



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. C. v. Minister of Employment and Social Development*, 2016 SSTGDIS 99

Tribunal File Number: GP-15-308

BETWEEN:

P. C.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Virginia Saunders

HEARD ON: December 1, 2016

DATE OF DECISION: December 5, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

P. C.	Appellant
Agnes Kwan	Appellant's Representative (Law Student)
Jennifer Hockey	Counsel for the Respondent
Adele Lay	Observer (Law Student with the Appellant)
Tania Arreaga	Observer (Paralegal with the Respondent)

INTRODUCTION

[1] The Appellant applied for a pension under the *Old Age Security Act* (OAS Act). The Respondent denied the application initially and upon reconsideration, because it found that the Appellant had not established her identity or her legal status in Canada (GD2-8). The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] On May 3, 2016, the Tribunal sent the Appellant notice of its intention to summarily dismiss the appeal as it appeared to have no reasonable chance of success. The Appellant was given 30 days to reply. In her response the Appellant appeared to raise a constitutional challenge, and the Tribunal decided not to summarily dismiss for that reason.

[3] In a letter dated August 18, 2016, the Appellant clarified that she did not intend to raise a constitutional challenge but rather submitted that the Tribunal must interpret the OAS Act and *Old Age Security Regulations* (OAS Regulations) in a manner consistent with the *Canadian Human Rights Act* (CHRA) and the *Canadian Charter of Rights and Freedoms* (Charter). Based on the submissions received the Tribunal decided not to summarily dismiss and determined that a hearing was appropriate. The reasons for this are discussed in more detail in the Analysis section of this decision.

[4] The appeal was heard by teleconference for the following reasons:

- a) The issues under appeal are not complex, and

b) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[5] An OAS pension is payable to a person who has reached 65 years of age, and who meets the residence requirements set out in subsections 3(1) and (2) of the OAS Act.

[6] Section 18 of the OAS Regulations states:

18. (1) Subject to section 19, the Minister shall determine the age and identity of an applicant for the purposes of the Act in accordance with whichever of subsections (2) to (2.2) is applicable.

(2) The Minister shall determine the age and identity of an applicant on the basis of any information provided to the Minister by the Canada Employment Insurance Commission under subsection 28.2(5) of the *Department of Employment and Social Development Act*.

(2.1) The Minister shall determine the age and identity of an applicant on the basis of a birth certificate or a certified copy of one.

(2.2) If there is sufficient reason to believe that a birth certificate is not available, the Minister shall determine the age and identity of an applicant on the basis of any other evidence and information with respect to the age and identity of the applicant that is available from any source.

(3) If the Minister is unable to determine the age and identity of an applicant under any of subsections (2) to (2.2), the Minister shall, subject to the following conditions, request that Statistics Canada search the census records for information as to the age and identity of the applicant.

(a) any such request shall be made in the form prescribed by the Chief Statistician of Canada and shall bear the signed consent of the person concerning whom the information is sought and shall provide such specific information as may be necessary for the purpose of making a search of the census records; and

(b) any information supplied by Statistics Canada shall be kept confidential and shall not be used for any purpose other than that of establishing the age of the applicant as required under the Act, the *Canada Assistance Plan* or the *Canada Pension Plan*, as the case may be.

[7] Section 4 of the OAS Act states:

4. (1) A person who was not a pensioner on July 1, 1977 is eligible for a pension under this Part only if

(a) on the day preceding the day on which that person's application is approved that person is a Canadian citizen or, if not, is legally resident in Canada; or

(b) on the day preceding the day that person ceased to reside in Canada that person was a Canadian citizen or, if not, was legally resident in Canada.

(2) The Governor in Council may make regulations respecting the meaning of legal residence for the purposes of subsection (1).

[8] Subsection 22(1) of the OAS Regulations states:

22. (1) For the purposes of subsections 4(1), 19(2) and 21(2) of the Act, legal residence, with respect to a person described in any of those subsections, means that, on the applicable day specified in paragraph (a) or (b) of those subsections, that person

(a) is or was lawfully in Canada pursuant to the immigration laws of Canada in force on that day;

(b) is or was a resident of Canada and is or was absent from Canada, but

(i) is deemed, pursuant to subsection 21(4) or (5) or under the terms of an agreement entered into under subsection 40(1) of the Act, not to have interrupted the person's residence in Canada during that absence, and

(ii) was lawfully in Canada pursuant to the immigration laws of Canada immediately prior to the commencement of the absence; or

(c) is not or was not resident of Canada but is deemed, pursuant to subsection 21(3) or under the terms of an agreement entered into under subsection 40(1) of the Act, to be or to have been resident in Canada.

[9] Section 44 of the *Immigration and Refugee Protection Act* states in part:

44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

(3) An officer or the Immigration Division may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer or the Division considers necessary on a permanent resident or a foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order.

[10] Subsection 3(1), section 5 and subsection 15(2) of CHRA state:

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

15. (2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a bona fide occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a bona fide justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

[11] Subsection 15(1) of the Charter states:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

[12] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success.

ISSUE

[13] The issue before the Tribunal is whether the Appellant has established on a balance of probabilities that she meets the eligibility requirements for an OAS pension.

EVIDENCE

[14] In May 2000 the Appellant attended a provincial social services office in Fort St. John, British Columbia, and applied for social assistance under the name A. K. P. C. She stated that she had been assaulted and that her purse containing her identification and immigration papers had been stolen. She stated that she was born in San Antonio, California and had dual citizenship, spending time between Canada and the United States. She advised that she had never had a social insurance number (SIN) and that she had been fired from her job. As Citizenship and Immigration Canada (CIC) had no record of the Appellant, she was determined to be ineligible for assistance at that time (GD2-103).

[15] The Appellant continued to have contact with B.C. social services and advocacy agencies after that, as well as with CIC and the Canada Border Services Agency (CBSA), in an effort to obtain social assistance and proof of Canadian citizenship.

[16] In spite of being unable to prove her identity, in 2005 the Appellant was granted income assistance by the Province of B.C. through a ministerial exemption, and coverage under the B.C. Medical Services Plan (MSP) by a policy exemption (GD2-100).

[17] The Appellant has not obtained any proof of citizenship or immigration status from CIC. She met with the CBSA in July 2013 and signed Terms and Conditions pursuant to subsection 44(3) of the *Immigration and Refugee Protection Act*, in which she agreed among other things to keep CBSA informed of any change of address and to report once a month regarding her activities and living situation (GD2-62).

[18] The Appellant completed an application for an OAS pension on February 1, 2012, under the name P. A. K. C. She stated that she was born on July 27, 1947, and now lived on X Street in Victoria B.C. She claimed to be a dual citizen, who first entered Canada on June 22, 1954, at Halifax, Nova Scotia. She stated that she lived in the USA from birth to 1998, after which she lived in Canada. She claimed to have worked in the USA from 1988 to 1998 (GD2-115-118).

[19] It is unclear when this application was submitted to the Respondent. It was dated February 1, 2012, but does not bear a date-stamp indicating when it was received by the Respondent. A report in the file indicated that an OAS application was completed with the

assistance of employees of the Respondent, along with an application for a *Canada Pension Plan* (CPP) retirement pension, on October 3, 2013 (GD2-179).

[20] In November 2013 the Respondent conducted an investigation, including an interview of the Appellant that month. In the interview the Appellant stated that she had never used any name other than P. M. or P. A. C. She lived at various addresses in Victoria before going to Nova Scotia in May 2013. As far as she knew she was born on a boat near Halifax. She had lived in a house in the X [Nova Scotia] area with her parents and her three brothers for about five years, after which she lived in an orphanage for two years and then with her grandparents. She stated that the orphanage records were destroyed in a fire in 1969. At age 14 she married a 21 year old man, and they moved to the United States in 1963. They had lived in New Mexico, where he was a police officer, until 1982, when he retired because he was sick. She did not remember any trips to Canada except possibly one to Victoria when she was 19. She had 12 children, all born in the United States. She had not been in contact with any of them since 1998 and she was unable to find them on the computer. She did not work in the United States. Her husband died in 1992.

[21] The Appellant stated in the interview that she entered Canada from Montana in 1998 with her brother who was continuing on to Alaska. They had come from Saratoga, California, where they had been living. She likely had a SIN card and “dual citizenship papers” when she crossed the border, but she did not remember what documentation she used because she was asleep. She was unable to reach this brother and she had lost touch with the other two as well. She stated that she had returned to Canada to work as a cook in fire camps in northern Alberta. She named the employer she had worked for from 1998 to 1999, and stated that after that she went to Dawson Creek until February 2000, when she was assaulted and lost all of her identification. She stated that she had reported the assault to the RCMP but because it was never solved “they deleted it from the computer.”

[22] At the end of the interview the Appellant signed consent forms for searches with CBSA and government and other agencies and individuals in British Columbia, Nova Scotia, and the United States (GD2-151-161).

[23] In the years before she submitted her OAS application, the Appellant had provided information about her personal history to other persons and agencies, all of which is set out in the appeal file. This information included the names of her parents; that her mother was a Canadian born in Halifax; that her father was American; and that her parents died when she was five or six years old. She claimed to have been born on July 27, 1947, on a farm in New Mexico; to have attended a Catholic school in New Mexico from Grade 1 to Grade 12; to have been married in 1961 at age 14 to a U.S. Marine; and to have given birth to 10 children in New Mexico.

[24] In efforts to help the Appellant identify herself and ascertain her immigration and citizenship status, investigations were carried out and inquiries made on her behalf in Canada and the United States. The Appellant travelled to Halifax in 2013 and spent approximately six months there while she tried to obtain more information about her past.

[25] Details and results of all of these efforts are in the appeal file. Except for evidence that the Appellant was employed for a total of one week and eight days in Alberta and B.C. in 2000, these searches turned up no evidence to substantiate any of the Appellant's claims or to assist in identifying her or settling her legal status. There are no records of any birth or adoption of a person with her name; and no records of family members or of the events she claimed took place.

[26] There were differing views on why this was so: either because the Appellant was suffering from distorted memory or amnesia, possibly as a result of the assault in 2000; or because she was deliberately concealing her identity for reasons unknown. It appears from the file that no one who dealt with the Appellant felt that there was any fraud or criminal purpose involved.

[27] The Respondent's Investigation Report dated November 19, 2013, noted that the B.C. Minister of Social Development had previously conducted the same searches which the Respondent now had consents for, and they had all been unsuccessful. The report noted the lack of evidence to substantiate the Appellant's claims regarding her name, place and date of birth and other matters; as well as the discrepancies with information provided by her in the B.C. investigation. The report concluded that the application should be denied based on the Appellant's inability prove her identity (GD2-36-37).

[28] The Appellant's CPP application was denied in November 2013, and is not the subject of this appeal (GD2-22). She was notified by letter dated February 10, 2014, that her OAS application had not been approved because she had not provided proof of her identity (GD2-16). In May 2014 she requested reconsideration of this decision.

[29] In April 2014 the Respondent had suggested that the Appellant submit a search form for 1951 census records to assist her. A search of 1951 Census records for Halifax found no information on the Appellant (GD2-9, GD2-11). Upon receiving these results, the Respondent issued its reconsideration decision upholding the original decision because the Appellant had failed to confirm her identity or her legal status in Canada (GD2-8).

[30] The Appellant's relevant testimony at the hearing was as follows:

- a) She suffered from amnesia and permanent memory loss as a result of a mugging. In 2002 she saw a neurologist named Dr. Neil Wells in Vancouver, who told her that her memory might come back on its own, but there was also a good chance that it might not. He did not prescribe any treatment. To this day, she has memory loss for the period before the mugging, but not for any time after that. However, her memory may have also been affected by medication she was given.
- b) In 2004 she was ordered to have a psychiatric exam and she was diagnosed with non-specific schizophrenia. She was diagnosed with cancer in August 2016 and learned recently that she was in remission. She is currently recovering from radiation therapy.
- c) She had not disclosed the extent of her disabilities until now because she did not know that she should have.
- d) Her earliest memories are of being taken to a park on the water in Halifax and being taught how to swim when she was about seven to nine years old. She remembered the orphanage, and she remembered being taught by nuns. She remembered visiting great aunts and uncles in Saskatchewan and Ontario, mostly in the summers for a week or two. She remembered doing so when she was around age 16. She also remembered working at a restaurant in Halifax called the Green Dory, and that it used to be where there is now a Service Canada centre.

- e) She is certain that her name is P. A. C. She knows she is a Canadian citizen, that she was a wife, that she gave birth, and that her husband passed away. To the best of her knowledge she has lived in Canada legally for most of her life before and after age 18.
- f) The conflicting statements regarding her past that are in the file were made when her memory was questionable. She had warned a lawyer who took her affirmation years ago that the information might not be correct as her memory was not intact.
- g) She does not now recall ever living in the United States. She began to have a different set of memories on this subject around 2005 or 2006. She did not correct her previous statements possibly because of medication she was on and possibly because she did not think people would take her seriously.
- h) The statement in her CPP application that she lived in the United States from 1961 to 1998 was incorrect and must have been made by someone who misheard her. She has no recollection of entering Canada from the United States in 2001. She does not believe she has dual citizenship, and she made such statements when her mind was impaired.
- i) The names she gave for her parents and her children were just “from my mind.”
- j) She applied for Canadian citizenship around 2004 or 2005. She does not know anything about being regarded as a stateless person, as set out in a letter from her Member of Parliament, M. R.
- k) When she went to Nova Scotia in 2013 she talked to a lot of people who remembered her. She talked to the orphanage and she was told that many papers were burned in a fire there in 1969, and that no records could be found for her. She found nothing about herself in the archives either.
- l) When asked to specify which people remembered her, the Appellant stated that she had been recognized by a librarian in Halifax, who told her “long time no see” when she went to apply for a library card there; and by a staff member at the women’s shelter where she was staying.

- m) She believed she was born in 1947 because she researched her name on Canada 411 and found people who knew her. In 2008 she spoke by telephone to the Mother Superior of the orphanage, who remembered her and the year of her birth. She believed she was born in July or September 1947 because that is “as close as my memory would tell me.”
- n) The Appellant did not tell anyone that she had found people who knew her because she had never been asked.

[31] Relevant documents in the file included the following:

- a) The Appellant’s file at the Vancouver Island Human Rights Coalition indicated that in February 2013 Mr. M. R.’s constituency office contacted CIC and was advised that the CIC data base contained information that the Appellant came to Canada on a visitor’s visa in 2001, with no details as to whether a passport was used or what the date of entry was. It also indicated that she had applied for citizenship but her application was not processed due to lack of a birth certificate for herself or her mother (GD2-78).
- b) In May 2002 a Dr. Martin of Vancouver completed a form to support the Appellant’s claim for income assistance benefits as an unemployable person. The information provided was brief and stated only that the Appellant had emotional stress and possible PTSD, and that her condition was expected to last for one month (GD2-144).
- c) A card issued by the United Native Nations Society stated that A. K. P. C. was Metis; gave her birthdate as July 27, 1947; and gave an address on X Street in Vancouver. It stated that “The bearer of this card is Native Indian permanently residing in the Province of British Columbia” (GD2-119). The Appellant testified that she obtained this card when she was receiving counselling through Battered Women’s Services. She was taken to the Native Friendship Centre, where she paid \$5 and was given the card with no questions asked. She did not know if she is in fact Metis, but stated that the woman who took her to get the card believed that she was.
- d) A B.C. Care Card for A. K. C. which gave her birthdate as July 27, 1947 (GD2-119).

- e) A Nova Scotia health card for P. A. C., with a letter indicating it was obtained by virtue of a sworn declaration by the Appellant that she is a Canadian citizen born in Halifax, Nova Scotia, on July 27, 1947; and by a certification by her that she was a permanent resident of Nova Scotia. It appears that reference was made to her BC Care Card number as well (GD2-173, 174).
- f) The Appellant was referred to a letter from Justice Gerald Moir of the Nova Scotia Supreme Court to Dalhousie Legal Aid dated September 10, 2013, which stated that the Appellant was in the care of X's Orphanage in Halifax from 1952-1954 until the early 1960s; that the children at the orphanage were enrolled at X X School; and that the Appellant did not remember going there (GD2-43-44).
- g) The Appellant testified that this letter came about after she made an appointment with Justice Moir to help her to prove her birth. She did not know Justice Moir before this. She testified that during her interview he told her that he had been at the orphanage as well. She did not know if he had recognized her or not.
- h) A search by Citizenship and Immigration Canada dated June 19, 2001, stated that no one named A. K. C. born July 27, 1947, in the US had been granted or issued a certificate of naturalization or citizenship (GD2-147).
- i) A search by Citizenship and Immigration Canada dated June 20, 2001, stated that no one named A. K. C. or A. C. had been recorded as lawfully landed as an immigrant since January 1, 1952 (GD2-148).
- j) A letter from Social Insurance Registration dated April 10, 2013, stated that it was unable to locate a record of a SIN for the Appellant since 1964, the year the program began (GD2-89).

SUBMISSIONS

[32] The Appellant submitted that:

- a) The Tribunal should interpret and apply the OAS Act and OAS Regulations in a manner consistent with the *Charter* and the *CHRA*, taking into account her unique and vulnerable circumstances, and that her disability be reasonably accommodated.
- b) Where a birth certificate is not available, her age and identity should be determined on the balance of probabilities on the basis of evidence and information that is available from any source.
- c) Although there are contradictions in her evidence, these are due to her physical and mental disabilities affecting her ability to recall details.
- d) In the past few years she has consistently stated her name and her age in declarations, affirmations and affidavits.
- e) The evidence as a whole establishes that she has a deep-rooted connection with Canada, and has made Canada her home.
- f) On balance the evidence supports a conclusion that she is residing and has resided in Canada legally.

[33] The Respondent submitted that:

- a) The Appellant was unable to establish that she met all of the legal requirements for eligibility for OAS benefits, on a balance of probabilities.
- b) The Tribunal should not consider the Appellant's submissions with respect to the CHRA because the OAS Act is exempt from the provisions of the CHRA; and in any event are more suited to challenges under the Charter.
- c) Although the Tribunal must consider Charter values when interpreting and applying the legislation, it may not disregard the objectives and requirements of the legislation.
- d) The Respondent applied a flexible approach to the eligibility requirements, but the evidence supplied by the Appellant was not considered to be reasonably reliable

confirmation of her identity, age, legal status or residency within the meaning of the OAS Act.

e) The appeal ought to have been summarily dismissed

ANALYSIS

Summary Dismissal

[34] At the hearing the Respondent submitted that this appeal should have been summarily dismissed, and noted that the Tribunal had intended to dispose of it in that manner until the possibility of a *Charter* challenge was raised. The appeal was then assigned to a different Tribunal member, after which the Appellant's representative stated that there would not be a Charter challenge.

[35] Summary dismissal is appropriate where the appeal manifestly lacks substance and is clearly bound to fail, regardless of what evidence or arguments might be submitted at the hearing (*C.D. v. Canada Employment Insurance Commission*, 2015 SSTAD 594 (CanLII)). The evidence in this file indicated that the Appellant had a difficult case to prove. However, given the submission that she had a disability and thus a *Charter* right to a more nuanced approach to the assessment of her evidence, it was conceivable that she might have adduced evidence at the hearing that would persuade the Tribunal to allow her appeal.

[36] As a result, the Tribunal determined that the appeal had a reasonable chance of success as that term has been defined in the case law, and that a hearing was required.

The Application of the CHRA

[37] Subsection 62(1) of the CHRA provides that:

62 (1) This Part and Parts I and II do not apply to or in respect of any superannuation or pension fund or plan established by an Act of Parliament enacted before March 1, 1978.

[38] The OAS Act is a pension plan established by an Act of Parliament before March 1, 1978. The Appellant's claims under the CHRA are made under subsection 3(1), section 5 and subsection 15(1); which are in Part I.

[39] Therefore the CHRA does not apply to the Appellant's case.

The Application of the Charter

[40] The Appellant submits that she is entitled to equal benefit of the OAS Act and Regulations in spite of her disability, pursuant to subsection 15(1) of the Charter.

[41] The Appellant did not claim that the eligibility requirements for OAS benefits violated the Charter; nor did she advance any alternative interpretation of the legislation. Rather; she submitted that the legislation should be applied in a manner consistent with Charter values, having regard to her mental and physical disability; and that the totality of the evidence should be considered in determining her eligibility.

[42] The Appellant must prove on a balance of probabilities that she is:

- a) the person named in the OAS application;
- b) that she is 65 years of age;
- c) that she resided in Canada for at least ten years after age 18 (or twenty if she resided outside Canada on the day preceding day the application could be approved); and that
- d) she is a Canadian citizen or legally resident in Canada on the day preceding the day on which her application could be approved.

[43] The Tribunal notes that the file contains no objective evidence that the Appellant has a disability, except for a period in 2002 as noted by Dr. Martin. However, for the purposes of this analysis the Tribunal assumes that she does in fact suffer from memory loss and that this has affected her ability to produce evidence to support her application. There is no evidence that a physical disability has caused any additional difficulty.

[44] In *Dore v. Barreau du Québec*, 2012 SCC 12, the Supreme Court of Canada stated that administrative decision-makers must strike an appropriate balance between Charter rights and the objectives of the legislation in question, to ensure that the rights are not unreasonably limited.

[45] The objective of the OAS legislative scheme is to provide assistance to elderly and low income Canadians. The legislation should be construed liberally, and applicants should not be lightly disentitled to OAS benefits; however, “it cannot be ignored that the OAS Act provides benefits, first and foremost, to residents of Canada” (*Minister of Human Resources Development v. Stiel*, 2006 FC 466). The eligibility requirements are aimed at ensuring that benefits are directed to those whom Parliament has determined are most deserving: persons over 65 who have established their age, their identity and their legal residence pursuant to the legislation.

[46] *Dore* means that in determining whether the Appellant has met the eligibility requirements, the Respondent and the Tribunal cannot disregard those requirements, but must have regard to the Appellant’s memory loss and the limitations it places on her ability to provide the necessary evidence and documentation. The Appellant has not submitted that this requires a shifting of the burden of proof, and the Tribunal finds that it does not. The onus is on the Appellant to provide the evidence necessary to satisfy the eligibility requirements on a balance of probabilities.

Credibility

[47] The Tribunal acknowledges that the Appellant may genuinely believe the statements she has made about the date and place of her birth; who her parents were; or her presence in Canada. However, although she has provided the same name or variations thereof and a reasonably consistent birthdate for many years, there is no evidence that it is based on fact. Numerous searches in different jurisdictions have failed to provide evidence of her age and identity, or to provide any leads upon which additional searches can be made. Her memories regarding her place of birth and her residence have changed dramatically over the years with no rational explanation. There is no basis upon which one version can be preferred over another or can be regarded as closer to the truth. The Tribunal cannot find that any of the Appellant’s oral testimony or her written evidence is reliable evidence of her age, her identity or her immigration status.

Has The Appellant Proven Her Age, Identity And Legal Residence In Canada?

[48] Section 18 of the OAS Regulations requires an extensive review of all evidence to determine an applicant's age and identity. Where a birth certificate is not available, the Minister is to refer to "any other evidence and information . . . that is available from any source". If the Minister is still unable to determine the age and identity, a search of census records must be conducted.

[49] In this case there is no birth certificate. There is no social insurance number. A census search has produced no evidence. It is clear from the efforts of the Appellant and others since 2000 that there is no person with the name (including different variations of it) and birthdate by which she now identifies herself.

[50] The documents relied on by the Appellant, such as affirmations and health cards, were all issued based on unreliable and unsubstantiated information provided by her. Justice Moir's statements regarding her past have not been verified and appear to have been based on information provided by the Appellant, not any independent recollection or knowledge of his.

[51] If in fact there are people who remember the Appellant from her childhood, there is no reason why they could not have given evidence in some form to the Tribunal either before or at the hearing. The only evidence that such persons exist is from the Appellant's recent recollection. She has provided not even a hint that they have credible information regarding her actual name and date and place of birth, not just shared childhood remembrances.

[52] A person's legal residence is determined by reference to the immigration laws of Canada, pursuant to subsection 22(1) of the OAS Regulations.

[53] There is no reliable evidence that the Appellant was born in Canada or that she was born to Canadian parents. There is no evidence that she has acquired citizenship or status as a landed immigrant or permanent resident. The only evidence that the Appellant was ever lawfully in Canada is the second-hand evidence that CIC recorded that someone using her name was permitted to enter the country as a visitor in 2001. Given that the Appellant does not remember crossing the border at that time (although this was after the period for which she claimed to have memory loss), and that in 2001 she did not have any government-issued documentation

with her name on it, the Tribunal is not convinced that this was in fact the Appellant. In any case, whether or not she was here legally as a visitor in 2001, there is no evidence that she is or was a legal resident of Canada.

[54] The legislation allows the Tribunal and the Minister before it to consider evidence other than official documentation, and this has been done with consideration of the unique situation of the Appellant and the difficulties she has encountered trying to establish an identity. The Minister interviewed the Appellant and conducted searches in addition to what was required by section 18 of the OAS Regulations. The Appellant was given an oral hearing before the Tribunal to provide further evidence so that it could be considered in addition to what had been provided to date. While the Tribunal is sympathetic to the Appellant's circumstances, the application of *Dore* does not require the Tribunal to accept evidence that is otherwise not credible, or to waive any of the eligibility requirements for an OAS pension.

[55] Considering all of the reliable evidence, the Appellant has simply failed to establish on a balance of probabilities that she is the person she has named in her OAS application; that she was born on July 27, 1947 or on any other date 65 or more years ago; that she is a Canadian citizen; or that she was legally resident in Canada at any time relevant to her OAS application.

[56] The Tribunal finds that the Appellant has not established that she meets the age, identity and legal residence requirements to qualify for an OAS pension. Because of this finding, the Tribunal did not consider whether the Appellant had resided in Canada for the minimum period that is also a prerequisite to eligibility.

CONCLUSION

[57] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security