

[TRANSLATION]

Citation: *A. M. v. Minister of Employment and Social Development*, 2015 SSTAD 976

Date: August 12, 2015

File number: AD-15-325

APPEAL DIVISION

Between:

A. M.

Applicant

and

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

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On March 5, 2015, the General Division concluded the following:

- As a non-resident of Canada when he filed his Old Age Security application and when he turned 65, the Applicant did not have the number of required years (20) of Canadian residence to be eligible for the Old Age Security pension pursuant to paragraph 3(2)(b) of the *Old Age Security Act* (the Act).

[3] On June 1, 2015, the Applicant applied for leave to appeal before the Appeal Division.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] Pursuant to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “an 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 “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

ANALYSIS

[7] In accordance with section 58(1) of the Act, the only grounds of appeal are as follows:

- (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 or order, whether or not the error appears on the face of the record; or

(c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] A leave to appeal proceeding 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 during the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove his or her case.

[9] Leave to appeal is granted by the Tribunal if it is satisfied that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, of fact or of jurisdiction whose response might justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In his application for leave to appeal, the Applicant essentially repeated the facts in support of his position, facts that were previously submitted to the General Division for assessment. In addition, some "new" evidence put forth by the Applicant in his application for leave to appeal was not submitted to the General Division even though it was clearly available at the time of the hearing. That evidence is therefore not admissible before the Appeal Division.

[13] The appeal before the Appeal Division is not subject to de novo hearings, that is, where a party may present its evidence again and hope for a favourable decision.

[14] The Applicant also submitted that the General Division based its decision on erroneous findings of fact that it made in a perverse or capricious manner and that some of its findings were inaccurate or pure speculation. However, he did not specify which findings were made in a perverse or capricious manner, or which findings were inaccurate or pure speculations.

[15] It is not the responsibility of the member, whose job it is to determine whether the appeal has merit, to seek, establish or clarify the Applicant's grounds of appeal.

[16] In conclusion, the Tribunal finds that the Applicant did not raise any questions of fact, of law or of jurisdiction, pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, whose response might justify setting aside the decision under review.

[17] After reviewing the file, the decision of the General Division and the Applicant's arguments on appeal, the Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

CONCLUSION

[18] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division