Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *M. A. v. Minister of Employment and Social Development*, 2018 SST 688

Tribunal File Number: AD-18-115

BETWEEN:

M. A.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: June 21, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal the decision made by the General Division of the Social Security Tribunal of Canada on December 14, 2017, is refused.

OVERVIEW

[2] The Applicant, M. A., applied for an Old Age Security (OAS) pension and a Guaranteed Income Supplement (GIS). The Respondent, the Minister of Employment and Social Development, approved the applications in 2001, but, following an investigation, it concluded that the Applicant had not established residency in Canada since the time she had reported. The Respondent requested repayment of the benefits paid for the period from June 2006 to November 2015.

[3] The Applicant claims that she has been a resident of Canada since she first entered the country in September 1991 and that she has accumulated the minimum 20 years of residency needed to export her benefits.

[4] The Applicant appealed the Respondent's decision. The General Division determined that the Applicant no longer resided in Canada as of November 2005 and is not entitled to a partial OAS pension or a GIS after November 2005.

[5] In her application for leave to appeal, the Applicant argues that she maintained ties to Canada after November 2005 and that the General Division did not consider her health condition, her frailty, and her old age to explain her frequent trips to X because of the climate and her familiarity with the country.

[6] The appeal does not have a reasonable chance of success because the Applicant has not raised any argument that the General Division committed an error.

ISSUE

[7] Is there an argument that the General Division erred by concluding that the Applicant no longer resided in Canada as of November 2005?

ANALYSIS

[8] An applicant must seek leave to appeal a decision made by the General Division. The Appeal Division must either grant or refuse leave to appeal, and an appeal may be brought only if leave to appeal is granted.[1]

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground of appeal on which the appeal may succeed?[2]

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success[3] based on a reviewable error. The only reviewable errors are the following:[4] the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

Is there an argument that the General Division erred by concluding that the Applicant no longer resided in Canada as of November 2005?

[11] The Applicant suggests that the General Division made an erroneous finding of fact in stating that she has not maintained ties to Canada since November 2005 and that this finding was marked by severe prejudice, thus violating the rules of natural justice.

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[1] *Department of Employment and Social Development Act* (DESDA), ss. 56(1) and 58(3).
[2] *Osaj v. Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v. Canada (Attorney General)*, 2017 FC 363 at para 22.
[3] DESDA, s. 58(2).
[4] DESDA, s. 58(1).

[12] However, after reading the General Division decision, I see that the General Division noted, among other things, the following: the Applicant left Canada on November 9, 2005; she did not enter Canada between November 2005 and April 2007; she entered Canada once each year in 2007, in 2008, in 2010, in 2011, in 2012, in 2013, and in 2015; she did not have any medical examinations in Canada between October 2005 and May 2007, and then she had one examination each year in 2008, 2009, 2010, 2011, and 2012, and two examinations in 2013 and in 2015, with none in 2014; she does not pay for rent or utility bills, and she submitted income tax returns only in 2005; and she holds a bank account in Canada, but it is managed by her niece.[5] Moreover, the General Division also noted that the representative for the Applicant had pointed out that the Applicant had been absent from Canada from October 2013 to September 2015 and that, over the years, she has made short visits to Canada and has then gone back to X.[6] As a result, the General Division found that the periods after November 2005 could not be considered Canadian residency periods [translation] "because [the Applicant] did not only lack ties to Canada but also left Canada in November 2005 to then return only in April 2007 and, subsequently, left for X on a regular basis each year, staying there for long periods of time."[7]

[13] The General Division did not err in its findings.

[14] The Applicant repeats the arguments she presented to the General Division, but she does not raise any argument showing that the General Division may have based its decision on a reviewable error. Although she has good personal reasons for being in X, this does not change the factors considered in determining whether a person has made their home and ordinarily lives in any part of Canada. The General Division examined the evidence on file in light of the factors in applicable case law[8] and relevant legislative provisions,[9] and it concluded that the Applicant no longer resided in Canada as of November 2005.

[15] The Applicant claims that the General Division made this finding of fact in a perverse or capricious manner or without regard for the material before it. I do not find that to be the case. It

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[5] General Division decision at para. 21.
[6] *Ibid.* at para. 22.
[7] *Ibid.* at para. 23.
[8] *De Carolis v. Canada (Attorney General)*, 2013 FC 366.
[9] OAS Act, s. 3(2), and OAS Regulations, s. 21(1).

is up to the General Division—and not the Appeal Division—to weigh the evidence submitted to it. This is what the General Division did, and it did not base 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.

[16] The Applicant also argues that the General Division made an erroneous finding of fact in claiming [translation] "that [the Applicant] is only in Canada for her medical appointments." I find that the General Division did not make this finding; it noted the dates of the Applicant's medical examinations in Canada since November 2005 as well as other factors relevant to the issue.

[17] I have also reviewed the evidence on file. There is nothing to show that the General Division overlooked or misinterpreted important evidence. I do not believe that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision, either. The Applicant has not identified any errors of law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[18] For these reasons, I find that the appeal does not have a reasonable chance of success.

CONCLUSION

[19] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	A. C., Representative for the Applicant