



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. H. v Minister of Employment and Social Development*, 2019 SST 1408

Tribunal File Number: AD-19-792

BETWEEN:

**M. H.**

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: Jude Samson

Date of Decision: December 13, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The application for leave to appeal is refused.

### **OVERVIEW**

[2] M. H. is the Claimant in this case. In 2016, he applied for the Guaranteed Income Supplement. Following an investigation, the Minister of Employment and Social Development denied the claim. More specifically, the Minister found that the Claimant did not meet the residence eligibility requirement.

[3] The Claimant challenged the Minister's decision to the Tribunal's General Division, but it dismissed his appeal. The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division. However, for the file to move forward, the Claimant must obtain leave to appeal.

[4] Unfortunately for the Claimant, I have found that his appeal has no reasonable chance of success. Therefore, I cannot grant him leave to appeal. These are the reasons for my decision.

### **ISSUE**

[5] Has the Claimant raised an arguable case on which the appeal might succeed?

### **ANALYSIS**

[6] The Tribunal must apply the law and follow certain procedures.<sup>1</sup> Therefore, this appeal follows a two-step process: the leave to appeal stage and the merits stage. If the appeal has no reasonable chance of success, it cannot proceed to the merits stage.<sup>2</sup>

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<sup>1</sup> Most of the Tribunal's procedures are set out in the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> This is found in sections 58(2) and 58(3) of the DESD Act.

[7] The legal test that the Claimant needs to meet at this stage is a low one: Is there any arguable case on which the appeal might succeed?<sup>3</sup> To answer that question, I must determine whether the General Division may have committed one of the three relevant errors.<sup>4</sup>

**Has the Applicant raised an arguable case on which the appeal might succeed?**

[8] No, the Claimant's appeal has no reasonable chance of success.

[9] The issue before the General Division was whether the Applicant resided in Canada or the United States during the periods at issue. To answer this question, the General Division had to assess many factors and decide to which country the Claimant's ties were stronger. The Federal Court's teachings indicate that determining a person's residence is largely a factual issue that requires an examination of the individual's whole context.<sup>5</sup>

[10] The Claimant's appeal is based on the fact that he is a Canadian citizen and he spends more than 183 days in Canada each year. He also submits that he paid his taxes in Canada, that he holds a Canadian passport, that he has a residence in Canada, that his children were born in Canada, that his brothers and sisters live in Canada, and that his late mother lived in Canada.<sup>6</sup>

[11] In deciding the appeal, the General Division considered the Claimant's ties to Canada, including those that the Claimant specified in his notice of appeal. However, the General Division was not satisfied that the Claimant had proven the establishment of his Canadian residence. The Claimant is essentially trying to reargue his case in hopes of getting a different result, but that is not the role of the Appeal Division.<sup>7</sup>

[12] As a result, the Claimant's arguments have no reasonable chance of success.

[13] In addition to the Claimant's arguments, I reviewed the documents on file, I listened to the audio recording of the General Division hearing, and I studied the decision under appeal. I

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<sup>3</sup> *Osaj v Canada (Attorney General)*, 2016 FC 115; *Ingram v Canada (Attorney General)*, 2017 FC 259.

<sup>4</sup> Section 58(1) of the DESD Act specifies the three errors (or grounds of appeal) that I must consider.

<sup>5</sup> *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at para 58; *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277 at para 19; *Duncan v Canada (Attorney General)*, 2013 FC 319.

<sup>6</sup> AD1-5.

<sup>7</sup> *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31; *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42.

am therefore satisfied that the General Division did not overlook or misconstrue relevant evidence.<sup>8</sup>

## CONCLUSION

[14] I am sympathetic to the Claimant's circumstances. Nevertheless, I have concluded that his appeal has no reasonable chance of success. Therefore, I have no choice but to refuse his application for leave to appeal.

Jude Samson  
Member, Appeal Division

REPRESENTATIVE:	M. H., self-represented
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<sup>8</sup> *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.