



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CT v Minister of Employment and Social Development and CA*, 2020 SST 1227

Tribunal File Number: GP-18-2514

BETWEEN:

**C. T.**

Appellant

and

**Minister of Employment and Social Development**

Minister

and

**C. A.**

Added Party  
GP-18-2515

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: François Guérin

Date of decision: October 9<sup>th</sup>, 2020



## **DECISION**

[1] The Tribunal finds that the appellant failed to meet her burden and prove on the balance of probabilities that she was a resident of Canada since her date of landing in Canada, on June 16<sup>th</sup>, 1990. Therefore, the appellant was not a resident of Canada on the day before her OAS application was initially approved.

## **OVERVIEW**

[2] The applicant was born in Peru on April X, 1929. She arrived in Canada on June 16<sup>th</sup>, 1990 as a permanent resident.<sup>1</sup> She turned 65 years old on April X, 1994. She applied for an Old Age Security Pension (OAS) in January 2004.<sup>2</sup> The OAS pension was approved on August 25<sup>th</sup>, 2004, effective February 2003, 11 months before the month in which the application was received.<sup>3</sup> On her OAS application, she indicated that she wanted to apply for the Guaranteed Income Supplement (GIS).<sup>4</sup> The GIS application was also approved.

[3] After an investigation, the Minister revised the appellant's periods of residence in Canada and concluded that the appellant was only present in Canada since at least April 2003. As a result, the Minister found the appellant did not qualify for an OAS pension and the GIS. The Minister informed the appellant of its decision on September 11<sup>th</sup>, 2017.<sup>5</sup>

[4] The appellant submitted a request for reconsideration of the decision on December 13<sup>th</sup>, 2017<sup>6</sup> and the Minister maintained its decision on July 3<sup>rd</sup>, 2018.<sup>7</sup>

[5] The appellant appealed the reconsideration decision to the Social Security Tribunal.<sup>8</sup>

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<sup>1</sup> GD2-75

<sup>2</sup> GD2-8 to 11

<sup>3</sup> GD7-3, paragraph 7

<sup>4</sup> GD2-9, question 11

<sup>5</sup> GD4-8 paragraph 24

<sup>6</sup> GD2-6 to 7

<sup>7</sup> GD2-3 to 5

<sup>8</sup> GD1

## PRELIMINARY MATTERS

[6] The Minister requested that the added party be added to this hearing as a party to this appeal as the added party has a direct interest in the outcome of the appeal. The Tribunal opened a case numbered GP-18-2515 for the added party as he also filed an appeal with the Tribunal.

[7] The appellant requested that the form of the hearing be by written questions and answers.<sup>9</sup> On March 4<sup>th</sup>, 2020, the Tribunal sent a Notice of Hearing<sup>10</sup> to the appellant including 28 questions with some sub-questions. The Tribunal gave the appellant until April 17<sup>th</sup>, 2020 to respond to these questions. The Tribunal received a response from the appellant on April 4<sup>th</sup>, 2020 via email.<sup>11</sup> This response included a two-page letter in English signed by her husband dated March 4<sup>th</sup>, 2020 (sic) and referring to the Notice of Hearing dated March 3<sup>rd</sup>, 2020 (sic), invoices in Spanish and medical reports in Spanish. The appellant provided a non-official translation into English.

[8] On June 1<sup>st</sup>, 2020, the Tribunal sent a letter to the appellant reminding her to respond to the questions asked by the Tribunal in the Notice of Hearing dated March 4<sup>th</sup>, 2020 and to make sure to answer each question one by one and in the same order. The Tribunal extended the time limit to respond to these questions to July 3<sup>rd</sup>, 2020.<sup>12</sup>

[9] As the Tribunal did not receive a response from the appellant and given the COVID-19 pandemic and the situation worldwide, the Tribunal decided to give more time to the appellant to respond to its questions. On July 14<sup>th</sup>, 2020, the Tribunal sent another letter to the appellant reminding the appellant another time to respond to the questions asked by the Tribunal in the Notice of Hearing dated March 4<sup>th</sup>, 2020 and to make sure to answer each question one by one and in the same order. The Tribunal extended another time the time limit to respond to these questions to August 28<sup>th</sup>, 2020.<sup>13</sup>

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<sup>9</sup> GD1-1, question 2

<sup>10</sup> GD0

<sup>11</sup> GD6 (and GD9 in GP-18-2515)

<sup>12</sup> GD7

<sup>13</sup> GD8

[10] As the appellant sent no response to the Tribunal and given the fact that the Tribunal gave ample time and opportunity to the appellant to respond, the Tribunal will decide on the issues using the submissions received from both parties up to the date of this decision.

[11] Revisiting an initial decision is an extraordinary remedy. This is the issue in this matter. In its submission, the Minister relied on section 23.1 of the *OAS Regulations*.<sup>14</sup> The Minister believes that the appellant received a benefit to which she was not entitled. The broad powers afforded to the Minister help to balance the goals of honoring undue delay in processing applications with the need to safeguard the OAS purse strings by denying payment of benefits to those not entitled. I am aware of an AD decision<sup>15</sup> that questions the Minister's power under section 23.1 of the Regulation. I am not compelled to follow the reasoning in the AD decision and I find that the Minister's power to reassess eligibility is broad and extends to cases where there is no suggestion of fraud or misrepresentation.

## **ISSUES**

[12] Was the appellant a resident of Canada as per the *OAS Act* since her date of landing in Canada on June 16<sup>th</sup>, 1990?

[13] Was the appellant a resident of Canada at the time she submitted her OAS application?

## **THE LAW**

### **Who is entitled to an OAS pension?**

[14] Section 3(2) of the *OAS Act* states that a partial pension may be paid to a pensioner. The pensioner must have attained sixty-five years of age and have resided in Canada for an aggregate period of at least 10 years after attaining eighteen years of age. He must have been a resident of Canada on the day preceding the day on which that person's application is approved. If the pensioner is not a resident of Canada the day preceding the approval of a pension, this person must have resided in Canada for at least 20 years after attaining eighteen years of age.

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<sup>14</sup> GD4-10, paragraph 31

<sup>15</sup> *BR v Minister of Employment and Social Development*, 2018 SST 844

[15] Section 5 of the OAS Regulations determines the date of approval of an application for a pension. In this case, the Application was approved on August 25<sup>th</sup>, 2004. Therefore, the appellant must have been a resident of Canada on August 24<sup>th</sup>, 2004.

[16] Section 23(1) of the Regulations gives the Minister the right to revise an application before or after it approves the application.

[17] For the purpose of the *OAS Act* and its regulations, a person resides in Canada if he makes his home and ordinarily lives in any part of Canada. This concept is different from a presence in Canada. A person is present in Canada when he is physically present in any part of Canada.<sup>16</sup> A person can be present in Canada without being a resident of Canada.

[18] Residency is a factual issue that requires an examination of the whole context of the individual. The subjective intentions of the person are not decisive in determining residency. The *Ding*<sup>17</sup> decision established factors to consider to guide the Tribunal when determining residency :

- a. Ties in the form of personal property;
- b. Social ties;
- c. Other ties to Canada (medical coverage, driver's licence, rental lease, tax records, etc.);
- d. Ties in another country;
- e. Regularity and length of stays in Canada in relations to the frequency and duration of absences from Canada;
- f. Lifestyle and mode of living of the person or is the person living in Canada significantly rooted in Canada.<sup>18</sup>

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<sup>16</sup>Old Age Security Regulations, Paragraph 21(1)

<sup>17</sup> *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

<sup>18</sup> *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76

[19] The appellant must prove on the balance of probabilities that she was a resident of Canada during this period.<sup>19</sup>

[20] I will now consider the factors established in the *Ding* decision in my analysis in order to decide when the appellant was a resident of Canada. To come to my conclusion, I will use the documents submitted by both parties up to the date of this decision.

## ANALYSIS

[21] The appellant submits that, as of October 12, 2018, the date she signed her Notice of Appeal to the Tribunal,<sup>20</sup> she was never absent from Canada for more than 6 months, except once when he was absent from Canada for the period from March 2005 to August 2007.<sup>21</sup>

[22] In response to a question asked by the Minister in a questionnaire dated March 28<sup>th</sup>, 2017, the appellant confirmed that she was in Peru from March 31<sup>st</sup>, 2005 until May 10<sup>th</sup>, 2007.<sup>22</sup> In that same questionnaire, she also confirmed that she left Canada temporarily on November 19, 2016.

[23] In a letter to the Minister dated November 21<sup>st</sup>, 2017, the appellant submitted that she lived in X, BC, from 1990 to 2005 and in X, QC, from 2007 to October 2016.<sup>23</sup> In the same letter, the appellant submitted that she always travelled within the framework of the law.

[24] The Minister submits that the appellant's entire residence history she declared as residence in Canada on her OAS application has been determined, after investigation, to be presence and not residence in Canada.<sup>24</sup> As the appellant had insufficient periods of residence to qualify for a partial OAS pension, the Minister denied her OAS and GIS applications. This resulted in a total overpayment of \$138,961.66.<sup>25</sup>

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<sup>19</sup> *De Carolis v Canada (AG)*, 2013 FC 366

<sup>20</sup> GD1-3, part 9

<sup>21</sup> GD1-2, part 4

<sup>22</sup> GD2-72

<sup>23</sup> GD2-6 to 8

<sup>24</sup> GD4-1, paragraph 2

<sup>25</sup> GD4-2, paragraph 2

[25] The Appellant was born in Peru on April 3<sup>rd</sup>, 1929. The Minister states that she applied for an OAS pension in January 2004<sup>26</sup> and that she has lived in Canada from June 16<sup>th</sup>, 1990 to the date appearing on the OAS application. The appellant submitted her landed immigrant document showing that she arrived in Canada on June 16<sup>th</sup>, 1990.<sup>27</sup>

[26] The Minister noted that the appellant was a late applicant. The Minister received the appellant's OAS application in January 2004 and approved it on August 25<sup>th</sup>, 2004, effective February 2003, eleven months before the month in which the application was received. At the time of this approval, the Minister determined that the Appellant had resided in Canada for 12 years.<sup>28</sup>

[27] After investigation, the Minister determined that the appellant ordinarily lived in Peru and that the time she spent in Canada were brief visits that could only be considered presence.<sup>29</sup>

[28] The Minister stated that the appellant and her husband called in February 2017 in order to change their address from Canada to Peru. However, when they were advised of the possibility of loss of benefits, they decided to remain in Canada. The Minister suggested that the appellant and his spouse intended to move to Peru.<sup>30</sup>

[29] On March 29<sup>th</sup>, 2017, the appellant submitted copies of four passports (two issued by the government of Peru, one of those including a prorogation period, and two issued by the government of Canada). The passports issued by the government of Peru covered the periods from April 22, 2003 to April 22, 2008 (issued in X, Peru),<sup>31</sup> from April 29, 2008 to April 29, 2013<sup>32</sup> (prorogation issued in X, Peru, and included in previous passport), and from April 24, 2013 to April 24, 2018 (issued in X, Peru).<sup>33</sup> The passports issued by the government of Canada

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<sup>26</sup> GD2-8 to 11

<sup>27</sup> GD2-75

<sup>28</sup> GD4-3, paragraph 7

<sup>29</sup> Old Age Security Regulation, s. 21(1)b)

<sup>30</sup> GD4-4, paragraph 14

<sup>31</sup> GD2-95 to 103

<sup>32</sup> GD2-102 to 103

<sup>33</sup> GD2-104 to 112



covered the periods from April 7, 2010 to April 7, 2015 (issued in X, Peru)<sup>34</sup> and from March 25, 2015 to March 25, 2020 (issued in X, Peru).<sup>35</sup>

[30] The Tribunal noted that the appellant declared a permanent residence address in X in her 2010 Canadian passport<sup>36</sup> and no permanent residence address in her 2015 Canadian passport.<sup>37</sup>

[31] The Minister noted that the appellant stated that her only absence from Canada for more than 6 months was from March 2005 to May 2007. However, the study of the stamps from her passports submitted on March 29<sup>th</sup>, 2017 shows frequent and lengthy absences from Canada.<sup>38</sup> Therefore, the Minister concluded that the appellant has only presence in Canada and no period of residence since at least April 2003.<sup>39</sup>

[32] In an internal note, the Minister noted that the appellant did not return the requested documents and signed consent forms, that the appellant was non compliant in order to establish her residence for the period from her date of landing in Canada on June 16<sup>th</sup>, 1990 up to and including April 2003. The appellant did not provide the Minister with the required authorizations in order to contact other government agencies and private organizations.<sup>40</sup>

[33] The Tribunal asked the appellant various questions in order to establish the appellant's ties to Canada as per the *Ding*<sup>41</sup> decision. However, in her response<sup>42</sup> to the Tribunal's Notice of Hearing dated March 4<sup>th</sup>, 2020,<sup>43</sup> the appellant submitted only a one-line email stating that she attached a letter<sup>44</sup> and some documents (medical notes/reports, prescriptions written in Spanish). She also mentions that the paperwork and information requested is 30 years old. The Tribunal noted that a non-official translation into English was included. The Tribunal also noted that this

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<sup>34</sup> GD2-78 to 84

<sup>35</sup> GD2-85 to 94

<sup>36</sup> GD2-79

<sup>37</sup> GD2-86

<sup>38</sup> GD2-16 to 18

<sup>39</sup> GD4-11, paragraph 35

<sup>40</sup> GD2-21 to 22

<sup>41</sup> *Canada (Ministre du Développement des Ressources Humaines) v Ding*, 2005 CF 76.

<sup>42</sup> GD6 (and GD9 in GP-18-2515)

<sup>43</sup> GD0

<sup>44</sup> GD6-6 to 7 (GD9-6 and 7)

letter and these documents do not answer the questions that the Tribunal asked to the appellant in its Notice of Hearing.

- a. Ties in the form of personal property. The Tribunal asked questions to the appellant in order to know if the appellant had real estate investments, rentals, companies and other goods in Canada but did not receive an answer. The Tribunal also asked questions about the specific addresses on record. The Tribunal did not receive a response to this question. However, the Tribunal noted that the appellant declared some rental income from 2002 to 2004.<sup>45</sup>
- b. Social ties. The Tribunal asked the appellant about her work experience in Canada since her date of landing and her social activities in Canada. The Tribunal did not receive an answer. However, the Tribunal noted that she submitted an activity center membership pass that expired on August 31<sup>st</sup>, 2001 and a X, BC, public library card.<sup>46</sup>
- c. Other ties to Canada (medical coverage, driver's licence, rental lease, tax records, etc.). The Tribunal asked the appellant about her medical coverage in Canada, her bank accounts with Canadian financial institutions, her contributions to Canadian pension plans, her insurance contracts in Canada (any kind), her Canadian driving history, her Canadian income tax declaration history, her accounts with any public or private utilities. The Tribunal did not receive a response to these questions. However, the Tribunal noted that the appellant and her husband have a joint bank account with BMO since 2010.<sup>47</sup> The Tribunal noted that the branch is in X, BC, and the declared residential addresses are in X, QC. The X address seems to have changed around October 2011. The Tribunal noted that there is no assessment information at the Canada Revenue Agency from 1989 to 2001, in 2005 and 2006, and in 2016.<sup>48</sup>

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<sup>45</sup> GD2-41 to 46

<sup>46</sup> GD2-74

<sup>47</sup> GD2-95 to 405 in GP-18-2515

<sup>48</sup> GD2-28 to 40, 47, 48 and 60

- d. Ties in another country. The Tribunal asked the same questions as noted above pertaining to ties with any other country but did not receive an answer.
- e. Regularity and length of stays in Canada in relations to the frequency and duration of absences from Canada. The Minister submitted a chart with all the passport stamps retrieved from the five passports the appellant submitted.<sup>49</sup> This chart shows that from April 2003 up to April 2017, when the appellant was still in Peru, there is little presence in Canada. The appellant did not provide the Minister with authorizations to obtain information from government agencies and private organizations in order to obtain information for the period from February 1990 to April 2003. The appellant did not respond to the Tribunal's question.
- f. Lifestyle and mode of living of the person or is the person living in Canada significantly rooted in Canada. The Tribunal asked the appellant where she considered herself a resident and why, and to be as specific and detailed as possible. The Tribunal also asked the appellant why her attachment and roots to Canada are greater than in Peru since her date of landing in Canada. The Tribunal did not receive a response to this question.

[34] The Minister sent a questionnaire to the appellant and received the completed questionnaire on March 30<sup>th</sup>, 2017.<sup>50</sup> In her answers, the appellant confirmed that she has no creditable periods of social security in Peru. The appellant stated that she lived in X, BC, from 1990 to 2005 and was absent from Canada from March 2005 until May 2007 and that came back to live in X. She confirmed that when she is in Peru she lives in an apartment with her husband, daughter and sister. She confirmed that her relatives are in Canada and Peru.

[35] In the same questionnaire, the appellant confirmed that her husband supports her and that when she is in Canada she lives with her husband and his goddaughter. She confirmed that between 1990 and 2003 her occupation and activities consisted as housekeeping and baby-sitting

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<sup>49</sup> GD2-16 to 18

<sup>50</sup> GD2-70 to 71

and that her husband supported her. The appellant confirmed that she filed an income tax return since she arrived in 1990.

[36] On the completed questionnaires requested by the Minister and received on March 29<sup>th</sup>, 2017<sup>51</sup> and on May 4<sup>th</sup>, 2017,<sup>52</sup> the appellant provided two different Montreal area phone numbers. The Minister attempted to contact the appellant on May 23<sup>rd</sup>, 2017 and was only able to speak to the appellant's goddaughter who confirmed that it was her phone number.<sup>53</sup>

[37] The Tribunal noted that the Minister sent to the appellant a request to sign and return Consents to Disclose Personal Information from Passport Canada, The Régie de l'assurance-maladie du Québec, Canada Border Service Agency and the BC Ministry of Health.<sup>54</sup>

[38] The Minister reported that the appellant failed to provide these consents.<sup>55</sup> The Minister conducted an investigation and noted that all phone numbers under the appellant and her spouse's addresses belong to their son.<sup>56</sup> The Minister reported that the information received from the BC Land Titles revealed that their son was the owner of the home for two of the appellant and her spouse's address and that a third address might have been owed by a relative as the owner has the same last name as her maiden name.

[39] The appellant did not respond to the questions asked by the Tribunal on the Notice of Hearing dated March 4<sup>th</sup>, 2020.<sup>57</sup> The Tribunal cannot find sufficient information and proof, that she could have obtained from government authorities for example, in the appellant's submissions that would support that the appellant was a resident of Canada as per the *OAS Act* since her date of landing on June 16<sup>th</sup>, 1990.

[40] The Tribunal finds that the appellant has some ties in Canada since her date of landing in Canada on June 16<sup>th</sup>, 1990. Her son lives in Canada. However, she also has family in Peru where she has a daughter. When she is in Canada, the appellant lived at her son's address when

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<sup>51</sup> GD2-72

<sup>52</sup> GD2-70 and 71

<sup>53</sup> GD4-6, paragraph 20

<sup>54</sup> GD2-23 and 24

<sup>55</sup> GD4-7, paragraph 23

<sup>56</sup> GD7-7, paragraph 25

<sup>57</sup> GD0

she was in BC and at her husband goddaughter's address when she was in Québec. The appellant provided a BC Medical Insurance and a RAMQ Health Card. However, for example, without decoded summaries of the health services received in these two provinces, it is difficult to establish the appellant's ties to Canada, especially since she did not respond to the Tribunal's questions. The appellant does not appear to have any personal property, contracts with public or private utilities, leases, mortgages or financial ties to Canada except for a joint BMO bank account since 2010. The appellant submitted income tax returns for 2002 to 2004 and for 2007 to 2015. The appellant did not provide the Tribunal with responses to its questions to clarify why she did not submit her income tax returns every year.

[41] In light of the four passports and passport prorogation submitted on March 29<sup>th</sup>, 2017 covering the period from April 2003 to March 2020 and her call to inform the Minister that she was in Peru since November 19<sup>th</sup>, 2016, the Tribunal finds that the appellant's regularity and length of stays in Canada do not support a residence in Canada since April 2003. As the appellant did not cooperate with the Minister in order to provide supporting evidence for a residence in Canada from February 1990 to April 2003, and because the appellant did not respond to the questions asked by the Tribunal in the Notice of Hearing dated March 4<sup>th</sup>, 2020, the Tribunal finds that the appellant's regularity and length of stays in Canada since February 10<sup>th</sup>, 1990 do not support a residence in Canada.

[42] The Tribunal finds the appellant's ties with Peru are stronger. She has family in Peru. All her Peruvian and Canadian passports submitted to the Minister were issued in Peru and show that she is in Peru the majority of the time since April 2003.

## CONCLUSION

[43] The appellant must prove on the balance of probability that she was a resident of Canada since the date of her landing in Canada on June 16<sup>th</sup>, 1990.<sup>58</sup>

[44] The appellant did not cooperate with the Minister's investigation in order to establish her residence in Canada as per the *OAS Act* for the period from her date of landing in Canada on June 16<sup>th</sup>, 1990 up to April 2003, as the Appellant did not provide the Minister with the required

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<sup>58</sup> *De Carolis v Canada (AG)*, 2013 FC 366

authorizations in order to contact other government agencies and private organizations.<sup>59</sup> The Tribunal gives a lot of weight to the factor pertaining to the regularity and length of stays in Canada in relations to the frequency and duration of absences from Canada. The Minister submitted a chart with all the passport stamps retrieved from the five passports the appellant submitted.<sup>60</sup> This chart shows that from April 2003 up to April 2017, the appellant was the majority of the time in Peru and spent very little time in Canada. The appellant did not respond to the questions asked by the Tribunal on the Notice of Hearing dated March 4<sup>th</sup>, 2020.<sup>61</sup>

[45] The appellant must prove on the balance of probabilities that she was a resident of Canada.<sup>62</sup> The Tribunal finds that the appellant failed to meet her burden and prove on the balance of probabilities that she was a resident of Canada since her date of landing in Canada, on June 16<sup>th</sup>, 1990.

[46] As the Tribunal finds that the appellant has not been a resident of Canada as per the *OAS Act* since her date of landing in Canada on June 16<sup>th</sup>, 1990, therefore, the appellant was not a resident of Canada on the day before her OAS application was initially approved.

[47] The appeal is dismissed.

François Guérin  
Member, General Division - Income Security

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<sup>59</sup> GD2-11

<sup>60</sup> GD2-14 to 18

<sup>61</sup> GD0

<sup>62</sup> *De Carolis v Canada (PG)*, 2013 CF 366