



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *E. A. v Minister of Employment and Social Development*, 2019 SST 331

Tribunal File Number: AD-19-27

BETWEEN:

**E. A.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: April 5, 2019

## DECISION AND REASONS

### DECISION

[1] Leave to appeal the decision made by the General Division of the Social Security Tribunal of Canada on December 12, 2018, is refused.

### OVERVIEW

[2] The Applicant, E. A., applied for a full Old Age Security (OAS) pension. The Respondent, the Minister of Employment and Social Development, found that the Applicant was not eligible for a full pension because he had not resided in Canada for at least 40 years before the date the application was approved. However, the Respondent granted the Applicant a partial pension at the rate of 25/40 of a full pension as of October 2016.

[3] The Applicant does not dispute his date of arrival in Canada in 1991, but he insists that he is entitled to a full pension under the *Old Age Security Act* (OAS Act). He requested that the Respondent reconsider his application. The Respondent upheld its decision.

[4] The Applicant appealed the Respondent's decision to the Tribunal. The Tribunal's General Division found that the Applicant had not resided in Canada for at least 40 years before the pension application date. As a result, his appeal had no reasonable chance of success, and his appeal was summarily dismissed.

[5] The Applicant filed an application to rescind or amend with the General Division and provided a letter explaining his grounds. The General Division found that the letter [translation] "does not establish a new material fact that could not have been discovered at the time of the hearing with the exercise of reasonable diligence."

[6] In his application for leave to appeal the dismissal of the application to rescind or amend, the Applicant submitted that the General Division based its decision on important errors regarding the facts of the appeal file and that it failed to observe a principle of natural justice. He argued that the OAS Act is discriminatory because it requires 40 years of residence in Canada after the age of 18.

[7] The appeal does not have a reasonable chance of success because the Applicant has not raised any arguable case that the General Division may have made a reviewable error.

## **ISSUE**

[8] Does the application for leave to appeal raise a ground of appeal on which the Applicant's appeal might succeed?

## **ANALYSIS**

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.<sup>1</sup>

[10] 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 Applicant's appeal might succeed?<sup>2</sup>

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error. The only reviewable errors are the following:<sup>4</sup> 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.

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<sup>1</sup> *Department of Employment and Social Development Act* (DESDA), ss 56(1) and 58(3).

<sup>2</sup> *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.

<sup>3</sup> DESDA, s 58(2).

<sup>4</sup> DESDA, s 58(1).

**Does the application for leave to appeal raise a ground of appeal on which the appeal might succeed?**

[12] No, the application for leave to appeal does not raise any ground on which the appeal might succeed.

[13] An application to rescind or amend a decision must be accompanied by evidence that establishes a new material fact under section 66(1)(b) of the *Department of Employment and Social Development Act* (DESDA). The Applicant had filed his application with a letter that he wrote explaining that he was entitled to receive a full pension and raising the same arguments that he had previously made before the General Division.

[14] The General Division noted the following in its reasons for dismissing the application to rescind or amend:

[Translation]

[10] The Applicant had already raised the same arguments concerning the Charter when he filed his application to appeal with the Tribunal. At a pre-hearing teleconference on June 5, 2018, the Applicant indicated that he did not intend to pursue the arguments raised under the Charter but that he wanted to make sure that he would be treated like all Canadians. The Tribunal considered all of the evidence to determine whether the Applicant was eligible for a full pension under section 3(1) of the OAS Act and, unfortunately, the Applicant did not meet the criteria for receiving a full pension.

[11] The letter submitted on October 17, 2018, with the application to rescind or amend does not establish a new material fact that could not have been discovered at the time of the hearing with the exercise of reasonable diligence within the meaning of section 66(1)(b) of the Act.

[15] The application for leave to appeal also contains the same arguments concerning the Charter to which the General Division referred. However, the application to rescind or amend must be accompanied by evidence that establishes a new material fact, and no evidence of this nature was offered with the application to rescind or amend.

[16] The Respondent submits that the Appellant's claim of discrimination is not a new material fact that could not have been discovered at the time of the hearing with the exercise of

reasonable diligence within the meaning of section 66(1)(b) of the DESDA.<sup>5</sup>

[17] The arguments contained in the Applicant's letter filed in support of the application to rescind or amend do not constitute a new material fact. The General Division is correct.

[18] The appeal cannot succeed based on the Applicant's grounds of appeal to the Appeal Division.

[19] I have also reviewed the evidence on file. There is no indication that the General Division overlooked or misconstrued important evidence. I also find that the General Division did not fail to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. 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.

[20] For these reasons, the appeal has no reasonable chance of success.

## CONCLUSION

[21] Leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	E. A., self-represented
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<sup>5</sup> AD2, Respondent's submissions at para 43.