



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. C. v. Minister of Employment and Social Development*, 2017 SSTGDIS 194

Tribunal File Number: GP-15-971

BETWEEN:

**A. C.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Antoinette Cardillo

HEARD ON: October 3, 2017

DATE OF DECISION: December 11, 2017

## **REASONS AND DECISION**

### **OVERVIEW**

[1] The Appellant's application for an Old Age Security (OAS) pension and Guaranteed Income Supplement (GIS) benefits was date stamped by the Respondent on September 10, 2008. The Appellant was approved for a partial pension effective October 2007 at a rate of 18/40ths. After an investigation, the Respondent advised the Appellant that he only had 15 years of Canadian residence from June 5 1967 to September 27 1982. Therefore, as he was not residing in Canada and he did not have the required 20 years of residence in order to collect the pension outside of Canada, there was an OAS and a GIS overpayment. The Appellant asked for a reconsideration of the decision, the Respondent maintained its original decision and denied the reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] This appeal was heard by teleconference for the following reasons:

- a) there were gaps in the information in the file and/or a need for clarification; 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.

[3] The following people attended the hearing: the Appellant and the Appellant's Representatives.

[4] The Tribunal has decided that the Appellant is not eligible for a CPP disability pension for the reasons set out below.

### **THE LAW**

[5] Subsection 3(2) of the *Old Age Security Act (OAS Act)* provides that a partial monthly pension may be paid for any month in a payment quarter to every person who is not eligible for a full monthly pension and who has attained sixty-five years of age, has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is

approved for an aggregate period of at least ten years but less than forty years and, where that aggregate period is less than twenty years, was resident in Canada on the day preceding the day on which that person's application is approved.

[6] Subsections 11 (7)(c)(d) of the *OAS Act* provide that no supplement may be paid to a pensioner for (c) any month throughout which the pensioner is absent from Canada having commenced to be absent from Canada either before or after becoming a pensioner and having remained outside Canada before that month for six consecutive months, exclusive of the month in which the pensioner left Canada; and (d) any month throughout which the pensioner is not resident in Canada, having ceased to reside in Canada, either before or after becoming a pensioner, six months before the beginning of that month.

[7] The definition of residence is set out in subsection 21(1) of the *Old Age Security Regulations (OAS Regulations)* and provides that a person resides in Canada if he makes his home and ordinarily lives in any part of Canada and a person is present in Canada when he is physically present in any part of Canada.

[8] Subsections 21(4)(a)(c) and (5)(b)(ix) of the *OAS Regulations* provide :

(4) Any interval of absence from Canada of a person resident in Canada that is

- (a) of a temporary nature and does not exceed one year,
- (b) for the purpose of attending a school or university, or
- (c) specified in subsection (5)

shall be deemed not to have interrupted that person's residence or presence in Canada.

(5) The absences from Canada referred to in paragraph (4)(c) of a person residing in Canada are absences under the following circumstances:

(b) while that person was employed or engaged out of Canada

- (i) by the Government of Canada or of the government or a municipal corporation of any province,
- (ii) in the performance of services in another country under a development or assistance program that is sponsored or operated in that country by the

Government of Canada or of a province or by a non-profit Canadian agency,

(iii) as a member of the Canadian Forces, pursuant to and in connection with the requirements of his duties,

(iv) in work for Canada connected with the prosecution of any war,

(v) as a member of the armed forces of any ally of Canada during any war,

(vi) as a missionary with any religious group or organization,

(vii) as a worker in lumbering, harvesting, fishing or other seasonal employment,

(viii) as a transport worker on trains, aircraft, ships or buses running between Canada and points outside Canada or other similar employment, or

(ix) as an employee, a member or an officer of an international charitable organization,

if he returned to Canada within six months of the end of his employment or engagement out of Canada or he attained, while employed or engaged out of Canada, an age at which he was eligible to be paid a pension under the Act.

[9] Pursuant to section 23 of the *OAS Regulations*, the Minister can ask, at any time, for additional information needed to show that a person receiving a benefit is entitled to it. And should the Minister conclude that a person received a benefit to which he or she was not entitled, section 37 of the OAS Act authorizes the Minister to recover any overpayments that might have been made.

## **EVIDENCE**

[10] The Appellant was born in India on X, 1939. He turned 65 years of age in X 2004. He applied for the OAS pension and GIS benefits in September 2008 and on his application, he indicated that he lived in Canada from June 5 1967 to August 15 1984; from May 25 2001 to July 10 2002; and from August 12, 2008 to September 2008 (date of application).

[11] On February 14 2013, a residence review was initiated by Integrity Service Investigations (ISI) and a Declaration was sent to the Appellant to determine his eligibility to the OAS pension

benefits. The Declaration was signed and returned by the Appellant with a letter dated March 10, 2013 indicating that he would be away from Canada for a couple of months. The Appellant also indicated that he had been out of Canada during the following dates:

- |                                       |                       |
|---------------------------------------|-----------------------|
| • January 18, 2008 to June 30, 2008   | India/USA/Pakistan/UK |
| • July 24, 2008 September 28, 2008    | USA/Pakistan          |
| • January 15, 2009 April 29, 2009     | USA/Pakistan          |
| • July 3, 2009 October 16, 2009       | USA/Pakistan          |
| • February 27, 2010 May 26, 2010      | USA/Pakistan          |
| • July 18, 2010 October 18, 2010      | USA/Pakistan          |
| • January 6, 2011 June 27, 2011       | USA/Pakistan          |
| • December 13, 2011 February 12, 2012 | USA/Pakistan          |
| • March 16, 2013 May 23, 2013         | USA/Pakistan          |

[12] Following an interview with the Appellant on June 25, 2013, the Investigator determined that the Appellant:

- had been living with a friend and his spouse in their rental unit;
- helped pay bills and paid for his cell phone;
- had no furniture in Canada;
- did not own property in Canada or in any other country;
- had a spouse who resided in Pakistan where she paid rent and looked after her sister and grandchildren;
- had two (2) daughters in Houston, Texas and a son in Pakistan;
- had a family physician in Pakistan as well as in Canada and health coverage in Canada but not in Pakistan;
- was not a member of any Canadian community organizations; and
- had a driver's licence both in Canada and in Pakistan but no car in either country.

[13] A report from the Canadian Border Services Agency (CBSA) confirmed the Appellant's entry dates to Canada after January 1, 2008:

- October 29 2009;
- December 10, 2009;
- May 26 2010;
- October 11 2010;

- May 26 2011; and
- December 28 2011.

[14] According to the CBSA report, the Appellant also entered Canada via automobile from the United States on July 23 2012.

[15] The Appellant had three (3) Canadian passports valid from 1999 to 2004 issued in Islamabad (Pakistan), from 2004 to 2009 also issued in Islamabad (Pakistan) and from 2009 to 2014 issued in Toronto (Canada). He also had a passport from the Islamic Republic of Pakistan valid from 2011 to 2016.

[16] Based on the evidence, he filed income tax returns in Canada from 2006 to 2015. He also made QPP contributions from 1967 to 1979 and CPP contributions from 1980 to 1982.

[17] In a letter dated November 8, 2014, the Appellant indicated that when he applied for OAS/GIS benefits on September 10, 2008, he had been in Canada since 1967. He left Canada for an assignment in 1982 in Dubai which did not have the expected results because the sponsor was over leveraged and had to renege on hiring him. This situation left him without a job and days of deprivation which necessitated the use of all funds from Canada, and latest until the end of 1985. A letter dated May 1, 2009 from the Appellant's spouse, corroborated the Appellant statements made in the November 8, 2014.

[18] The Appellant's representative submissions dated September 25, 2017 indicated that the Appellant resided in Canada for 17 years, from the date he entered the country on June 5, 1967 to the date that he departed Canada and relocated to Pakistan on August 15, 1984. Then, from October 7, 1984 to June 30 1988, the Appellant resided in Pakistan and was employed as the Manager of Resource Development at X, an international charitable organization operating in Karachi, Pakistan. In the submissions, the Appellant's representative makes reference to the fact that although the Appellant left Canada for an assignment in Dubai in 1982, his absence was merely temporary in nature and that the Appellant's continued residency in Canada from 1982 to 1984 is supported not only by his "previous long association" of more than 15 years with

Canada, but also by the numerous stamps in his Canadian passport, which demonstrate that he was frequently entering and exiting the United Arab Emirates in 1982 and 1983.

[19] Also, there is a Questionnaire on file signed by Appellant but undated declaring that he was in Dubai from 1983 to 2001.

[20] Based on the information on file, the Appellant worked from October 7, 1984 to June 30, 1988 with X in Pakistan. From January 1<sup>st</sup>, 1989 to January 16, 1997, he worked as a Corporate Communications & Public Affairs Manager at the Head Office, of X, in Pakistan. The Appellant's Representative submissions dated September 26, 2017 indicate that the Appellant was working for international charitable organizations while abroad. Documents were submitted indicating that X was set up in 1991 as a charitable trust, to provide financial support to bonafide healthcare, education and social welfare organizations across Pakistan.

[21] Medical reports including a prescription summary were also submitted spanning from November 2008 to March 2016 showing the Appellant attending medical visits in Canada during that period.

## **SUBMISSIONS**

[22] The Appellant submitted that he qualifies for the OAS pension because he has 20 years of residency in Canada from 1967 or at the very least 17 years of residency since 1967. He further submitted that he left Canada and moved to Pakistan in August 1984; he lived in Pakistan as a Canadian resident until 2001; he then moved back to Canada in August 2008. Also, his absences from Canada since August 2008 were of a temporary nature and did not exceed six (6) months.

[23] The Appellant's Representative submitted that when the Appellant left Canada in 1982, it was on a temporary basis for an assignment. The Appellant's Representative also submitted that alternatively, the Appellant resumed his residency in Canada as of August 12, 2008. Due to the financial duress he suffered in Dubai, he was unable to afford buying a home and therefore he lived with a friend. Although the Appellant has no formal lease, he does help pay bills. He has a

bank account in Canada, a driver's licence and medical coverage. He also sees his cardiologist on a regular basis. The Appellant also filed income tax returns since 2006. The Appellant's Representative added that the reasons the Appellant continued to travel abroad after he returned to Canada, was to visit family members.

[24] The Respondent submitted that the Appellant does not qualify for the OAS pension because the Appellant has not offered proof that he is a resident of Canada. His spouse lives in Pakistan and his children and grandchildren are in the U.S. and Pakistan. He does not rent or own a home in Canada, but stays at a friend's home. There is no proof on file that he was residing in Canada after September 27, 1982. The Appellant can only be considered to have presence in Canada after this date as per subsection 21(1) of the *OAS Regulations*. As the Appellant has been unable to prove that he has been a resident of Canada since September 27 1982, he has not attained the 20 years of residence required in order to collect the OAS pension outside of Canada as per paragraph 3(2)(b) of the *OAS Act*. As well, he cannot collect the GIS outside of Canada as it is not a portable benefit.

## ANALYSIS

[25] The issue before the Tribunal is whether or not the Appellant is eligible to a partial pension and GIS benefits pursuant to subsections 3(2) and 11 (7)(c)(d) of the *OAS Act*.

[26] Subsection 3(2) of the *OAS Act* provides that to receive a partial pension, an applicant must have resided in Canada for at least 10 years if he or she resides in Canada on the day before the application is approved. An applicant who resides outside of Canada on the day before the application is approved must prove that he or she had previously resided in Canada for at least 20 years. Also, subsection 21(1)(a) of the *OAS Regulations* provides that a person resided in Canada if he or she makes her home and ordinarily lives in any part of Canada.

[27] Pursuant to the case law, the residence analysis involves a fluid approach, with each case determined on its own facts (*Canada (Minister of Human Resources and Development) v. Ding*, 2005 FC 76 (CanLII) ("*Ding*"). In *Ding*, the court set out factors to be taken in account in determining whether a person makes his or her home in and ordinarily lives in Canada. In the



present appeal, the Tribunal finds these factors to be relevant and helpful in determining the issue before it. They are as follows:

- a) ties in the form of personal property (bank accounts, business, furniture, automobile, credit card);
- b) social ties (membership with organizations or associations, professional membership);
- c) other fiscal ties to Canada (hospital and medical insurance coverage, driver's license, property tax statements, public records, immigration and passport records, federal and provincial income tax records);
- d) ties in another country;
- e) regularity and length of stay in Canada and the frequency and length of absences from Canada; and
- f) the lifestyle of the person or his/her establishment in Canada.

[28] Having considered the above factors and the evidence, the Tribunal finds that the Appellant was a resident of Canada only from June 1967 to September 1982.

[29] There is no evidence to demonstrate that the Appellant has established any ties in Canada after he left for an assignment in Dubai in September 1982. It is clear that the Appellant left Canada in September 1982 and relocated abroad, initially in Dubai and afterwards in Pakistan. The Tribunal based its finding and the overall evidence submitted but in particular on the Appellant's letter dated November 8, 2014, indicating that when he applied for OAS/GIS benefits on September 10, 2008, he had been in Canada since 1967, he then left Canada for an assignment in 1982 in Dubai, however, because the sponsor was over leveraged and had to renege on hiring him, this situation left him without a job and latest until the end of 1985. A letter dated May 1, 2009 from the Appellant's spouse, corroborated the Appellant statements in the November 8, 2014.

[30] In addition, the Appellant's Representative submissions dated September 25, 2017 also indicate that the Appellant left Canada for an assignment in Dubai in 1982. Although in the same submission the Appellant's Representative also states that the Appellant resided in Canada for 17 years from the date he arrived on June 5, 1967 to the date that he departed Canada and relocated to Pakistan on August 15, 1984, there is however no evidence to indicate that the Appellant maintained ties to Canada during this period or that he returned to Canada to find employment

after he was not able to secure employment in Dubai, rather he remained abroad and then moved to Pakistan. Also, there is a Questionnaire on file signed by Appellant but undated declaring that he was in Dubai from 1983 to 2001.

[31] Based on the information on file, the Appellant worked from October 7, 1984 to June 30, 1988 with X in Pakistan and from January 1<sup>st</sup>, 1989 to January 16, 1997, he worked as a Corporate Communications & Public Affairs Manager at the Head Office of X, X, Pakistan. Following the end of his employment in Pakistan in 1997, there is no evidence that the Appellant returned permanently to Canada.

[32] Section 21(4)(a)(c) and (5)(b)(ix) of the *OAS Regulations* sets out specific circumstances in which a person is deemed to reside or not to reside in Canada, and in which absence from Canada is deemed not to interrupt residence or presence. A residence or presence is not interrupted by “any interval or absence of a person resident in Canada that is of a temporary nature and does not exceed one year”; or by employment outside Canada if the person is an employee, a member or an officer of an international charitable organization, and if he returned to Canada within six (6) months of the end of his employment or engagement out of Canada.

[33] The Appellant cannot avail himself of paragraphs 21(4)(a)(c) of the *OAS Regulations*. They apply only to “a person resident in Canada.” As of September 1982, the Appellant was no longer a resident in Canada. Furthermore, the absence contemplated by 21(4)(a) is one “of a temporary nature.” Based on the evidence, the Tribunal could not conclude that the Appellant left on temporary basis.

[34] The Appellant also cannot avail himself of paragraph 21(5)(b)(ix) of the *OAS Regulations*. The Appellant did not return to Canada within six (6) months of the end of his employment or engagement out of Canada. Based on the evidence and submissions for the Appellant’s Representative, the Appellant returned in August 2008, his employment in Pakistan ended in January 1997.

[35] In addition, the Tribunal could not conclude that the Appellant was in fact working for international charitable organizations in Dubai or in Pakistan as referred to in subparagraph 21(5)

(b) (ix) of the *OAS Regulations* . There is no evidence that the organization in Dubai is an international charitable organization and the organization in Pakistan seems to operate only in Pakistan based on the evidence submitted.

[36] Further, as provided by the investigator after an interview with the Appellant on June 25, 2013, while in Canada, the Appellant has no furniture, does not own property, lives with a friend and is not a member of any Canadian community organizations. The Appellant's Representative submitted during the hearing that due to the Appellant's financial duress suffered in Dubai, he did not have much financial means to purchase a home or other. However, the Tribunal noted that the Appellant returned to Canada after having worked abroad for many years following the unfortunate situation in Dubai.

[37] The Tribunal considered the fact that the Appellant had health coverage in Canada, a driver's licence and a bank account, that he filed income tax returns from 2006 to 2015 and attended medical visits at different times from 2008 to 2016, however, this evidence does not prove that the Appellant was a resident in Canada. In fact, during this same period, his spouse resided in Pakistan where she paid rent and looked after her sister and grandchildren; he had two (2) daughters in Texas and a son in Pakistan; he had a family physician in Pakistan as well as a driver's licence and a passport from the Islamic Republic of Pakistan valid from 2011 to 2016.

[38] Finally, the Appellant indicated a letter dated March 10, 2013 that he would be away from Canada for a couple of months and that that he was not in Canada from January 18, 2008 to June 30, 2008, January 15, 2009 April 29, 2009, July 3, 2009 October 16, 2009, February 27, 2010 May 26, 2010, July 18, 2010 October 18, 2010, January 6, 2011 to June 27, 2011, December 13, 2011 to February 12, 2012 and March 16, 2013 May 23, 2013. The evidence shows a consistent pattern of absences from 2008 to 2010 and then further absences in 2011, 2012 and 2013 but for shorter periods.

[39] The Tribunal finds that the Appellant may have returned to Canada on many occasions after 2008 but his stays can only be considered presence and not residence given that he clearly had no ties to Canada and was absent on a regular basis for many months from 2008 to 2013.

[40] Therefore, based on the evidence on file, the Tribunal finds that the Appellant has not resided in Canada pursuant to subsection 3(2) of the OAS Act and subsection 21(1)(a) of the *OAS Regulations* since September 1982 and therefore is not eligible to a partial OAS pension or the GIS benefits pursuant to subsections 11 (7)(c)(d) of the *OAS Act*.

## **CONCLUSION**

[41] The appeal is dismissed.

Antoinette Cardillo  
Member, General Division - Income Security