

Citation: *Z. A. v. Minister of Employment and Social Development*, 2015 SSTAD 454

Date: April 1, 2015

File number: AD-14-611

APPEAL DIVISION

Between:

Z. A.

Appellant

and

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills Development)**

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for an Old Age Security pension. The Respondent denied this application initially and after reconsideration as it concluded that the Appellant did not meet the Canadian residency requirement to receive this pension. The Appellant appealed this decision to the General Division of the Social Security Tribunal. He filed the appeal after the time permitted to do so, and asked for an extension of time to file the appeal. On June 10, 2014 the General Division dismissed the Appellant's request for an extension of time to file the appeal.

[2] The Appellant seeks leave to appeal from that decision, and an extension of time to file this Application Requesting Leave to Appeal. He argued that his request for leave to appeal to the Appeal Division of the Tribunal was late because of delays with the mail system between Canada and Pakistan where he resides. This is beyond his control. In addition, the decision of the General Division was contrary to his expectations and there was an injustice as only the other party was heard. He also claimed that he was discriminated against. The Appellant provided a history of his residence in Canada including that he is a Canadian citizen and resides in Pakistan because his Wife has not been permitted to move to Canada. Finally, he disagreed with the conclusions reached in the General Division decision.

[3] I requested that the Respondent provide written submissions. It submitted that the General Division made no error in not granting an extension of time to file the appeal as the Appellant had no reasonable chance of success on appeal. Similarly, the Appellant had presented no argument with a reasonable chance of success on appeal to the Appeal Division, so again the request for additional time to file the Application Requesting Leave to Appeal (Application) should be refused. I must decide if the Appellant should be granted an extension of time to file the Application, and if so whether leave to appeal should be granted.

ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. Pursuant to paragraph 57(2)(b) of the DESD Act, an application

must be made to the Appeal Division within 90 days after the day on which the decision was communicated to the Appellant. This time can be extended.

[5] In assessing the request to extend time for leave to appeal, the Tribunal is guided by decisions of the Federal Court. In *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883 the Federal Court of Appeal concluded that the following factors must be considered and weighed when deciding this issue:

- a) A continuing intention to pursue the application;
- b) There is a reasonable explanation for the delay;
- c) There is no prejudice to the other party in allowing the extension; and
- d) The matter discloses an arguable case

[6] The weight to be given to each of these factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served (*Canada (Attorney General) v. Larkman*, 2012 FCA 204).

[7] In this case, I am satisfied that the Appellant had a continuing intention to pursue this matter. He wrote eloquently about when he received the General Division decision and what steps he took to respond. He also explained the delay caused by slow mail service between Canada and Pakistan. For these reasons I am also satisfied that the Appellant had a reasonable explanation for his delay in seeking leave to appeal to the Appeal Division of the Tribunal.

[8] Neither party made any submissions on the issue of whether the Respondent would be prejudiced if this matter proceeded. I make no finding on that.

[9] Finally, I must consider if the Appellant has presented some arguable ground upon which the proposed appeal might succeed. The Federal Court of Appeal has concluded that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[10] Section 58 of the DESD Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (this is set out in the Appendix to this decision).

[11] The Appellant conceded that he had not met the 20 year Canadian residency requirement to receive an Old Age Security pension. He claimed that he did not meet this requirement as his wife has not been permitted to move from Pakistan to Canada. If she had been permitted to move to Canada, he would have resided here. Under the *Old Age Security Act*, there are no exceptions to the 20 year residency requirement to receive this pension. Therefore, no matter how sympathetic I might be to his marital plight, I cannot change the fact that the Appellant did not reside in Canada for the required time to be able to receive this pension. The repetition of these facts and the Appellant's residential history is not a ground of appeal that has a reasonable chance of success on appeal.

[12] The Appellant claimed that only the other party was heard prior to the General Division decision being made. He provided no explanation on how he came to that conclusion, and provided no evidence to support this. Without this, I am not satisfied that the General Division made its decision after hearing only from one party to this proceeding, or made any other error in its procedure. This is not a ground of appeal that has a reasonable chance of success.

[13] The Appellant also argued that he was discriminated against. Prior to making this decision I sent written questions to the Appellant and asked him to explain this. He responded with examples of three occasions when he felt that he was not treated properly by various legal systems while he lived in Canada, including a workers' compensation claim, his divorce and his inability to find work. These circumstances do not allege that this Tribunal or the *Old Age Security Act* discriminated against the Appellant. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[14] Finally, the Appellant disagreed with the General Division decision. This argument did not point to any error of fact made by the General Division. The Appellant did not allege that the General Division made any error of law. Therefore, this argument also does not have a reasonable chance of success on appeal.

[15] In summary, I find that although the Appellant had a continuing intention to appeal and a reasonable explanation for his delay, he did not present an arguable case on appeal. I place greater weight on this factor than the others considered. It would serve no useful purpose to extend the time for the Application to be filed if it did not have a reasonable chance of success on appeal. It would only protract the litigation between these parties for no purpose. It is not in the interest of justice to proceed in this manner.

[16] For these reasons, an extension of time to apply for leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) The only grounds of appeal are that

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.