

**[TRANSLATION]**

**Citation: *M. B. v. Minister of Employment and Social Development*, 2015 SSTAD 818**

**Date: June 26, 2015**

**File number: AD-15-128**

**APPEAL DIVISION**

**Between:**

**M. B.**

**Applicant**

**and**

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

**Respondent**

**Decision by: Shu Tai Cheng, Member, Appeal Division**

## **REASONS AND DECISION**

### **DECISION**

[1] The Social Security Tribunal of Canada (Tribunal) refuses leave to appeal to the Appeal Division.

### **INTRODUCTION**

[2] On December 23, 2014, the Tribunal's General Division (SST-GD) found that the Applicant was not resident in Canada between May 1, 1997, and January 2007. As a result, he is not eligible for the Guaranteed Income Supplement (GIS) under paragraph 11(7)(d) of the *Old Age Security Act* (OAS Act). The Respondent can recover the overpayment under section 37 of the OAS Act.

[3] The Applicant filed an application for leave to appeal to the Appeal Division (Application) on March 13, 2015. The Tribunal received the Application within the time limit.

### **ISSUE**

[4] Does the appeal have a reasonable chance of success?

### **THE LAW AND ANALYSIS**

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, "[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted" and the Appeal Division "must either grant or refuse leave to appeal".

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, 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.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove his case.

[9] The Tribunal will grant leave to appeal if any of the above grounds of appeal has a reasonable chance of success.

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, be able to see a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[11] In his Application, the Applicant notes:

- (a) That the SST-GD's decision is based on an erroneous finding that it made in a perverse or capricious manner, without regard for the material before it;
- (b) More complete facts set out in emails and letters written to the SST-GD in January, February and March 2015;
- (c) That he sold his farm in Canada after his spouse died;
- (d) The proof of his trips back and forth between Canada and France has disappeared, except the proof on his new passport for 2005-2007;
- (e) His two daughters have acquired Canadian nationality, and he stays with them when he is in Canada;

- (f) He has a book that the province of Quebec gives to immigrants stating that regular visits to Canada may be considered proof of residence, especially if you have family in the country, which is his case;
- (g) He still feels like a Quebecer, he has two daughters and four grandchildren, a bank account and houses where he can reside in Quebec; and
- (h) After 2007, he retired outside Canada.

[12] The SST-GD's decision includes four pages concerning the evidence submitted and makes note of the Applicant's explanation of his history in Canada at paragraphs [39] and [40]. Specific mention is made of his assertion that he was never absent from Canada for more than six months a year and that he never gave up his permanent resident status in Canada.

[13] I cannot reassess the evidence submitted before the SST-GD. On my reading of the file and the SST-GD's decision, the Applicant's arguments concerning his residence in Canada until 2007 have already been addressed by the SST-GD.

#### **New document**

[14] The book mentioned in paragraph [12]( f) above is not in the SST-GD's file, nor did the Applicant file a copy with his Application.

[15] If the Applicant wishes to submit additional documents in support of his application for an old age security pension, those documents must relate to the grounds of appeal. However, the Applicant has not provided a copy of the book and has not stated how this supports the listed grounds of appeal. If the Applicant is asking the Tribunal to consider that additional document, reassess the evidence and reassess the application in his favour, I am unable to do so at this stage given the constraints of subsection 58(1) of the *Department of Employment and Social Development Act*. The Appeal Division has no authority to make a decision based on the merits of the case.

[16] If the Applicant intended to file additional documents to have the SST-GD's decision rescinded or amended, he would have been obliged to comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations* and file an application to rescind

or amend with the General Division. The Appeal Division, in this case, has no jurisdiction to rescind or amend a decision based on new facts. Subsection 66(2) of the *Department of Employment and Social Development Act* requires that an application to rescind or amend a decision be made within one year after the day on which the decision in question is communicated to the parties. The SST-GD's decision is dated December 23, 2014. The Applicant has one year following the communication of that decision to apply to rescind or amend it. That period ends in December 2015.

[17] Under paragraph 66(1)(b) of the *Department of Employment and Social Development Act*, an applicant must show that the new fact is important and would not have been discovered at the time of the hearing with the exercise of reasonable diligence.

[18] An appeal is not a new hearing on the merits of the Applicant's application for an old age security pension. In short, there are no grounds on which I can consider the document referred to for the purposes of an application for leave to appeal.

## **CONCLUSION**

[19] Leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division