Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *P. C. v Minister of Employment and Social Development*, 2020 SST 686

Tribunal File Number: AD-20-92

BETWEEN:

P. C.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 7, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, P. C., was born in Vietnam in 1950 and arrived in Australia as a refugee in 1979. She became an Australian citizen in 1982. She arrived in Canada on November 19, 1999, to study in a Buddhist temple. She became a permanent resident of Canada in 2002 and became a Canadian citizen in 2015.

[3] The Applicant turned 65 on April X, 2015, and applied for an Old Age Security (OAS) pension on July 25, 2016. She then applied for the Guaranteed Income Supplement (GIS) on October 13, 2016.

[4] On November 9, 2017, the Minister of Employment and Social Development (Minister) made a decision in which it informed the Applicant that her OAS application was refused because she had not responded to its requests for additional information so it could finish reviewing her file. The Applicant filed a request for reconsideration, but the Minister upheld its initial decision for the same reasons.

[5] The Applicant appealed the Minister's decision. She submitted that her representative had abandoned her. She filed her Australian passport as additional information.

[6] The General Division found that the Applicant had been a resident of Canada since December 1, 2015. It determined that the day before the deemed date of approval of her OAS application—that is, April 6, 2015—the Applicant was not a resident of Canada under the *Old Age Security Act* (OAS Act). The General Division found that the Applicant was not entitled to an OAS pension on the deemed date of approval of her application—that is, April 7, 2015.

[7] The Applicant now seeks leave to appeal the General Division's decision. She argues that the General Division made its decision without regard for the material before it. The Applicant submits that she lived in Alberta from 2010 to 2015. She also produced proof of health insurance coverage in Alberta starting in December 2010.

[8] On April 21, 2020, the Tribunal sent the Applicant a letter informing her that she could submit an application to rescind or amend the General Division's November 26, 2019, decision, in light of new evidence under section 66 of the *Department of Employment and Social Development Act* (DESD Act). The Applicant decided to file an application to rescind or amend with the General Division.

[9] On July 10, 2020, the General Division refused the Applicant's application to rescind or amend.

[10] On August 5, 2020, the Applicant, through her representative, asked the Tribunal to give a decision on the application for leave to appeal the General Division's November 26, 2019, decision.

[11] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[12] The Tribunal refuses leave to appeal because the Applicant has not raised a ground of appeal on which the appeal might succeed.

ISSUE

[13] Does the Applicant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[14] Section 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

> (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> (b) The General Division made an error of law in making its decision, whether or not the error appears on the face of the record; or
>
> (c) The General Division 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.

[15] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Applicant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal may succeed.

[16] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Applicant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Applicant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[17] The General Division had to decide whether the Applicant was a resident of Canada on the day before the deemed date of approval of her application for an OAS pension—that is, April 6, 2015.

[18] The General Division determined that the Applicant was a resident of Canada as of December 1, 2015. It determined that the day before the deemed date of approval of her OAS application—that is, April 6, 2015—the Applicant was not a resident of Canada under the OAS Act. The General Division found that the Applicant was not entitled to an OAS pension on the deemed date of approval of her application—that is, April 7, 2015.

[19] The Applicant argues that the General Division 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.

[20] In particular, the Applicant argues that the General Division did not consider the fact that she lived in Alberta from September 2010 to December 2015. She also argues that the General Division overlooked the fact that she travelled only within Canada after 2010, except for a trip of less than three weeks to Australia in 2018.

[21] I would like to point out that the Appeal Division's powers are limited by section 58(1) of the DESD Act. A hearing before the Appeal Division is not an opportunity to present evidence again and hope for a new favourable outcome. I will therefore decide this application for leave to appeal based on the evidence presented to the General Division.

[22] At the hearing, the Applicant was asked about her travel within Canada and outside Canada. She did not mention having lived elsewhere in Canada than in the province of Québec She was also asked about her health between 2010 and 2015 because she did not have medical coverage in Québec. She responded that she did not have many health problems during that time. She never mentioned the fact that she was under a doctor's care in Edmonton. She was also asked on more than one occasion where she lived after she arrived in Canada, and she always responded at the monastery in Québec.

[23] For the period from January 1, 2006, to November 30, 2015, she said in her testimony that she did not think it was a good idea to renew her coverage under the Régie de l'assurance-maladie du Québec [Québec's health insurance plan] (RAMQ) because she travelled a lot and was often outside the country. It was not until December 1, 2015, that she considered that it was worth renewing her coverage under the RAMQ.

[24] The General Division found that, after December 1, 2015, the Applicant was more frequently in Canada and for longer periods and that she used the services covered under the RAMQ more regularly. All these factors tipped the balance in favour of the establishment of Canadian residence starting on December 1, 2015, under the OAS Act.

[25] The General Division found that the evidence presented did not support that the Applicant ordinarily lived and made her home in Canada before December 1, 2015, since her first entry into Canada on November 19, 1999.

[26] In my view, the General Division made its decision with regard to the facts the Applicant presented and does not raise any concern that would support an arguable case on appeal.

[27] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Applicant has not raised an issue that could lead to the setting aside of the decision under review.

CONCLUSION

[28] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	N. V., self-represented [*sic*]