



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *JF v Minister of Employment and Social Development*, 2020 SST 1060

Tribunal File Number: GP-20-781

BETWEEN:

J. F.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: François Guérin

HEARD ON: July 22, 2020

DATE OF DECISION: August 19, 2020

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

[2] I decided that the Appellant was a resident of Canada from October 25, 1971, to December 31, 1979, and from October 2, 1984, until August 15, 1995, for a total of 19 years and 21 days.

[3] I decided that the Appellant was not a resident of Canada the day before his Old Age Security (OAS) application was approved, on March 5, 2013.¹

[4] Based on the above, the Appellant had not accumulated a minimum of 20 years of residence in Canada after he turned 18 to receive the OAS pension.

OVERVIEW

[5] The Appellant was born in Haiti in 1948 and arrived in Canada on October 10, 1971. He turned 65 on March 6, 2013. The Appellant applied for an Old Age Security pension² on March 15, 2013, to start as soon as possible, the month after he turned 65.³

[6] The Respondent did not approve the OAS pension application starting the month after the Appellant turned 65 because the Respondent found that the Appellant was not living in Canada when he filed his OAS application and that he had not lived in Canada for at least 20 years after the age of 18. The Respondent gave the Appellant its decision on September 9, 2015.⁴ On December 10, 2015, the Respondent received a reconsideration request from the Appellant.⁵ On September 14, 2016, the Respondent told the Appellant that it had reviewed the file and that it was upholding its original decision.⁶

¹ Section 5(2) of the *Old Age Security Regulations*.

² GD2-3 to 6.

³ GD2-4, question 10.

⁴ GD2-173 to 174.

⁵ GD2-175.

⁶ GD2-176 to 177.

[7] On August 27, 2018, the Tribunal received the Appellant's notice of appeal. In a first decision,⁷ the Tribunal's General Division decided that the appeal would not proceed because the Appellant had not filed an appeal with the Tribunal within the timeframe required under section 52(2) of the *Department of Employment and Social Development Act*. The Appellant appealed to the Appeal Division, which decided to send the matter back to the General Division to decide whether the Applicant is eligible for a pension under the *Old Act Security Act* (OAS Act).⁸

WHAT ARE THE ISSUES, OR WHAT DO I HAVE TO DECIDE?

[8] The Appellant stated in his OAS pension application⁹ that he was a resident of Canada from October 1971 to December 1998.¹⁰

[9] So, I have to decide whether the Appellant was a resident of Canada the day before his OAS application was approved, on March 5, 2013.¹¹

[10] If the Appellant was not a resident of Canada under the *Old Act Security Act* (OAS Act) the day before his OAS application was approved, on March 5, 2013, I also have to decide whether the Appellant had accumulated 20 years of residence in Canada after age 18.

PRELIMINARY MATTER

[11] At the hearing, the Appellant was represented by an unpaid representative. The Appellant and the representative are cousins.

⁷ GP-18-1972.

⁸ AD-19-893.

⁹ GD2-3 to 6.

¹⁰ GD2-5, question 14.

¹¹ Section 5(2) of the *Old Age Security Regulations*.

THE LAW

Eligibility Criteria for an OAS Pension

[12] For OAS purposes, a person resides in Canada if they make their home and ordinarily live in any part of Canada. This is distinct from the concept of presence. A person is present in Canada when they are physically present in any part of Canada.¹² A person can be present in Canada without being a resident of Canada.

[13] Residence is a question of fact to be determined on the particular facts of each case. A person's intentions are not decisive. The decision *Ding*¹³ set out a non-exhaustive list of factors to consider to guide the Tribunal in deciding the question of residence:

- a. ties in the form of personal property;
- b. social ties in Canada;
- c. other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.);
- d. ties in another country;
- e. regularity and length of stay in Canada, and the frequency and length of absences from Canada;
- f. the person's mode of living, or whether the person's life in Canada is substantially deep rooted and settled.¹⁴

[14] The Appellant must prove that it is more likely than not that he was living in Canada during the period in question.¹⁵

¹² Section 21(1) of the *Old Age Security Regulations*.

¹³ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

¹⁴ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

¹⁵ *De Carolis v Canada (Attorney General)*, 2013 FC 366.

[15] Section 3(2) of the OAS Act states that a partial pension may be paid to a pensioner who has reached 65 years of age if they resided in Canada for at least 10 years after age 18, and if they were residing in Canada on the day before the day their application was approved. If the pensioner was not a resident of Canada the day before their application was approved, they must have resided in Canada for at least 20 years after the age of 18.

[16] Section 5 of the OAS Regulations (Regulations) sets out when the approval of an OAS pension application takes effect.

[17] I will consider the factors established in *Ding* in my analysis to decide whether the Appellant was residing in Canada. To come to my conclusion, I will use the documents filed by the two parties and their answers to my questions at the hearing.

The Appellant's Period of Residence in Canada that is Accepted by the Respondent

[18] The Respondent accepts that the Appellant was a resident of Canada in accordance with the OAS Act from October 25, 1971, to December 31, 1979, and from October 2, 1984, to August 15, 1995, giving the Appellant a total of 19 years and 21 days of residence in Canada.¹⁶ The Tribunal accepts that these two periods are not disputed by the parties.

The Appellant's Arrival in Canada and Beginning of his Residence

[19] In a questionnaire requested by the Respondent, the Appellant stated that he arrived in Canada on October 10, 1971.¹⁷ At the hearing, the Appellant stated that he arrived in Toronto on October 9, 1971, and arrived in Montréal the next day, on October 10, 1971. However, the Canadian Immigration Identification Card¹⁸ issued to the Appellant states that he entered Canada on October 10, 1971, with a date of residence of October 25, 1971. The Tribunal prefers to accept that the Appellant entered Canada for the first time on October 10, 1971, as is written on his Canadian Immigration Identification Card.

¹⁶ IS4-14, paragraph 39.

¹⁷ GD2-12.

¹⁸ GD2-19 to 20.

[20] The Respondent submitted a questionnaire that was sent to a reference given by the Appellant and which confirms that the Appellant lived in Canada from October 1971 to December 1998.¹⁹ At the hearing, the Appellant admitted that his reference could be wrong and may not remember the exact dates. Furthermore, that reference is the Appellant's brother-in-law because he is his wife's brother. However, the Tribunal is satisfied with the Appellant's testimony, the documentary evidence on file, and the explanations the Appellant gave about it. The Tribunal prefers not to give this questionnaire a lot of weight.

[21] The Appellant testified that he arrived in Canada as a tourist to visit Haitian friends who were already established in Montréal and to see the country. It was during that trip that he decided to apply for permanent residence in Canada on October 25, 1971. The Appellant testified that, when he arrived in Canada on October 9, 1971, he still did not intend to make his home in Canada. On October 25, 1971, his status changed from simple tourist to permanent resident. The Tribunal therefore understands that the Appellant entered Canada as a tourist, became a permanent resident of Canada on October 25, 1971, and, as a result, his Canadian residence under the OAS Act started that same day, on October 25, 1971.

The Appellant's Ties in Canada

[22] The Respondent finds that the Appellant was a resident of Canada under the OAS Act from October 25, 1971, to December 31, 1979.

[23] However, from January 1, 1980, to October 1, 1984, the Respondent finds that the Appellant cannot show that he had made his home and ordinarily lived in any part of Canada. The Respondent submitted that the Appellant did not provide his tax returns for the years 1980 to 1985²⁰ that he had no medical visits covered by the Régie de l'assurance maladie du Québec [Quebec's health insurance plan] (RAMQ) from November 1, 1981, the start date of the report received from the RAMQ,²¹ until October 1, 1984, and that he had no employment income eligible for the Québec Pension Plan (QPP) from 1980 to 1985.²² The Respondent also submits

¹⁹ GD2-110 to 111.

²⁰ GD2-147.

²¹ GD2-90.

²² GD2-100.

that the Appellant did not file income tax returns with the CRA from 1995 to 2012.²³ The Appellant did not dispute this information.

[24] Regarding the unfiled tax returns, the Appellant's representative explained that taxi drivers sometimes do not file tax returns, but that does not mean they are unable to. Regarding medical visits, the Appellant argued that you do not see a doctor if you are not sick.

[25] In an undated letter,²⁴ with no indication or stamp as to the date it was received, the Appellant indicates that he left Montréal as early as 1994. However, after verifying with the Appellant, the Respondent concluded that the Appellant had stopped residing in Canada under the OAS Act in August 1995, shortly after he sold his house in June 1995.²⁵

[26] During his testimony, the Appellant admitted that he had not moved back to Canada since leaving the country in August 1995, that his trips to Canada after that were for only short visits of one or two months, but that he intended to return to Canada permanently.

[27] In its notes, the Respondent indicated that the Appellant allegedly told it that he had moved to Canada on July 12, 2016, and stated that he intended to stay in Canada permanently.²⁶ However, when asked about this at the hearing, the Appellant said that this was not correct because he was only visiting family members. He travelled between Port-au-Prince, Miami, and Montréal regularly.

[28] At the hearing, the Appellant said that he is currently living in Port-au-Prince temporarily until he can join his wife in Miami. However, he said that his choice would be to make his home in Canada. He can afford to live in Haiti, but he does not have the financial means to live in Canada. The Appellant said that he does not pay rent but has lived in the family home since his father's death in 2011. However, he later confirmed that his father's death was in 1995 or 1996, which corresponds to the period described by the Appellant in an undated letter sent to the

²³ GD2-147.

²⁴ GD2-23 to 24.

²⁵ GD2-142.

²⁶ IS4-24, 2016-07-14 at 13:31:06.

Respondent and received by it on September 10, 2013.²⁷ He also receives his mail there even though he also uses a mailing address in Canada with family members.

[29] The Appellant testified that he has not filed tax returns in Canada since 1971. He did not file tax returns in Haiti or the United States either.

[30] He had his first Canadian driver's licence around 1972. He said at the hearing that he had not had a Canadian driver's licence since approximately 2005. However, according to the report from the Société de l'assurance automobile du Québec [Quebec's automobile insurance corporation] (SAAQ), that date would be March 6, 2008.²⁸ He testified that he had an American driver's licence in Florida from approximately 2001 to 2007. He explained that he got an American driver's licence even though he had a Canadian licence because he came to the United States from Haiti, and his wife was living in Florida.

[31] The Appellant said that the last time he voted in Canadian elections was in 1994 and that he had not voted in Canada since then. The Appellant said he did not vote in elections in Haiti or the United States either.

[32] During the hearing, the Appellant said that he had only had insurance contracts in Canada and that it was his motor vehicle insurance while he was a taxi driver.

[33] The Appellant said that he was not a member of organizations in Canada and that he had not volunteered with structured organizations, but sometimes helped people when needed.

[34] The Appellant said that he joined his wife in Florida after selling his house in Montréal in 1995.

[35] The Appellant has two daughters and a son, who were all born in Canada. His son lives in Florida. One of his daughters lives in Ottawa and works for the Canadian government, while the other daughter lives in Haiti and travels regularly to Canada and the United States. The Appellant

²⁷ GD2-83.

²⁸ GD2-117.

has two sisters in Canada who he sees occasionally. All his childhood friends are now living in Canada.

[36] The Appellant said that he had a bank account in Canada, even though he does not have much money in it. He has no utility contracts in Canada and has not had any since leaving Canada in 1995.

[37] The Appellant said that he no longer had real estate in Canada since selling his house in June 1995. He has not had any rentals, work, or personal possessions in Canada since June 1995 either. He keeps only a few items of clothing in Canada.

Addresses in Canada Declared by the Appellant

[38] The Appellant said that the address at X in Pierrefonds is the address where he lived when he came to Montréal because he did not pay rent there. When asked, the Appellant said that it was the address of his brother-in-law, his wife's brother. He could stay there for two or three months and pay nothing at all. It is the address that the Appellant declared as his home address on his Canadian passport issued August 22, 1996, in Miami. He used that address from approximately 1995²⁹ to 2013 or 2014.

[39] The Appellant said that X in Montréal was his daughter's address. This became his family's landing point when it came to Montréal. His daughter lived at this address for two or three years and has now lived in Ottawa for two or three years. The Appellant confirmed that his daughter pays for the utilities. When their daughter started living there, her mother, the Appellant's wife, helped her financially while she was a student. From the time she started working, their daughter became responsible for all costs of that apartment. The Appellant said that he never helped his daughter financially for that apartment. He testified that he used that address from approximately 2013 or 2014 to 2016 or 2017.

²⁹ GD2-142.

[40] The Appellant testified that he starting using the address on X in Laval in 2018 or 2019, when his daughter moved to Ottawa. It is the address of his cousin and representative. They confirmed that the Appellant does not pay rent or the utilities for that address.

The Appellant's Insured Health Services

[41] The Respondent submitted a letter from the RAMQ to the Appellant concerning his eligibility for Quebec's health insurance plan. The letter says that, after reviewing the Appellant's file, the RAMQ cannot rule on his date of establishment outside Quebec and therefore cannot proceed with his request to obtain a history of his eligibility for the health insurance plan.³⁰

[42] When asked by the Tribunal whether he had followed up with the RAMQ to rectify the situation, the Appellant said that he did not stay in Quebec for six consecutive months and that he had not spent six consecutive months in Canada since leaving in 1995, even though he would like to.

The Appellant's Work in Canada

[43] The Appellant confirmed to the Respondent that he was a taxi driver in Montréal from 1974 to 1994.³¹ However, at the hearing, the Appellant said that he had stopped working as a taxi driver in 1995. He said that, after 1995, he worked on the family farm in Haiti until it was sold.

[44] The Appellant explained the difference between a taxi licence and a taxi operator licence. The Appellant explained that he had a taxi licence from approximately 1973 to 1979 or 1980, when he sold it. The Appellant explained that he had his taxi operator licence, linked to his driver's licence, from approximately 1973 to 1995. The Appellant explained that, during some of those years, he did not drive a taxi.

³⁰ GD2-89.

³¹ GD2-107 and 112.

[45] The Appellant was the sole owner of an eight-unit apartment building in East Montréal for two or three years from approximately 1982 to 1985.³²

The Appellant's Ties in Haiti

[46] The Appellant says that he is of Haitian origin without however wanting to confirm whether he still has Haitian citizenship or whether he has repudiated it.

[47] The Appellant testified that he looked after the family farm from 1995 until it was sold and that the profits from the sale were divided among family members. The Appellant said during his testimony that he paid the utilities, water tax, and telephone after the death of his father, which he estimated was in 1995 or 1996. At the hearing, the Appellant said that he was currently living in Port-au-Prince temporarily until he could join his wife in Miami. However, he said that his choice would be to make his home in Canada. He has the financial means to live in Haiti, but not in Canada right now.

[48] The Appellant said that he has a [translation] "citizen's" bank account and that he does not have much money. When asked for more details about this, the Appellant said that anyone can have a bank account in Haiti.

[49] The Appellant said that he has had a vehicle in Haiti for four or five years. It is the first vehicle he has owned in Haiti. He testified that he has had a Haitian driver's licence since approximately 1999. He testified that he had friends in Haiti but that most of them are now in Canada.

The Appellant's Ties in the United States

[50] The Appellant testified that he joined his wife in Florida after he sold his house in Montréal in 1995.

³² GD2-136.

[51] The Appellant testified that he is not an American citizen and does not have a United States green card. However, his wife chose to become an American citizen about two years ago, while keeping her Canadian citizenship.

[52] The Appellant's son was born in Canada and lives in the United States. He does not see his son regularly and does not know whether he asked for or obtained American citizenship. The Appellant also has brothers and sisters in the United States who he does not see regularly. The Appellant testified that they have their own families and their own lives.

[53] The Appellant testified that he has never worked in the United States, that he never contributed to American social security, and that he does not receive American social benefits.

[54] The Appellant says that he does not have a bank account in the United States. The Appellant said that he never had a vehicle registered in his name in the United States. His wife, however, had a vehicle registered in her name.

[55] When asked, the Appellant testified that he no longer owned the house at X in Boynton Beach, Florida, and that it was now his wife's house. She is still the owner and rents it out. She has lived with her son for two or three years.

[56] The Appellant said that he had no utilities registered in his name in the United States. However, the Appellant later admitted that he did have some utilities in his name.³³

The Appellant's Declarations of Residence, his Credibility, and his Reliability

[57] Generally speaking, the Tribunal has doubts about the Appellant's credibility. Not necessarily that the Appellant is lying in his statements—on the contrary, the Appellant was very candid about leaving Canada to join his wife in 1995 and using Canadian mailing addresses after 1995. Rather, the Tribunal has doubts about his credibility because he withholds information when he is asked a question and it has to dig to get an answer. The Tribunal also noted, during his testimony, that the Appellant had a hard time remembering the exact dates certain events occurred. Furthermore, the dates the Appellant submitted in his written answers in the

³³ GD2-169.

questionnaires requested by the Respondent are not consistent either. The Tribunal had to ask several questions and confront the Appellant with conflicting information between the documents on file and his statements at the hearing, as explained further on.

[58] When the Tribunal asked the Appellant about his citizenships, the Appellant first said that he was only a Canadian citizen and had no other citizenship. He argues that he is a Canadian of Haitian origin because he chose Canadian citizenship and decided to live in Canada. However, he said that he never repudiated his Haitian citizenship. That answer gives the Tribunal the impression that the Appellant is giving calculated answers and not answering in a factual manner to questions he is asked, but answering according to his own intentions.

[59] Regarding the Appellant's declarations of residence after August 1995 in official documents, including his passport issued on August 22, 1996, in Miami,³⁴ the Appellant confirmed that it was actually an address for mail delivery in Canada because it was his brother-in-law's residence in Canada. The Appellant explained that he had to give that address in his passport for his correspondence in Canada, even though it is clearly written to put the permanent address of the passport holder.

[60] However, in his Canadian passport issued in Port-au-Prince on October 17, 2001, the Appellant put that his address was an address on X, which is the physical address of a building with two addresses, one for each of two entrances to the house—on X and on X. The Appellant explained that the address on X is the address that someone would have to use to meet him in person and the address on X is the address used for mail. The Tribunal can only note the Appellant's contradiction as to the logic that he used to report his addresses in his two Canadian passports: The Appellant used a mailing address for his passport issued in 1996 and a physical address for his passport in 2001.

[61] The Tribunal notes that the Appellant has difficulty understanding the concept of residence, and it cannot rely on his declarations of residence.

³⁴ GD2-34.

[62] When asked whether he owned the house at X in Boynton Beach, Florida, the Appellant first answered that he was not the owner of the house, that he had never had utilities registered in his name for that property, and that it was his wife's house. However, when asked about the fact that the American white pages for Boynton Beach indicate that the Appellant was listed with an American telephone number,³⁵ the Appellant said that his wife had removed his name from the registration because foreigners have to pay more municipal taxes. The Appellant eventually admitted that the house had been purchased in both of their names. The Appellant's name was removed after a year or two. The fact that the Appellant did not give information when he was first asked leaves the Tribunal with significant doubt about the information the Appellant would have given to the Respondent and the Tribunal about his actual situation if he had not been thoroughly questioned and about the information he is still holding back.

[63] In a questionnaire sent by the Respondent and signed and dated September 3, 2013, by the Appellant,³⁶ the Appellant stated that he and his wife left Montréal in 1996, but he indicated in another letter that he had left in 1994.³⁷ Furthermore, in his testimony before the Tribunal, the Appellant admitted that he had left Canada on August 15, 1995, after he sold his house, which the Appellant confirmed in another questionnaire requested by the Respondent.³⁸ The Appellant therefore gave three different years to describe the same event—his leaving Montréal for Florida.

[64] The Tribunal notes that the Appellant makes approximate statements about the dates he uses and that it cannot exactly rely on the dates he provided.

[65] The Appellant said he was a taxi driver in Montréal from 1974 to 1994.³⁹ At the hearing, the Appellant said that he stopped working as a taxi driver in 1995. However, he did not file tax returns from 1980 to 1985, from 1995 to 2001, or in 1995. When asked about the fact that he had not filed a tax return in 1995, the Appellant answered that he did not think he had to file a tax return in 1995 because he had left Canada, and he eventually said that he had not really worked much in 1995. For the other years for which the Appellant did not file tax returns, the Appellant

³⁵ GD2-169.

³⁶ GD2-82.

³⁷ GD2-23 to 24.

³⁸ GD2-142.

³⁹ GD2-107 and 112.

argued that he thought that the little money he made driving a taxi was not subject to tax.⁴⁰ As for the apartment building⁴¹ that the Respondent [*sic*] owned for two or three years from approximately 1982 to 1985, the Appellant argued during his testimony that the money used to buy the building came from Haiti and was given to him by his father, even though the building was registered in his name and he said he reported the income and expenses from this building in his tax returns.

[66] The Tribunal has a hard time believing the Appellant's lack of knowledge about the obligations and rules relating to his tax returns given that the Appellant was a business man operating as a self-employed worker in the taxi industry for several years and that he was the sole owner of an eight-unit rental property⁴² for two to three years, which also involved tax obligations. It is difficult for the Tribunal to believe that the Appellant did not know his obligations concerning his annual tax return, and it can only conclude that the Appellant did not want to disclose his actual situation to the governments.

[67] According to the Appellant's QPP contribution report,⁴³ the last year he contributed to the QPP was 1993. However, the Appellant told the Tribunal that he had not worked much as a taxi driver in 1995, but that he had worked normally in 1994. When asked why he did not make contributions to the QPP in 1994 and 1995 even though he says he worked, the Appellant answered that it was self-employment and that you could forget to contribute to the QPP and that it was different for salaried employees. The Tribunal has difficulty believing the Appellant given that the Appellant was a business man operating as a self-employed worker in the taxi industry and that he was the sole owner of an eight-unit rental property⁴⁴ for two to three years, also involving tax obligations and the reporting of social benefits. It is difficult for the Tribunal to believe that the Appellant did not know his obligations to the QPP, and it can only conclude that the Appellant did not want to disclose his actual situation to the governments.

⁴⁰ GD2-136, question i.

⁴¹ GD2-136, question iv.

⁴² GD2-136.

⁴³ GD2-100.

⁴⁴ GD2-136.

[68] The Appellant said he operated a taxi from approximately 1972 to 1995. The Appellant testified that, to be able to drive a taxi, the municipal by-law required taxi drivers to undergo an annual medical exam. When asked why the medical history from the RAMQ⁴⁵ does not include any visits between November 25, 1991, and July 28, 1994, he answered simply that the City of Montréal required a medical visit without answering the question and that he did not know why the annual medical visits were not registered.

[69] Generally speaking, the Tribunal has difficulty accepting the Appellant's statements, and notes that the Appellant made approximate statements without clearly answering the questions, which leaves the Tribunal with doubts based on a balance of probabilities.

[70] The burden of proof, on a balance of probabilities, is on the Appellant. The Tribunal finds that the Appellant failed to meet his burden of proof and that the Appellant's credibility is unreliable in the absence of objective documents.

The Appellant's Ties in Canada and Haiti

[71] The Appellant has social and family ties in both countries.

[72] His three children were born in Canada, and he has a daughter who still lives in Canada. He also has other family and friends in Canada. He has family and friends in Haiti as well. When he is in Canada, he lives with family for free while he is there. The Tribunal finds that the Appellant's social and family ties are relatively comparable in both countries. However, the Tribunal finds that his housing connection is stronger in Haiti than it is in Canada given the fact that he is currently living in Haiti and has been since 1995 and that he was living in the family home and paying its utility bills until it was sold. In Canada, he has no house or property in his name, and he lives with family members while he is visiting Canada and is not responsible for paying any utilities.

[73] The Appellant has had other ties in Canada. He had a driver's licence until approximately 2008 and filed tax returns. The Appellant has had a vehicle in Haiti for four or five years, and he

⁴⁵ GD2-90.

has not had a vehicle in Canada since at least 1995. The Appellant no longer has a Quebec health insurance card.

[74] In the Appellant's case, the Tribunal gives significant weight to the regularity and length of stays in Canada criterion, and the frequency and length of absences from Canada. The Appellant admitted that he had not moved back to Canada since leaving the country in August 1995 and that, when he did come to Canada after 1995, it was for only short trips of one or two months, even though he intended to move back to Canada permanently. A person's intentions are not decisive. You need to have significant roots in Canada, which is much more than having an address in the country and a place to stay when you are there.⁴⁶ This is true for the day before the OAS application was approved, on March 5, 2013; from January 1, 1980, to October 1, 1984; as well as since August 16, 1995.

Was the Appellant a resident of Canada under the OAS Act from January 1, 1980, to October 1, 1984?

[75] In a questionnaire completed by the Appellant and received by the Respondent on May 17, 2016, the Appellant stated that, from July 1980 to September 1984, he lived on X in Port-au-Prince,⁴⁷ and in another questionnaire completed by the Appellant and received by the Respondent on July 14, 2016, the Appellant stated that he lived in Haiti from October 1980 to July 1984.⁴⁸

[76] The Tribunal notes that, during the same years, the Appellant did not file his tax returns for the years 1980 to 1985,⁴⁹ that he had no medical visits covered by the Régie de l'assurance maladie du Québec [Quebec's health insurance plan] (RAMQ) from November 1, 1981, start date of the report received from the RAMQ and submitted by the Respondent,⁵⁰ until October 1, 1984, and that he had no employment income eligible for the Québec Pension Plan (QPP) from 1980 to 1985.⁵¹ The Appellant did not dispute this information. Furthermore, the Tribunal notes

⁴⁶ *Canada (MHRD) v Ding*, 2005 FC (Federal Court) 76.

⁴⁷ GD2-141.

⁴⁸ GD2-144.

⁴⁹ GD2-147.

⁵⁰ GD2-90.

⁵¹ GD2-100.

that the Appellant made approximate statements about the dates that he uses, and it cannot exactly rely on the dates he provided.

[77] The Respondent argues that the Appellant was not a resident of Canada from January 1, 1980, to October 1, 1984, because he cannot prove, on a balance of probabilities, that he was living in Canada during that time.

[78] The burden of proof, on a balance of probabilities, is on the Appellant. The Tribunal finds that the Appellant has failed to meet his burden proof and that he was not a resident of Canada under the OAS Act from January 1, 1980, to October 1, 1984.

Has the Appellant been a resident of Canada under the OAS Act since August 16, 1995?

[79] The Respondent submits that the Appellant has not been a resident of Canada under the OAS Act since August 16, 1995.

[80] During his testimony, the Appellant admitted that he had not moved back to Canada since leaving the country in August 1995, and that his trips to Canada after 1995 were for only short visits of one or two months, but that he did intend to move back to Canada permanently.

Was the Appellant a resident of Canada under the OAS Act the day before the approval of his OAS application, on March 5, 2013?

[81] The Respondent submits that the Appellant has not been a resident of Canada in accordance with the OAS Act since August 16, 1995.⁵²

[82] During his testimony, the Appellant admitted that he had not moved back to Canada since leaving the country in August 1995, that his trips to Canada after August 1995 were for only short visits of one or two months, but that he did intend to move back to Canada permanently.

[83] The Tribunal therefore accepts the Respondent's position that the Appellant has not been a resident of Canada under the OAS Act since August 15, 1995, given that the Appellant has

⁵² IS4-14, paragraph 39.

admitted this as well. The Appellant must therefore have lived in Canada for at least 20 years to be eligible for OAS.

[84] I can only find, on a balance of probabilities, that from January 1, 1980, to October 1, 1984, and as of August 16, 1995, the Appellant did not make his home and ordinarily live in any part of Canada.

CONCLUSION

[85] The onus is on the Appellant to prove that he made his home and ordinarily lived in Canada. The Tribunal finds that the Appellant's Canadian residence under the OAS Act started on October 25, 1971.

[86] The Tribunal finds that the Appellant was not a resident of Canada under the OAS Act from January 1, 1980, to October 1, 1984.

[87] During his testimony, the Appellant admitted that he had not moved back to Canada since leaving the country in 1995, and that his trips to Canada after 1995 were for only short visits of one or two months, even though he intended to move back to Canada permanently.

[88] Based on the evidence on file and the parties' testimonies at the hearing, the Tribunal finds that the Appellant was not a resident of Canada under the OAS Act from January 1, 1980, to October 1, 1984, and has not been a resident of Canada under the OAS Act since August 16, 1995. Therefore, the day before his OAS application was approved, on March 5, 2013, the Appellant was not a resident of Canada under the OAS Act, and he must have lived in Canada for at least 20 years to be eligible for OAS.

[89] Given that I have concluded that the Appellant was a resident of Canada under the OAS Act from October 25, 1971, to December 31, 1979, and from October 2, 1984, to August 15, 1995, for a total of 19 years and 21 days, I find that the Appellant has not resided in Canada for at least 20 years under the OAS Act to be eligible for OAS.

[90] The appeal is dismissed.

François Guérin
Member, General Division – Income Security