Citation: *M. L. v Minister of Employment and Social Development*, 2020 SST 3

Tribunal File Number: AD-19-826

BETWEEN:

M. L.

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: January 6, 2020

DECISION AND REASONS

DECISION

[1]   Leave to appeal is refused.

OVERVIEW

[2]   M. L. (Claimant) has resided in Pakistan and Canada since he turned 18. He has also spent some time in the United States. In 2017, the Claimant applied for an *Old Age Security Act* pension (OAS) and Guaranteed Income Supplement. The Minister of Employment and Social Development approved payment of 10/40ths of a full OAS and the Guaranteed Income Supplement (GIS).

[3]   In 2018, the Minister reviewed the Claimant's file and requested additional information to substantiate the Claimant's residence in Canada. The Minister was not satisfied with the information the Claimant provided, and decided that he did not have sufficient Canadian residence to qualify for OAS and GIS. As a result it also assessed an overpayment of approximately $29, 700.

[4]   The Claimant appealed the Minister's decision regarding his qualification for OAS and GIS and the amount of the overpayment to the Tribunal. The Tribunal's General Division dismissed the appeal because it found that the Claimant had not provided sufficient information of Canadian residence.

[5]   Prior to making this decision the Appeal Division scheduled a Settlement Conference. The Claimant declined to participate so this conference was cancelled.

[6]   Leave to appeal the General Division's decision to the Tribunal's Appeal Division is refused because the appeal does not have a reasonable chance of success on the basis that the General Division based its decision on an important factual error.

GROUNDS OF APPEAL

[7]   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]

[8]   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. 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.

ISSUE

[9]   Does the appeal have a reasonable chance of success because the General Division based its decision on an important factual error without regard for documents the Claimant submitted?

ANALYSIS

[10]   The Claimant argues that the General Division failed to consider evidence of his Canadian residence that was filed with the Tribunal and coded as GD5. However, the General Division decision summarizes the Claimant's evidence regarding his Canadian residence,[2] and refers specifically to the document that the Claimant says was not considered.[3] Therefore, the appeal does not have a reasonable chance of success on the basis that the General Division failed to consider this evidence.

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[1] This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act
[2] General Division decision at para. 9
[3] General Division decision at para. 11

[11]   I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. There is no suggestion that it made an error in law or failed to provide a fair process.

CONCLUSION

[12]   Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	M. L., Self-represented