



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. C. v. Minister of Employment and Social Development*, 2018 SST 481

Tribunal File Number: GP-17-459

BETWEEN:

M. C.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Teleconference hearing on: May 9, 2018

Date of decision: May 29, 2018

REASONS AND DECISION

DECISION

[1] The Claimant was not entitled to a partial Old Age Security (“OAS”) pension when she applied for that pension on November 9, 2015.

OVERVIEW

[2] The Claimant was born in China on X X, 1939 and lived there for many years. The Claimant was in Canada for a period of time in 2000, returned for just over three years between 2004 and 2007, and then returned again on May 20, 2008. She has been in Canada more or less continuously since then. The Minister received the Claimant’s application for an OAS pension on November 9, 2015. The Minister denied the application initially and on reconsideration, on the basis that she had not yet been resident in Canada for at least ten years. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] OAS pension entitlement is based on the length and timing of residency in Canada.¹ The Minister has admitted that the Claimant had been resident in Canada from May 20, 2008 until she applied for the OAS pension. The Claimant says she was resident in Canada for additional periods prior to May 20, 2008.

PRELIMINARY MATTERS

[4] The Minister’s submissions were filed with the Tribunal on March 26, 2018. However, according to the Tribunal’s December 18, 2017 letter, these submissions should have been filed by February 15, 2018. The original hearing on April 11, 2018 was adjourned because the Claimant had not yet received the Minister’s submissions. However, the Claimant received the Respondent’s submissions later in April and she had an opportunity to review them prior to the hearing. As the Respondent could also have made these submissions in person at the hearing, I elected to receive and consider them.

¹ Section 3 of the *Old Age Security Act*

[5] The Claimant's daughter, D. S., was listed as the Claimant's Representative in this matter. However, D. S.'s role was focused on handling the paperwork and providing support for her mother, rather than acting as a legal representative. D. S. speaks English but the Claimant does not. As a result, I permitted D. S. to give evidence at the hearing, before I received evidence from the Claimant through an interpreter.

ISSUES

[6] Was the Claimant resident in Canada for any period of time before May 20, 2008?

[7] Based on her cumulative periods of residency, was the Claimant eligible for an OAS pension when she applied on November 9, 2015?

ANALYSIS

[8] For OAS purposes, a person resides in Canada if she makes her home and ordinarily lives in any part of Canada. This is distinct from the concept of presence: a person is present in Canada when she is physically present in any part of Canada.² A person can be present in Canada but not be a resident of Canada.

[9] Residence is a question of fact to be determined on the particular facts of each case. A person's intentions are not decisive. Factors to be considered include, but are not limited to:

- (a) ties in the form of personal property;
- (b) social ties in Canada;
- (c) other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.);
- (d) ties in another country;
- (e) regularity and length of stays in Canada versus the frequency and length of absences from Canada; and
- (f) the person's mode of living, or whether the person's life in Canada is substantially deep-rooted and settled.³

[10] The Claimant argues that she was resident in Canada for two distinct periods of time before May 20, 2008. The first period was from January 12, 2000 until October 7, 2000. The second period was from June 26, 2004 until August 23, 2007. As these periods had some

² Subsection 21(1) of the *Old Age Security Regulations*

³ *Canada (MHRD) v. Ding*, 2005 FC 76

important differences, I will consider her residency status separately for each one. In doing so, I will consider the factors (the “Ding Factors”) listed in the preceding paragraph.

Was the Claimant resident in Canada between January 12, 2000 and October 7, 2000?

[11] I find that the Claimant did not make her home and ordinarily live in Canada from January 12, 2000 until October 7, 2000, despite being present in Canada during that time.

[12] The Claimant initially entered Canada as a visitor on January 12, 2000, was later issued a visitor record that was valid until January 11, 2001, and left Canada for China on October 7, 2000.⁴ From October 7, 2000, until June 6, 2004, the Claimant lived with her husband in their own house in Shanghai, China. Her oldest daughter also lived in Shanghai. The Claimant had also lived in the Shanghai house prior to her initial visit to Canada in 2000.

[13] D. S.’s presence in Canada clearly prompted the Claimant’s 2000 visit. At the hearing, D. S. said she first arrived in Canada as a visitor from China in June 1998. D. S. was a medical doctor in China and became a Canadian citizen in 2001 or 2002. She began a medical residency in 2004. This ultimately led to accreditation as a medical doctor in Canada.

[14] While the Claimant was present in Canada and stayed with D. S., the ties to Canada during this period are not sufficient to establish residency. The Ding Factors confirm this. Other than an undocumented bank account, there were few tangible ties to Canada. She also had few social ties, other than to her family, and her 9-month visit was extremely brief in comparison to her preceding (60 years) and subsequent (44 months) periods in China. There were very few other ties such as a driver’s licence, a lease, or tax filings. Her mode of living in Canada was also not deep-rooted or settled, dependent as it was on D. S.. D. S. herself had only recently arrived in Canada, was not a Canadian citizen, and was not in a position to commence the sponsorship process. It is also very important that the Claimant still owned her home in Shanghai and then returned to live there for more than three years. The Claimant’s ongoing ties to China were significant, and family members still lived in Shanghai. The Ding Factors clearly favour the Claimant’s status as a Chinese resident who was merely a visitor to Canada during this period.

⁴ GD2-5 and GD2-23

Was the Claimant resident in Canada between June 26, 2004 and August 23, 2007?

[15] I find that the Claimant did not make her home and ordinarily live in Canada from June 26, 2004 to August 23, 2007, despite being present in Canada during that time.

[16] As with the Claimant's previous visit, she was admitted to Canada on June 26, 2004 with a single entry visitor's visa. On December 14, 2004, she was issued a continuous visitor record and received extensions of that record until August 26, 2007. She left Canada for China on August 23, 2007.⁵ She remained in China until May 20, 2008, once again staying in her own home in Shanghai. In order to support my finding of non-residence between June 26, 2004 and August 23, 2007, I will examine each of the Ding Factors in turn.

1. Ties in the form of personal property

[17] I do not find this factor supportive of Canadian residency. The Claimant said she obtained a credit card in 2004 and had a Canadian bank account since 2000. However, there is no evidence that she owned a house, a business, an automobile, or any furniture. During this time, she also continued to maintain a house in Shanghai, China. She therefore had relatively few personal property ties to Canada, particularly when compared to what she had in China.

2. Social ties in Canada

[18] I do not find this factor supportive of Canadian residency. The Claimant again lived with D. S. (and her sister) in Canada from 2004 to 2007. The Claimant did not work outside of the home, and her only social ties outside the home were with the neighbours. She did not belong to any clubs or organizations.

[19] I acknowledge D. S.'s statement that said she needed her parents to help look after her young daughter. D. S. said her parents helped her physically and mentally. She said that, in Chinese culture, it is traditional for parents to live with their children. D. S.'s second sister also arrived in Canada in April 2004. Despite these apparent "social" ties, I find them to be familial ties that only indirectly tied the Claimant to Canada: had D. S. then moved to another country, there would have been essentially nothing to tie the Claimant socially to Canada.

⁵ GD2-5 and GD2-23

3. Other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.);

[20] I find this factor to be essentially neutral for the Claimant. D. S. bought private medical insurance for the Claimant in Canada. However, the Claimant did not have a driver's licence, did not file any tax returns, and did not have any insurance policies. She received visitor extensions to remain in Canada for more than three years but otherwise appears to have little interaction with any public services.

4. Ties in another country

[21] I do not find this factor supportive of Canadian residency. It is significant that the Claimant continued to own a home in Shanghai during this period but did not rent it out. Upon returning to China on August 23, 2007, she once again lived with her husband in that home. One of D. S.'s sisters remained in China until moving to Canada in 2014, while one of D. S.'s nieces remained in China until 2011. Even though the Claimant was granted an immigrant visa on September 29, 2010, she has continued to own her home in Shanghai. As nobody else lives there, she stays there whenever she visits China. She has gone to China to celebrate Chinese New Year on three recent occasions: March 12, 2011 to May 2, 2011, January 9, 2014 to March 19, 2014, and for nearly five months in 2016. While those visits and her ongoing home ownership in China are not relevant to residency from 2004 to 2007, they are consistent with the Claimant maintaining significant ties to China that already existed between 2004 and 2007.

5. Regularity and length of stays in Canada

[22] I find this factor to be supportive of Canadian residency. While the Claimant's previous stay in Canada was quite short, this stay was considerably longer. It was almost as long as her stay in China between 2000 and 2004, and was much longer than her stay in China between 2007 and 2008. It also does not appear that the Claimant left Canada between 2004 and 2007.

6. The Claimant's mode of living

[23] I do not find this factor to be supportive of Canadian residency. Another way of describing this factor is whether the Claimant's life in Canada was substantially deep-rooted and settled. Citizenship and Immigration Canada considered the Claimant to be a "visitor" at this

time.⁶ The Claimant herself said she was a “visitor” and/or “temporary resident” in Canada during this period.⁷ These words do not describe a deep-rooted and settled life in Canada.

[24] I acknowledge D. S.’s statement that it was the Claimant’s intention to live in Canada and her parents had formed an attachment to Canada. However, D. S. said the visa application process was very strict in 2007 and 2008, so her parents went back to China in order to comply with the law. D. S.’s intention was to sponsor her parents to live in Canada, but she needed to be financially secure in order to qualify for the “sponsor class”. Sponsorship was necessary because her parents were not going to work in Canada. After obtaining a medical doctor position in 2006 that substantially increased her income, D. S. started the sponsorship process in February 2007. However, the Claimant and her husband were not granted approval to apply as “family class” immigrants until October 2009. The Claimant then applied for an immigrant visa almost immediately. She did not apply for an immigrant visa before then because there was no sponsorship in place.

[25] I have no doubt that the Claimant wanted to be in Canada with D. S.’s family. I also accept that D. S. wanted to ensure that her sponsorship application had the greatest chance of success. However, D. S.’s concerns about financial security and her ability to successfully sponsor the Claimant affirm that the Claimant’s life in Canada could not have been substantially deep-rooted and settled. While the Claimant was not in any kind of physical danger, her visitor record had to be extended on a regular basis. The Claimant’s situation may have begun to change slightly in February 2007, when D. S. started the sponsorship process, but that was completely unresolved by the time the Claimant returned to China on August 23, 2007. As a result, I cannot find it to be determinative.

Summary of factors between June 26, 2004 and August 23, 2007

[26] While the Claimant’s regularity/length of stay in Canada was supportive of Canadian residency, and the “other ties in Canada” factor was essentially neutral, none of the other Ding Factors were supportive of residency in Canada. I find the “mode of living” factor to be

⁶ GD2-23

⁷ GD2-11, GD2-15, and GD2-24

particularly important. I accept that the Claimant's retention of a home in China during this period was reasonable, but it also emphasizes the unsettled nature of her ongoing presence in Canada. As a result, I find that the Ding Factors do not support a finding of residency between June 26, 2004 and August 23, 2007.

Impact on Claimant's potential OAS pension

[27] As I have found that the Claimant has not established any additional periods of residency in Canada, the Claimant's total residency in Canada up to the date of her application (November 9, 2015) remains 7 years and 173 days. This means she had no entitlement to an OAS pension as of that date.⁸ However, the Claimant is not precluded from applying again for an OAS pension.

CONCLUSION

[28] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security

⁸ Subsections 3(2) through 3(5), *Old Age Security Act*