



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S.N. v. Minister of Employment and Social Development*, 2018 SST 971

Tribunal File Number: AD-18-584

BETWEEN:

S. N.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Valerie Hazlett Parker

Date of Decision: October 5, 2018

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is refused.

OVERVIEW

[2] S. N. (Claimant) was born in X in 1950. He came to Canada in 1992 and became a Canadian citizen at a later date. The Claimant applied for an *Old Age Security Act* pension (OAS) in February 2014. The Minister of Employment and Social Development (Minister) refused the application because the Claimant had not provided sufficient information to prove that he was resident in Canada for over ten years and therefore eligible for OAS benefits. The Claimant appealed the Minister's decision to this Tribunal. The Tribunal's General Division dismissed the appeal for the same reason on August 30, 2017.

[3] The Claimant made an application for leave to appeal the General Division decision (Application) to the Tribunal's Appeal Division on September 13, 2018. The request for an extension of time to make the Application is refused because the Claimant has not demonstrated that he had a continuing intention to apply, provided a reasonable explanation for his delay in making the Application, or presented a ground of appeal upon which the appeal has a reasonable chance of success.

ISSUES

[4] Can the time for leave to appeal be extended?

[5] If so, should time be extended for leave to appeal in this case?

ANALYSIS

Can the time for leave to appeal be extended?

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It states that an application for leave to appeal must be made within 90

days of when the General Division decision was communicated to the claimant.¹ This time may be extended, but in no case may an application for leave to appeal be made more than one year after the day on which the decision was communicated to the claimant.² The General Division made the decision on August 30, 2017. The Claimant states that he received the General Division decision on September 30, 2017. The Application was made on September 13, 2018, so the application was made more than 90 days after the decision was communicated to him, but less than one year after the day it was communicated to him. The Application was made within the time period when time to file it could be extended.

Should time be extended for leave to appeal in this case?

[7] The Federal Court teaches that decision-makers must consider and weigh the following factors when deciding whether to extend time to file an application for leave to appeal:

- a) whether there is a continuing intention to pursue the application;
- b) whether there is a reasonable explanation for the delay;
- c) whether there is any prejudice to the other party in allowing the extension; and
- d) whether the matter discloses an arguable case.³

I consider these factors below.

[8] The Claimant argues that he made the Application late because he has had health issues, including diabetes and problems with his sight and his neck. To support this argument, he included a copy of his application for special diet funding dated August 20, 2018. This document does not suggest that the Claimant was unable to make the Application before he did. There is no further explanation of the impact that the Claimant's health had on his ability to make the Application within the required timeframe.

¹ DESD Act s. 57(1)

² *Ibid.* s. 57(2)

³ *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883

[9] In addition, the Claimant contends that the Application was late because he went to Norway to be with an injured grandchild. However, the Claimant has not explained how long he stayed in Norway or why he could not communicate with the Tribunal from there.

[10] Based on the information provided, I find that, the Claimant has not provided a reasonable explanation for his delay in making the Application.

[11] The Claimant did not have any contact with the Tribunal after the General Division made its decision until he filed the Application. He has not filed any evidence that demonstrates that he had a continuing intention to make the Application.

[12] There is no evidence before me that any party would be prejudiced by the granting of an extension of time. I make no finding in this regard.

[13] The DESD Act says that leave to appeal must be refused if the appeal has no reasonable chance of success.⁴ Legally, this is the same as disclosing an arguable case. The only grounds of appeal that the Appeal Division can consider are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.⁵ Therefore, to decide whether the Claimant has presented an arguable case, I must decide whether he has presented a ground of appeal that falls under the DESD Act and upon which the appeal has a reasonable chance of success.

[14] The Claimant argues that the appeal has a reasonable chance of success because he has been resident in Canada for more than 25 years, with only one significant absence in 1994. The General Division decision summarized all of the evidence that was before it⁶ and found that there were several discrepancies in the evidence regarding dates when the Claimant arrived in and left Canada.⁷ The Claimant testified that he became a Canadian citizen in 1996, but the citizenship documents showed that he did so in 2001. The Claimant did not provide clear evidence of a tenancy agreement for his address in Toronto, but he did testify that he cancels his

⁴ DESD Act s. 58(2)

⁵ *Ibid.* s. 58(1)

⁶ General Division decision paras. 5–14, 22–29

⁷ *Ibid.* para. 40

tenancy when he leaves the country for short periods, that he stays with friends, and that he rents furnished accommodations.⁸ The General Division weighed all of this evidence and decided that the Claimant had not presented evidence that persuaded it that he was resident in Canada for a sufficient period of time to receive OAS benefits. The Claimant's repetition of his contention that he resided in Canada for approximately 25 years does not point to any error made by the General Division. This is not a ground of appeal under the DESD Act.

[15] The Claimant also contends that his health has been poor. This does not point to any error made by the General Division either, so it is not a ground of appeal under the DESD Act.

[16] Finally, the Claimant argues that leave to appeal should be granted because the General Division based its decision on irrelevant information such as the fact that his wife and children (except one son) reside overseas. The General Division decision refers to the fact that the Claimant's wife has never resided in Canada⁹ and that they had a child during the time that the Claimant said he was residing in Canada.¹⁰ The decision was not, however, based on where the Claimant's family members reside. The fact that the Claimant's wife has never resided in Canada explains why she did not sign the Claimant's application for the Guaranteed Income Supplement. The General Division considered the birth of the Claimant's son in 1997 because he would have been conceived and born during the time that the Claimant says he was residing in Canada and because the Claimant also said that he was the primary caregiver for his children. These claims were relevant to the General Division's decision regarding the Claimant's residence. The appeal therefore does not have a reasonable chance of success based on this argument.

[17] In deciding whether to extend the time for the Claimant to make the Application, I place the greatest weight on the fact that the Claimant has not presented a ground of appeal upon which the appeal has a reasonable chance of success. It is not in the interests of justice to extend the time for the Claimant to make the Application if the appeal has no reasonable chance of success on its merits.

⁸ *Ibid.* paras. 48, 49, and 51

⁹ *Ibid.* para. 10

¹⁰ *Ibid.* para. 41

CONCLUSION

[18] For these reasons, an extension of time to make the Application is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	S _amuel N _atnael , self-represented
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