



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. J. v Minister of Employment and Social Development*, 2019 SST 1362

Tribunal File Number: AD-19-778

BETWEEN:

M. J.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: November 25, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] M. J. (Claimant) was born in India. He moved to Canada in 1972 and later became a Canadian citizen. He now lives in the United States. In 2016 the Claimant applied for an Old Age Security pension (OAS). The Minister of Employment and Social Development refused the application because it decided that the Claimant had not resided in Canada for long enough to receive the pension while he lives in the United States.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason. It concluded that the Claimant had not resided in Canada since 1984.

[4] The Claimant now asks for leave (permission) to appeal the General Division's decision to the Appeal Division. This is refused because the appeal does not have a reasonable chance of success.

GROUND OF APPEAL

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or

d) based its decision on an important factual error.¹

[6] However, before I can decide an appeal, I must decide whether to grant leave (permission) to appeal. The DESD Act says that leave to appeal must be refused if the appeal does not have a reasonable chance of success.² Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that falls under the DESD Act and on which the appeal has a reasonable chance of success.

ANALYSIS

[7] In the Application to the Appeal Division, the Claimant wrote that he disagrees with the General Division decision. A person's disagreement with the General Division decision is not a ground of appeal under the DESD Act. So, the Tribunal wrote to the Claimant, explained what grounds of appeal I can consider and asked him to provide this. The Claimant responded that the General Division based its decision on an important factual error because he had provided proof that he had resided in Canada and he should be entitled to OAS.

[8] The Claimant did not point to any specific factual errors in the decision. I have read the General Division decision and reviewed the documents filed with the Tribunal. The General Division did not overlook or misconstrue any important information. It considered when the Claimant came to Canada, how long he resided in Canada, and when he left Canada for the United States.

[9] There is no suggestion that the General Division made an error in law or failed to provide a fair appeal process.

[10] Therefore, there is no basis on which I can find that the appeal has a reasonable chance of success.

CONCLUSION

[11] Leave to appeal is refused.

¹ This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

² DESD Act s.58(2)

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	M. J., Self-represented
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