



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *YK v Minister of Employment and Social Development*, 2020 SST 892

Tribunal File Number: AD-20-796

BETWEEN:

**Y. K.**

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: Valerie Hazlett Parker

Date of Decision: October 13, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal is refused.

### **OVERVIEW**

[2] Y. K. was born and raised in Japan. He worked in Canada for approximately three years. He applied for an *Old Age Security Act* pension (OAS) after he returned to Japan.

[3] The Minister of Employment and Social Development refused the application. It decided that the Claimant had not resided in Canada long enough to be eligible for this pension. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant had not resided in Canada long enough to be eligible for the pension, and the treaty between Canada and Japan did not assist him.

[4] Leave to appeal the General Division decision to the Tribunal's Appeal Division is refused. The appeal does not have a reasonable chance of success on the basis that the General Division made an error in law.

### **ISSUES**

[5] Does the appeal have a reasonable chance of success because the General Division made at least one of the following errors in law

- a) that the OAS is payable only to those who are at least 65 years old?
- b) that a claimant must have resided in Canada for 20 years to receive OAS?
- c) that the treaty between Canada and Japan does not assist the Claimant to receive OAS?

### **ANALYSIS**

[6] An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only 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.<sup>1</sup>

[7] However, a claimant must first obtain leave (permission) to appeal. Leave to appeal to the Appeal Division must be refused if the appeal does not have a reasonable chance of success.<sup>2</sup> Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

### **Age requirement**

[8] First, the Claimant says that the General Division erred when it stated that OAS is only payable to someone who has turned 65 years of age.<sup>3</sup> But the *Old Age Security Act* says that a person must be 65 years old to receive the pension.<sup>4</sup> Therefore, the appeal does not have a reasonable chance of success on this basis.

### **Residence Requirement**

[9] Second, the Claimant says that the General Division made an error when it stated that he did not qualify for OAS because he did not have 20 years of Canadian residence. However, the *Old Age Security Act* says that when a person has been resident in Canada for less than 20 years after they turned 18, they must be resident in Canada on the day before their application is approved to receive OAS.<sup>5</sup> The Claimant was a Japanese resident when he applied for OAS. The appeal does not have a reasonable chance of success on this basis.

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<sup>1</sup> This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

<sup>2</sup> *Department of Employment and Social Development Act* s. 58(2)

<sup>3</sup> General Division decision at para. 5

<sup>4</sup> *Old Age Security Act* s. 3(1)(b)

<sup>5</sup> *Old Age Security Act* s. 3(2)(b)

### **Treaty between Canada and Japan**

[10] Finally, the Claimant says that the General Division made an error because the spirit of the treaty between Canada and Japan on social security matters is designed to avoid dual payment of social security by both Japan and Canada. He asks that the Tribunal respect the basic spirit of the treaty.

[11] However, the Tribunal is created by legislation. As such it only has the legal authority granted to it in its governing legislation. It cannot bend the residence requirements social benefits scheme. It must apply the relevant law as it is written, and not apply what one party says is the spirit of the treaty. The appeal does not have a reasonable chance of success on this basis.

### **CONCLUSION**

[12] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	Y. K., Self-represented
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