Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *H. Z. v Minister of Employment and Social Development*, 2020 SST 550

Tribunal File Number: AD-19-241

BETWEEN:

H. Z.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: June 26, 2020

Canada

DECISION AND REASONS

DECISION

[1] I am allowing this appeal and restoring the Claimant's entitlement to Old Age Security (OAS) benefits.

OVERVIEW

[2] H. Z. is the Claimant in this case. In May 2013, she applied for an OAS pension. The Minister approved the Claimant's application in May 2014, concluding that she had resided in Canada for over 27 years.[1] In addition, the Minister approved the Claimant's application for the Guaranteed Income Supplement (GIS). To maintain her entitlement to the GIS, however, the Claimant had to continue residing in Canada.

[3] The Minister suspended the Claimant's GIS just a few months after it had been approved. But when the Claimant inquired about the problem, an agent grew concerned about her connections to the United States (U.S.).[2] As a result, she sent the file for further investigation. She did this even though the Minister had already considered the strength of the Claimant's ties to the U.S. before making its May 2014 approval decision.

[4] The Minister's investigation lasted about a year. And in July 2015, the Minister suspended the Claimant's OAS pension too.

[5] In the end, the Minister changed its approval decision. It concluded instead that the Claimant had resided in Canada for just 11 years, and that she had been residing in the U.S. since December 1, 1997.

[6] The Claimant says that this investigation has caused her tremendous hardship. She has received no OAS benefits since July 2015. Plus, the Minister is demanding that she repay all of the benefits that she received before that date: over $11,000.

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[1] In this context, residing in Canada has a very specific meaning, which is described below.
[2] See page GD5-7 at para 20.

[7] The Claimant appealed the Minister's decision to the Tribunal's General Division. In its first decision, the General Division agreed that the Claimant was not eligible for OAS benefits. The Claimant asked the General Division to rescind or amend that decision based on new facts, but it wrote a second decision denying her request. The Claimant did not appeal the General Division's second decision, so I will not deal with it here.

[8] In a growing number of cases, the Tribunal has concluded that the Minister does not have the power to change its approval (or initial eligibility) decisions. The Minister has not appealed those decisions to the courts, but may not be following them either. In this decision, I will reconsider and reaffirm this important limit on the Minister's powers.

[9] I have concluded that the General Division made errors of law and jurisdiction that allow me to intervene in this case. I have also decided to give the decision that the General Division should have given. In short, neither the Minister nor the Tribunal are able to change the Minister's May 2014 approval decision. It must be respected. In addition, the Claimant resided in Canada from May 22, 2014, to January 4, 2019.

[10] As a result, the Claimant's OAS benefits are restored.

PRELIMINARY ISSUES

[11] Three issues are worth discussing in a preliminary way.

I cannot consider the Minister's criticisms of the leave to appeal decision.

[12] In it submissions, the Minister criticized the decision in which I granted the Claimant leave (or permission) to appeal. Specifically, the Minister alleges that I committed errors of law and jurisdiction by granting leave to appeal on an issue that the Claimant had not raised and by shifting the burden of proof from the Claimant to the Minister.

[13] If the Minister had wanted to challenge my earlier decision, it could have asked the Federal Court to review it. It did not. As a result, that decision is final.[3] There is little more that I

[3] See section 68 of the *Department of Employment and Social Development Act* (DESD Act) and the Federal Court's decision in *Canada (Attorney General) v O'Keefe*, 2016 FC 503.

can, or should, say about that decision except that it has provided the parties with a fair opportunity to comment on the issues discussed below.

I will consider the Minister's new evidence.

[14] The Appeal Division rarely considers new evidence. By new evidence, I am referring to evidence that the General Division did not have in front of it when it made its decision.

[15] The Appeal Division's focus is on whether the General Division committed a relevant error. That assessment is normally based on just the evidence that the parties had presented to the General Division. However, there are exceptions to the general rule against considering new evidence.[4]

[16] As part of its submissions to the Appeal Division, the Minister provided new evidence: the Affidavit of Elizabeth Charron.[5] Elizabeth Charron is a legislative officer responsible for policy development as it concerns the *Old Age Security* (OAS Act) and the *Old Age Security Regulations* (OAS Regulations).

[17] The Minister argues that I can consider the Charron Affidavit because it provides general background information only. This is one of the recognized exceptions to the general rule against considering new evidence.[6]

[18] The general background information exception is narrow. It "applies to non-argumentative orienting statements" that can assist in understanding the history and nature of a case.[7] To fall within this exception, the Charron Affidavit should be written in neutral and uncontroversial language; it should not engage in spin, advocacy, or provide evidence that goes to the heart of the matter that needs to be decided.[8]

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[4] Although the context is different, section 58 of the DESD Act assigns a role to the Appeal Division that is similar to that of a court on judicial review. As a result, the Appeal Division normally applies the exceptions to considering new evidence that the Federal Court of Appeal listed in *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8 and that the Federal Court listed in *Greeley v Canada (Attorney General)*, 2019 FC 1493 at para 28.
[5] See pages AD6-589 to 593.
[6] This exception is described in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20, and in *Delios v Canada (Attorney General)*, 2015 FCA 117 at paras 41–52.
[7] See the Federal Court of Appeal's decision in *Delios*, note 6, at para 45.
[8] *Ibid* at paras 45–46.

[19] I recognize that the Minister filed the Charron Affidavit to help me in my interpretation of the OAS Act and OAS Regulations. The General Division did not consider that issue. As a result, it may not be surprising that the Minister delayed submitting the affidavit.

[20] I also recognize that the Charron Affidavit does not mention any specific details about this case. Instead, it is intended to provide more general information about the eligibility criteria for obtaining OAS benefits, along with the OAS program's administration.

[21] For these reasons, I decided to admit the Charron Affidavit as an exception to the general rule against new evidence at the Appeal Division.

I will not consider the Claimant's new evidence.

[22] In my leave to appeal decision, I decided that I would not consider new evidence that the Claimant had filed up to that date.[9] Beyond the new evidence discussed in that decision, the Claimant has also submitted a letter to London Life and some income tax information.[10]

[23] The reasons set out above and in my leave to appeal decision apply to this new evidence too. None of the exceptions to the rule against considering new evidence apply to the Claimant's new evidence. As a result, I cannot consider any of it.

ISSUES

[24] When reaching my decision, I focused on the following issues:

a) Did the General Division commit errors of law and jurisdiction by assuming that the Minister had the power to change its May 2014 approval decision?

b) If so, can the Minister's May 2014 approval decision be changed?

c) Did the Claimant reside in Canada between May 22, 2014, and January 4, 2019?

[9] See paragraphs 9 to 14 of the leave to appeal decision dated February 6, 2020.
[10] See pages AD3-3, AD10-3, and AD10-4.

ANALYSIS

[25] I must follow the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, I can intervene in this case only if the General Division committed a relevant error.[11]

[26] In this case, I focused on whether the General Division made a jurisdictional error by failing to decide all of the relevant issues and whether its decision contains an error of law.[12] Based on the wording of the DESD Act, any error of these types could allow me to intervene in this case.[13]

The General Division committed errors of law and jurisdiction by failing to decide a relevant issue.

[27] The General Division incorrectly assumed that the Minister had the power to change its May 2014 approval decision. The scope of the Minister's powers were at issue in this case, but the General Division never decided the issue.

[28] When the Claimant applied for her OAS benefits, it was essential that she prove when she had resided in Canada. Specifically,

a) her eligibility for an OAS pension depended on the number of years that she had resided in Canada between her 18th and 65th birthdays; and

b) her eligibility for the GIS depended on her maintaining her residence in Canada after her 65th birthday.

[29] On receiving the Claimant's application, the Minister asked follow-up questions.[14] Some of those questions concerned the strength of the Claimant's ties to the U.S. In particular, the

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[11] The relevant errors, formally known as grounds of appeal, are listed under section 58(1) of the DESD Act.
[12] Section 58(1)(a) of the DESD Act gives me the power to intervene in a case if the General Division fails to exercise its jurisdiction. Section 58(1)(b) of the DESD Act gives me the power to intervene in a case if the General Division misapplies the law, whether or not the error appears on the face of the record.
[13] The focus on the words of the DESD Act is explained in *Canada (Attorney General) v Jean*, 2015 FCA 242 at para 19.
[14] See page GD2-358.

Claimant's husband is an American citizen. They married in New York in 1995. The Claimant's husband also confirmed that he[15]

a) divides his time almost equally between Canada and the U.S.; and

b) has never worked in Canada.

[30] Nevertheless, the Claimant maintained that her and her husband spend large amounts of time apart and that she had never been outside of Canada for more than three months.[16]

[31] The Minister had this information, considered it, and approved the Claimant's application in May 2014.[17] The Minister granted the Claimant an OAS pension, based on 27 years of residence in Canada. The Minister's approval letter told the Claimant that it would continue to pay her OAS pension indefinitely, until the month after her death.

[32] In the Minister's May 2014 approval decision, the Minister also decided that the Claimant was eligible for the GIS. However, the GIS is an income-tested benefit, so the Minister said that it would reassess the Claimant's eligibility for the GIS on a yearly basis, as it does for all GIS recipients.

[33] Despite its approval in May, the Minister suspended the Claimant's GIS in July 2014. This seems to have happened because the Claimant had not filed her taxes on time, so the Minister was missing information that it needed about the Claimant's income in the previous year.[18] When the Claimant and her husband went to a Service Canada Centre to inquire, the agent they met with seemed to grow concerned because the couple had just returned from the U.S. As a result, she reviewed the file, did her own internet research, and sent the file for further investigation.[19]

[34] The investigation lasted about another year and prompted the Minister to suspend the Claimant's OAS pension too. Ultimately, the Minister changed its May 2014 approval decision.

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[15] See page GD2-357.
[16] See page GD2-351.
[17] See the Claimant's approval letter starting at page GD2-343.
[18] See page GD5-7 at para 20.
[19] The agent's investigation request and accompanying internet research starts at page GD2-327.

Instead, it concluded that the Claimant had resided in Canada for just 11 years, and that she had been residing in the U.S. since December 1, 1997.

[35] Based on that decision, the Minister argues that the Claimant is not entitled to OAS benefits, and should reimburse the amounts that she has already received.

[36] The General Division agreed: It found that the Claimant had not resided in Canada after November 30, 1997.

[37] However, the General Division did not consider the Minister's power to change its May 2014 approval decision in the first place. I have concluded that the General Division committed an error of law and jurisdiction by overlooking this issue.

[38] First, while the Claimant might not have expressed her concern in a lawyerly way, a generous interpretation of her letters reveals that she was questioning the Minister's ability to go back on its earlier decision.[20]

[39] On this point, it is worth noting that the Minister's letters to the Claimant were confusing. For example, in its letter dated May 9, 2016, the Minister said that it could not approve the Claimant's pension because she did not meet all of the eligibility requirements.[21] The Minister made no specific mention of the fact that it had already approved her OAS benefits in May 2014 or of the power that it was using to change that decision.

[40] Nevertheless, the Claimant did complain to the Minister about the length of time that it was making her wait for benefits that it had already determined she was entitled to receive.[22] Based on that complaint, the General Division should have been alive to the issue of the Minister's power to revisit its earlier decision.

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[20] The Tribunal's need to avoid a strict legalistic approach and to interpret an unrepresented party's arguments generously is reinforced by decisions like *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10, and *Duverger v 2553-4330 Québec Inc. (Aéropro)*, 2015 FC 1071 at para 19.
[21] See page GD2-52.
[22] The Claimant's letter is on page GD2-11, a copy of which was attached to her Notice of Appeal on page GD1-32.

[41] Second, even if the Claimant had not raised this issue, justice required that the General Division consider possible limits on the Minister's ability to change its approval decisions.[23]

[42] The Minister's ability to change its approval decision goes to the very heart of the Claimant's concerns. If the Minister were unable to change its approval decision, then the Minister went beyond its powers by stopping the Claimant's OAS pension and asking the Claimant to reimburse all of the OAS benefits that she had ever received. Instead, the Minister (and the Tribunal's) powers would be limited to reassessing the Claimant's residence in Canada only for the period after May 21, 2014.

[43] Justice required that the General Division look into and question the source of the sweeping powers that the Minister claims to be exercising in this case (and others like it).

[44] Third, the Tribunal has now ruled in several cases that the Minister does not have the power to change its approval decisions. The first of those cases was *BR v Minister of Employment and Social Development*.[24]

[45] I recognize that the General Division was not obliged to follow *BR*. However, *BR* raises an important issue that limits the powers of the Minister and of the Tribunal. And the Minister never challenged *BR* in the courts. Therefore, *BR* potentially applies in every case where the Minister revisits an earlier approval decision.

[46] In my view, if the General Division was not going to follow *BR*, then it should have at least explained why.[25] Indeed, the Supreme Court of Canada recently stressed the importance of consistent decision-making: Like cases should generally be treated alike.[26] Perfection is not required. However, decision makers should use their reasons to explain why they are departing from other decisions.

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[23] See, for example, *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 at paras 65-71, and *Adamson v Canada (Human Rights Commission)*, 2015 FCA 153 at para 89.
[24] *BR v Minister of Employment and Social Development*, 2018 SST 844. Other decisions following *BR* include *Minister of Employment and Social Development v JA*, 2020 SST 414, *MA v Minister of Employment and Social Development*, 2020 SST 269, *CH v Minister of Employment and Social Development*, 2020 SST 368, *MB v Minister of Employment and Social Development*, 2020 SST 22.
[25] *Canada (Attorney General) v Bri-Chem Supply Ltd.*, 2016 FCA 257 at para 44.
[26] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 129-131.

[47] For all of these reasons, I concluded that it was an error of law under section 58(1)(b) of the DESD Act for the General Division to assume that the Minister had the power to change its May 2014 approval decision.

[48] Viewed from a different angle, the Minister's power to change its May 2014 approval decision was an issue that the General Division needed to decide, but it failed to do so. This can also be seen as a jurisdictional error, as described under section 58(1)(a) of the DESD Act.

The Minister's May 2014 approval decision cannot be changed.

[49] Given the General Division's error, I decided to give the decision the General Division should have given.[27] I reached that conclusion because:

a) the law requires that I conduct proceedings as informally and as quickly as possible;[28]

b) under the DESD Act, the Tribunal's General and Appeal Divisions are equally empowered to decide the relevant issues in a case;[29] and

c) I have all the facts needed to make a decision, including Elizabeth Charron's affidavit.

[50] The Minister argues that section 23 of the OAS Regulations allows it to reassess the Claimant's residence in Canada for whatever period it wants, whenever it wants, and however many times it wants. In addition, it is the Claimant's duty to prove her residence in Canada during any of these reassessments.[30]

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[27] If the General Division commits a relevant error, section 59(1) of the DESD Act sets out the powers that I have to try to fix the error.
[28] This requirement is set out in section 3(1)(a) of the *Social Security Tribunal Regulations*.
[29] Section 64(1) of the DESD Act gives me the power to decide questions of law and fact. The Federal Court of Appeal confirmed these powers in *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paras 16–18.
[30] *De Carolis v Canada (Attorney General)*, 2013 FC 366 at para 32.

[51] The Minister's powers under section 23 of the OAS Regulations are defined in this way:

> **Further Information and Investigation Before or After the Approval of an Application or Before or After the Requirement of an Application Is Waived**
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> **23 (1)** The Minister, at any time before or after approval of an application or after the requirement for an application is waived, may require the applicant, the person who applied on the applicant's behalf, the beneficiary or the person who receives payment on the applicant's behalf, as the case may be, to make available or allow to be made available further information or evidence regarding the eligibility of the applicant or the beneficiary for a benefit.
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> **(2)** The Minister may at any time make an investigation into the eligibility of a person to receive a benefit including the capacity of a beneficiary to manage his own affairs.

[52] The Minister's arguments in this case are the same as the ones it advanced in earlier cases. The Tribunal has already considered and rejected those arguments in other decisions, especially *BR v Minister of Employment and Social Development*, *Minister of Employment and Social Development v JA*, and *MA v Minister of Employment and Social Development*.[31] I agree with those decisions and adopt their reasoning here.

[53] The Minister had the time and the power to investigate the Claimant's connections to the U.S. and to determine when she resided in Canada before making its May 2014 approval decision.

[54] The Minister also had the power to assess whether the Claimant continued to reside in Canada after its May 2014 approval decision, since that is required for the Claimant to continue receiving the GIS.

[55] Once the Minister had made its approval decision, the OAS Act and Regulations set out the Minister's powers to cancel or suspend the Claimant's OAS benefits. Critically, however, section 23 of the OAS Regulations does not give the Minister the power to change its past approval decisions.

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[31] For the full legal citations, see note 24 above.

[56] In *BR*, the Tribunal provided detailed reasons explaining why it rejected the Minister's broad interpretation of section 23 of the OAS Regulations. As part of that decision, the Tribunal was careful to examine the text, context, and purpose of the relevant provision. In summary:

a) The OAS scheme is altruistic in purpose and people should not be lightly disentitled from the benefits it provides;[32]

b) The OAS Act and Regulations must be interpreted as harmoniously as possible;

c) Once approved, OAS pensions are paid for life, unless the pensioner asks for payments to be stopped sooner.[33] However, the OAS Act establishes specific circumstances when the Minister can suspend the payment of benefits;[34]

d) The powers that the Minister claims to have been given by section 23 of the OAS Regulations are extraordinary. While it is accepted that the Minister has the power to assess a person's ongoing eligibility to OAS benefits, nothing in the OAS Act and OAS Regulations suggests that the Minister has the power to change or cancel its approval decisions;

e) The Minister has the power to change other types of decisions that it makes (under the OAS Act and under other acts that it administers). Therefore, it is all the more striking that Parliament did not use similar language in regards to the Minister's approval decisions;

f) As a result, a harmonious reading of the OAS Act and Regulations does not support the Minister's position. Nor does a decision from the Federal Court of Appeal.[35]

[57] The Minister has advanced some additional arguments, which the Tribunal considered in *MA*. In short:

a) The reasoning in *BR* applies to cases like this one, where the Minister is attempting to change an earlier approval decision;

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[32] See also *Canadian Pacific Ltd. v Attorney General (Canada)*, 1986 CanLII 69 at para 25 (SCC).
[33] See sections 8(3), 9.1(1), and 9.3(1) of the OAS Act.
[34] See, for example, section 9 of the OAS Act.
[35] *Kinney v Canada (Attorney General)*, 2009 FCA 158.

b) Other decisions relied on by the Minister, like *De Bustamante v Canada (Attorney General),*[36] *De Carolis v Canada (Attorney General),*[37] *MR v Minister of Employment and Social Development,*[38] and *Comeau's Sea Foods Ltd. v Canada (Minister of Fisheries and Oceans)*[39] do not help the Minister in this case;

c) When the Minister approved the Claimant's application for OAS benefits, it was exercising a legislative function that affected the Claimant's legal rights. It is a power that the Minister could only use once; and

d) Regardless of whether the Minister would find it useful to have the power to change its approval decisions, it is limited to the powers that the law gives to it. Even after considering the specific provisions that the Minister has highlighted, the law cannot be interpreted as giving the Minister an unrestricted power to change its earlier approval decisions.

[58] I agree that Parliament intended for the Minister to have certain investigatory powers, because a person's entitlement to OAS benefits can change over time. However, none of the sources relied on by the Minister provide a clear indication that Parliament also intended for the Minister to have the power to change its approval decisions.

[59] For all these reasons, I have concluded that the Minister could not change its May 2014 approval decision. According to that decision, the Claimant resided in Canada on May 21, 2014, and for more than 27 years between her 18th and 65th birthdays.

[60] As a result, the Minister could assess the Claimant's residence in Canada starting only from May 22, 2014.

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[36] *De Bustamante v Canada (Attorney General),* 2008 FC 1111.
[37] *Supra* note 30.
[38] *MR v Minister of Employment and Social Development*, 2020 SST 93.
[39] *Comeau's Sea Foods Ltd. v Canada (Minister of Fisheries and Oceans),* 1997 CanLII 399 (SCC).

[61] The Tribunal has the same powers as the Minister.[40] It too can only assess the Claimant's residence from May 22, 2014. However, the Tribunal can continue its assessment of the Claimant's residence in Canada until the date of the General Division hearing.

The Claimant resided in Canada between May 22, 2014, and January 4, 2019.

[62] In this context, residing in Canada has a very specific meaning. Section 21(1) of the OAS Regulations says that a person resides in Canada if they make their home and ordinarily live in any part of the country. This is different from a person who is physically present in Canada.

[63] Whether the Claimant resided in Canada is determined based on all the facts of her particular case. Specifically, I considered the Claimant's:[41]

a) ties in the form of personal property;

b) social ties in Canada;

c) other ties in Canada (for example, medical coverage, driver's licence, lease, tax records, etc.);

d) ties in another country;

e) frequency and length of stays in Canada versus the frequency and length of absences from Canada; and

f) lifestyle and degree of establishment in Canada.

[64] The weight given to each factor can change from case to case.[42]

[65] There is no dispute that the Claimant had ties to both Canada and the U.S. during the relevant period. Here is a table summarizing her connections to each country.

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[40] See, for example, sections 54(1) and 59(1) of the DESD Act.
[41] These factors can be found in court decisions, such as *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at para 31; *De Carolis*, *supra* note 30 at para 32; and *De Bustamante*, *supra* note 36 at para 38.
[42] *Singer v Canada (Attorney General)*, 2010 FC 607 at para 33.

Canada	United States
• The Claimant's daughter and her family live in Canada, though they have been estranged since about 2014.	• The Claimant's son lives in the U.S. with his family. The Claimant's husband also spends up to half his time in the U.S.
• Since 2014, the Claimant has been sharing an apartment on X Avenue with a friend. Because of her financial situation, she said that she could not rent an apartment on her own. She provided this address to various public agencies in 2014, it is confirmed in official documents, and she has been named on the lease since 2016.[43]	• The Claimant and her husband own a condominium on X Row in Florida. The Claimant explained that this property really belongs to her son-in-law and that her name appears on title for legal reasons only. She admitted that she has stayed in this property before, but she usually stays with her son when in Florida.
• The Claimant has Canadian citizenship and maintains her Canadian passport.	• The Claimant has no legal status in the U.S. and does not have a U.S. social security number.
• The Claimant maintains her Quebec driver's licence.[44]	• The Claimant once had a Florida driver's licence but it expired long ago.
• The Claimant maintains provincial healthcare insurance and receives medical treatments in Canada.	• The Claimant has no healthcare coverage in the U.S.
• The Claimant files her taxes in Canada every year and declares herself to be a resident of Quebec.	• The Claimant does not file taxes in the U.S.
• The Claimant receives a small pension from the Quebec Pension Plan. She had a small pension through her previous employer, which was paid out in 2015.[45] The Claimant also had a life insurance policy in Canada, though she cashed it out early because she needed the money.[46]	• There is no evidence of similar insurance policies or investments in the U.S.

[43] See pages GD2-17 to 23, GD2-32, GD2-81 to 83, GD2-150, GD2-177, GD2-300, GD5-2 (at para 6), and GD7-9.
[44] See pages GD2-38 and GD2-40.
[45] See pages GD2-76 to 77.
[46] See page GD2-35.

Canada	United States
• The Claimant has a bank account in Canada, though she says that there are few transactions because she has no money.	• The Claimant admitted during the hearing that her and her husband have a bank account in the U.S., but said that her son-in-law manages the account.
• There was no evidence that the Claimant is politically active in Canada.	• In January 2014, the Claimant donated $25 to a U.S. politician.[47] The Claimant explained that her son-in-law asked her to make this donation.
• At the General Division hearing, the Claimant said that she owns just a few personal items, like clothing, furniture, and a computer. She said that it is all in Canada.	• The Claimant does not leave personal items in the U.S.

[66] The Minister seems concerned that the Claimant spends significant amounts of time in the U.S. and that she has greater wealth, including a condominium, in the U.S.

[67] It is very difficult to assess how much time the Claimant spends in Canada versus the U.S. There are no objective records to confirm her comings and goings between the two countries. Plus, the Claimant's answers to this question have been contradictory. For example:

a) on a questionnaire, the Claimant wrote that, since arriving in Canada in 1986, she had never left the country for more than three months;[48]

b) the Claimant is reported to have told the Minister's investigator that she spends the winters in Florida, except for a return to Canada for Christmas;[49]

c) at the General Division hearing, the Claimant said that she usually went to Florida twice a year, but for short trips only. One trip was at Christmas and the other was at a convenient time for her son. In 2014-2015, the Claimant did stay in the U.S. for longer because she had broken her arm.

[47] See page GD2-336.
[48] See page GD2-351.
[49] See pages GD2-78 and GD2-109 to 110. It is worth noting, however, that the investigator did not give evidence at the General Division hearing.

[68] While these inconsistencies are troubling, none suggests that the Claimant spent more time in the U.S. than in Canada. Many Canadians travel to the U.S. for the winter without losing their Canadian residence.

[69] Concerning her alleged wealth in the U.S., the Claimant asked why she would cash out her insurance policy, why she would live so modestly while in Canada, and why she would delay getting important dentistry work done if she was a person of such means.

[70] I agree that the Claimant's partial ownership of a condominium in Florida is an important factor connecting her to the U.S. But her connections to the U.S. must be balanced against her connections to Canada. This includes the fact that the Claimant seems to spend much more time at the apartment in Montreal than she does at the condominium in Florida.

[71] I also agree that the Claimant's limited financial means are part of the overall context in which I must consider her case.

[72] Overall, I am satisfied that the Claimant made her home and ordinarily lived in Canada during the relevant period. In reaching this conclusion, I found it particularly important that the Claimant:

a) maintains her Canadian passport, driver's licence, and provincial healthcare coverage;

b) files her taxes in Canada every year, declaring herself to be a resident of Quebec;

c) has no U.S. social security number and no legal right to stay in the U.S. for prolonged periods; and

d) has or had pensions and insurance policies in Canada.

[73] I conclude, therefore, that the Claimant resided in Canada from May 22, 2014, to January 4, 2019. I am unable to make any findings concerning the Claimant's residence in Canada after the date of the General Division hearing.

CONCLUSION

[74] I concluded that the General Division committed errors of law and jurisdiction and that its decision should be set aside. I also decided that I can assess the Claimant's residence in Canada from May 22, 2014, to January 4, 2019. I agree with the Claimant that she resided in Canada throughout this period. As a result, I am allowing her appeal and restoring her entitlement to OAS benefits.[50]

Jude Samson
Member, Appeal Division

HEARD ON:	April 21, 2020
METHOD OF PROCEEDING:	Teleconference followed by written submissions
APPEARANCES:	H. Z., Appellant Tiffany Glover, Representative for the Respondent

[50] The Claimant's entitlement to the GIS is nevertheless subject to a verification of her income and any other requirements of the OAS Act and OAS Regulations.