



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CN v Minister of Employment and Social Development*, 2020 SST 1096

Tribunal File Number: GP-19-1619

BETWEEN:

C. N.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Date of decision: November 17, 2020

DECISION

[1] The Claimant is not entitled to an *Old Age Security* (OAS) pension.

OVERVIEW

[2] The Minister received the Claimant's application for a Canadian OAS pension under the Agreement on Social Security between Canada and the Republic of Korea on October 11, 2018¹. The Minister denied the application initially and on reconsideration. The Minister determined the Claimant did not substantiate that he was *legally resident* in Canada on the day preceding the day he ceased to reside in Canada. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for an OAS pension, an applicant must meet the eligibility requirements set out in the *Old Age Security Act* (OASA). An applicant, who is not a Canadian citizen, and who ceased to reside in Canada, is eligible for a pension only if that person was *legally resident* in Canada on the day preceding the day the applicant ceased to reside in Canada². *Legal residence* for the purposes of the OASA means that person was lawfully in Canada pursuant to the immigration laws of Canada on the day before the day that person ceased to reside in Canada³.

[4] I decided this appeal, as requested by the Claimant, based upon the documents and submissions filed. I determined I did not require any additional evidence to make my decision, as the relevant evidence in the file is clear and non-contradictory. I made my decision after a review of all documentation and submissions contained in the file.

ISSUE(S)

[5] Was the Claimant *legally resident* in Canada on the day preceding the day he ceased to reside in Canada?

¹ GD2 pages 27-30

² Section 4(1)(b) OASA

³ Paragraph 22(1)(a) *Old Age Security Regulations* (OASR)

[6] If so, did he reside in Canada for a sufficient number of years to qualify for the OAS pension?

ANALYSIS

The Claimant was not *legally resident* in Canada on the day preceding the day he ceased to reside in Canada.

[7] The Claimant was born in the Republic of Korea (Korea) on X. He is a citizen of Korea. He declared on his application that his legal status of residence in Canada at the time of his departure from Canada was “admitted on a Minister’s permit”. He noted on his request for reconsideration⁴ that he came to Canada on a business trip in 1985, and several months later acquired a “work permit” from the Canadian Immigration Centre. He was an employee of a South Korean automotive company. He came to Canada in September 1985 as his employer decided to build a manufacturing facility in Canada. He was supposed to return to Korea once the plant was completed, and did so in August 1990. He did not keep his passport, which included his work permit, and Canada entrance record.

[8] The Claimant, in his notice of appeal dated October 5, 2019⁵, noted he disagreed with the Minister’s decision, as he had lived in Canada with his family, and worked in Canada as an employee of the Korean automotive company while in Canada. He paid Canadian taxes, had a Canadian Social Insurance number and his children attended Canadian schools.

[9] The Claimant indicated, in a Questionnaire dated March 31, 2019⁶ that he never intended to take up permanent residence in Canada when he arrived in September 1985, and did not thereafter apply to become a permanent resident of Canada. He did not apply for permanent resident (landed immigrant) status as he was an employee of the Korean company, and was supposed to return to work for that company in Korea, once his work in Canada was completed. He maintained a residence and medical coverage in Korea while in Canada. He was “a non-

⁴ GD1 pages 5-6

⁵ GD1 pages 2-4

⁶ GD2 pages 31-33

resident” of Canada for income tax purposes. He entered Canada as a visitor. He does not remember the type of visa or entry permit he had when he entered Canada in 1985.

[10] The Claimant gave the Minister written consent dated March 31, 2019 to obtain information from Citizenship and Immigration Canada (CIC)⁷. He noted on the consent that he entered Canada in 1985 as a key member for preparation of a car manufacturing plant. CIC reported October 23, 2019, that they completed their assessment, and are unable to locate any record that he obtained permanent resident status in Canada⁸.

[11] The Claimant provided the Minister with a Royal Trust statement as at December 31, 1989⁹, a Notice of Assessment dated July 25, 1990 regarding his 1989 taxation year¹⁰, wage statements¹¹, a school record dated June 15, 1988¹², a driver’s file dated August 15, 1990¹³, and a Certificate of Merit dated March 30, 1990¹⁴. He submitted these documents should prove he was a resident of Canada.

[12] The Claimant, who was not a Canadian citizen on the day before the day he ceased to reside in Canada, is eligible for an OAS pension only if he was *legally resident* in Canada on the day before he ceased to reside in Canada¹⁵. He must substantiate that he was lawfully in Canada pursuant to the immigration laws of Canada on the day before the day he ceased to reside in Canada¹⁶.

[13] The various documentation provided to the Minister at best substantiates the Claimant lived/was present in Canada, but do not establish he was *legally resident* on the day preceding the day he ceased to reside in Canada. CIC has no record of landed immigrant status. The Claimant was unable to provide a visa, work permit, or other documentation to substantiate *legal residence* status in Canada on the day preceding the day he ceased to reside in Canada.

⁷ GD2 pages 42-43

⁸ GD2 page 18

⁹ GD2 page 36

¹⁰ GD2 page 37

¹¹ GD2 pages 7-10

¹² GD2 page 13

¹³ GD2 page 14

¹⁴ GD2 page 17

¹⁵ Section 4(1)(b) OASA

¹⁶ Paragraph 22(1)(a) OASR

Accordingly, I find he was not *legally resident* in Canada on the day preceding the day he ceased to reside in Canada

[14] The onus is on the Claimant to establish on the balance of probabilities his entitlement to an OAS pension¹⁷. He has not established he met the *legal residence* requirement for eligibility for an OAS pension. As he has not satisfied the *legal residence* status requirements of the OASA, it is not necessary for me to determine whether he resided in Canada for a sufficient number of years to receive an OAS pension under the Agreement on Social Security between Canada and the Republic of Korea.

CONCLUSION

[15] The appeal is dismissed.

Patrick O'Neil
Member, General Division - Income Security

¹⁷ De Carolis v. Canada (Attorney General), 2013 FC 366