



Citation: *K. Z. and N. Z. v. Minister of Employment and Social Development*, 2018 SST 1141

Tribunal File Number: AD-18-447

BETWEEN:

K. Z.

Appellant

and

Minister of Employment and Social Development

Respondent

and

N. Z.

Added Party

Tribunal File Number: AD-18-448

BETWEEN:

N. Z.

Appellant

and

Minister of Employment and Social Development

Respondent

and

K. Z.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: November 13, 2018

DECISION AND REASONS

DECISION

[1] The appeals are allowed.

OVERVIEW

[2] N. Z. (Appellant) arrived in Canada on January 15, 1990, to pursue his graduate studies at X. When he arrived, he was accompanied by his spouse, K. Z. (Appellant).

[3] In 2014 and 2015, N. Z. and K. Z. applied for pensions under the *Old Age Security Act* (OAS Act). In N. Z.'s case, the Respondent, the Minister of Employment and Social Development [(Minister)], initially granted him a partial Old Age Security (OAS) pension that was 23/40ths of a full pension. In its decision, the Minister acknowledged that N. Z. had lived in Canada continuously from his arrival in the country in January 1990.

[4] However, as part of a later assessment of K. Z.'s file, the Minister determined that the couple's Canadian residence had not been established from their arrival in Canada but rather as of December 21, 1992, when N. Z. finished his studies.¹ As a result, K. Z.'s OAS pension was calculated based on this date, but the Minister had to change its initial decision for N. Z.'s file. His partial OAS pension was reduced from 23/40ths to 20/40ths of a full pension.

[5] The couple asked the Minister to reconsider its decision regarding their Canadian residence during N. Z.'s study period, but the Minister maintained its initial decision. The appellants then appealed the reconsideration decision to the General Division, but it dismissed their appeals. The appellants then filed applications for leave to appeal before the Appeal Division, which I have already granted.

¹ The period in dispute was initially from January 15, 1990, to April 1, 1993, but the Minister then extended the recognized period of Canadian residence.

[6] Currently, the Minister agrees that the appeals should be allowed and that the January 15, 1990, to December 21, 1992, period should be included in the appellants' Canadian residence period.²

PRELIMINARY ISSUE

[7] I found that the appeal could be decided based on the documents and submissions on file given the following:

- a) The Minister's agreement, which fully addresses the issue.
- b) The Tribunal's obligation to proceed as informally and as quickly as the circumstances and the considerations of fairness and natural justice allow.³

ISSUE

[8] Did the General Division commit an error of law when assessing the appellants' Canadian residence?

ANALYSIS

[9] The amount of the partial OAS pension to which the appellants are entitled is calculated based on the number of years of Canadian residence each accumulated before their applications were approved. The General Division found that the period from January 15, 1990, to December 21, 1992, could not be considered a period of residence in Canada and therefore could not be used to increase the amount of their OAS pensions.

[10] However, in deciding the issue of the appellants' Canadian residence, the Minister now accepts that the General Division committed an error of law.⁴ More specifically, the General Division based its decision on the appellants' intention to live in Canada rather than on their

² AD5.

³ *Social Security Tribunal Regulations*, s 3(1)(a).

⁴ AD5.

entire situation. This goes against the Federal Court's teachings.⁵ Instead of disregarding them, the General Division should have considered various factors about the period in question.

- a) The appellants signed a lease dated January 19, 1990, and still live at that address.
- b) They have electricity, telephone, cable, and newspaper subscriptions.
- c) They are registered for Quebec's health insurance plan.
- d) They opened bank accounts, which are still open.
- e) They have contributed to the Québec pension plan.

[11] I agree with the Minister's submissions that the General Division made an error under section 58(1)(b) of the *Department of Employment and Social Development Act* (DESDA).

[12] The Minister proposes that, of the remedies possible, I exercise the authority provided in section 59(1) of the DESDA and render the decision the General Division should have given. Once again, I agree with the Minister's submissions and declare that the period from January 15, 1990, to December 21, 1992, must be included in the period of Canadian residence used to determine the appellants' entitlement under the OAS Act.

⁵ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at para 58.

CONCLUSION

[13] The appeals are allowed.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	K. Z., Appellant N. Z., Appellant Stephanie Pilon, Representative for the Respondent