sup>8</sup> GD2-137

<sup>9</sup> GD2-50

- a questionnaire date stamped March 30, 2009, indicating that he lived in Canada since June 26, 2008, and never left more than six months since that date<sup>10</sup>;
- a second questionnaire date stamped July 7, 2010, confirming that he continuously lived in Canada since May 2008<sup>11</sup>.

c) 2010 to 2016

- a Canadian passport issued in Cairo from April 7, 2010, to April 7, 2015<sup>12</sup>;
- a Statutory Declaration dated May 17, 2010<sup>13</sup> indicating that he was living in Montreal;
- a lease for an apartment signed in his name and the name of his daughter for the period of July 2010 to June 2011<sup>14</sup>;
- a questionnaire<sup>15</sup> date stamped on November 30, 2015 confirming that he was living in Montreal and that he had been in Canada from June 1, 2010 to June 1, 2015, except from
  - May 28, 2011, to November 20, 2011, and
  - from May 7 2014, to November 11, 2015.
- a residence history<sup>16</sup> indicating that while living in Canada since March 2010, he was in Egypt from
  - May 4, 2010, to December 2010,
  - May 5, 2011, to November 11, 2011,
  - March 15, 2012, to June 27, 2012,
  - from May 7, 2014, to November 6, 2014, and
  - December 3, 2014, to May 12, 2015.
- a driver's licence valid from November 17, 2012, to February 1, 2017<sup>17</sup>;
- a car insurance certificate valid from July 19, 2010, to July 19, 2011<sup>18</sup>;

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<sup>10</sup>GD2-70

<sup>11</sup> GD2-69

<sup>12</sup> GD2-143

<sup>13</sup> GD2-66

<sup>14</sup> GD2-46

<sup>15</sup> GD2-103

<sup>16</sup> GD2-71 and 160

<sup>17</sup> GD2-75

<sup>18</sup> GD2-79

- a letter from the West Island Career Center confirming the Appellant was studying full-time from August 21, 2012, to April 29, 2014<sup>19</sup>;
- Letters dated July 16, 2010, July 19, 2010, and October 23, 2017, confirming the Appellant received social welfare benefits from July 2008 to December 2008, from January 2009 to July 2009, from May 2010 to October 2010 and from November 2015 to July 2016<sup>20</sup>;
- a car insurance certificate for November 7, 2014, to November 7, 2015<sup>21</sup>;
- a car registration certificate for the period of November 23, 2015, to February 28, 2017<sup>22</sup>;
- tax slips for 2010, 2012, 2013 and 2014<sup>23</sup>
- proof of residence on X Street in Montreal that began on November 11, 2015<sup>24</sup>;
- confirmation of registration at the RAMQ expiring on January 18, 2016<sup>25</sup>; and
- address history from the Société de l'assurance automobile du Québec<sup>26</sup>.

### *iii. Testimony*

[9] The Appellant testified that he has two daughters in Montreal and one son, he also has four grandchildren.

[10] He arrived in Canada 30 years ago. He has returned to Egypt for family related issues. He also returned to be supported by family. On two occasions, because of revolutions in the country, he was not able to return to Canada, he did not however remember the years of these

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<sup>19</sup> GD2-20

<sup>20</sup> GD2-17 to 19

<sup>21</sup> GD2-75

<sup>22</sup> GD2-75

<sup>23</sup> GD2-81, 85, 86

<sup>24</sup> GD2-89

<sup>25</sup> GD2-92 and GD5-3

<sup>26</sup> GD5-12

occurrences. He did state that during those periods, his Canadian passports expired and he renewed them in Cairo.

[11] When he returned to Canada in 2008, he brought his personal belongings from Egypt which consisted mainly of clothes.

[12] He added that the periods he received welfare should prove residency in Canada.

[13] He also provided copies of leases. Further, he studied in Montreal from 2012 to 2014.

[14] He did travel to Egypt in 2013, 2014 and 2015. He was back in Canada in April 2015 until January 2016 and returned to Egypt in July 2017 until October 2017.

[15] He has two sisters in Egypt which he stays with when he visits, he has no property abroad.

[16] He also referred to his bank statements showing transactions in Canada.

***iv. Residence v. presence***

[17] I cannot consider the period after June 2008 as periods of residence. Unfortunately, neither the evidence on file nor the Appellant's testimony has convinced me that the Appellant resided in Canada after June 2008. The evidence has demonstrated that, when in Canada, the Appellant does not have any personal property, strong social or fiscal ties or that his lifestyle is representative of an individual having established himself in Canada as a resident.

[18] The Appellant provided evidence of having a lease between the periods of September 2008 to August 2009 and July 2010 to June 2011. He also provided evidence that he studied in Montreal from 2012 to 2014, however, the evidence on file shows that the Appellant was in Egypt before and left immediately after he completed his studies. He further submitted evidence of having the RAMQ card valid until February 2013, car insurance between November 2014 and November 2015, a car registration certificate from November 2015 and February 2017 and bank statements from 2012 to 2019.

[19] However, a report from the RAMQ from June 2008 to January 2016 shows limited visits between 2008 and 2015. The bank statements also show sporadic transactions made in Canada but also made abroad. The Appellant had two valid Canadian passports from 2005 to 2015, they were however, both issued in Cairo, the period, which he claims he was a resident of Canada. The Appellant did provide an explanation during his testimony that his passports expired while he was in Egypt and because there was a revolution, he had to renew them abroad, the fact remains that not one but two Canadian passports were renewed in Cairo during a ten year period. Lastly, he has been abroad during the following periods:

from May 4, 2010, to December 2010;  
from May 5, 2011, to November 11, 2011;  
from March 15, 2012, to June 27, 2012;  
from May 7, 2014, to November 6, 2014; and  
from December 3, 2014, to May 12, 2015.

[20] Other than having children and grandchildren in Canada, there is no evidence to corroborate the Appellant's testimony or to demonstrate that he has established residence in Canada after June 2008. There is no question that the Appellant spends time in Canada, however, those periods cannot be considered residence but rather presence.

[21] Even if some evidence may demonstrate that the Appellant had established residence, there are too many gaps and periods which I cannot establish the ties the Appellant had to Canada and the evidence has shown that the Appellant has left and continues to leave Canada on a regular basis, every year, for prolonged periods of time.

[22] I therefore find that the evidence does not demonstrate that the Appellant resided in Canada pursuant to subsection 21(1)(a) of the *OAS Regulations* and therefore is not eligible to a OAS pension as provided by subsection 3(2) of the *OAS Act* or the GIS as provided by subsection 11(7)(d) of the *OAS Act*.

## **CONCLUSION**

[23] The appeal is dismissed.



Antoinette Cardillo  
Member, General Division - Income Security