



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *MB v Minister of Employment and Social Development*, 2020 SST 1211

Tribunal File Number: GP-19-525

BETWEEN:

M. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: François Guérin

HEARD ON: November 4 and 13, 2020

DATE OF DECISION: December 1, 2020

REASONS AND DECISION

DECISION

[1] The appeal is allowed in part.

[2] The Tribunal finds that the Appellant has not met the burden of showing that he was a resident of Canada from September 10, 2007, to March 16, 2019, and finds that he was not a resident of Canada under the *Old Age Security Act* (OAS Act).

[3] However, the Tribunal finds that the Appellant was a resident of Canada under the OAS Act from March 17, 2019, until his return to Morocco on August 5, 2020.

[4] I decided that the Appellant had not accumulated the minimum 20 years of residence in Canada after turning 18 to receive the Old Age Security (OAS) pension.

OVERVIEW

[5] The Appellant was born in Morocco on January X, 1942, and arrived in Canada on August 10, 1997.¹ He turned 65 on August X, 2007. On September 27, 2011, the Appellant submitted a first OAS pension application² in which he asked to be considered for the Guaranteed Income Supplement (GIS).³ The Respondent forwarded the OAS application to its International Operations Office so that it could be reviewed in accordance with the Canada–Morocco agreement.⁴ On May 12, 2016, the Appellant submitted a second OAS pension application.⁵ This application was also forwarded to the International Operations Office so that it could be reviewed in accordance with the Canada–Morocco agreement.⁶

[6] After the routine checks were completed, the Respondent informed the Appellant on December 12, 2018, that his OAS pension application could not be approved because he stopped

¹ GD2-60.

² GD2-35 to 38.

³ GD2-36, question 11.

⁴ GD2-58 and 59.

⁵ GD2-30 to 34.

⁶ GD2-41 and 42.

being a resident of Canada on September 10, 2007, and that he had less than 20 years of residence in Canada.⁷

[7] On January 9, 2017, the Respondent received a request for reconsideration of its initial decision.⁸ On September 12, 2018, the Respondent informed the Appellant that it was upholding its initial decision after reconsideration.⁹ On March 27, 2019, the Appellant filed a notice of appeal with the Social Security Tribunal (Tribunal).¹⁰

PRELIMINARY MATTER

[8] On July 15, 2020, the Tribunal sent a notice of teleconference hearing to the Appellant and to his representative from the X legal aid office.¹¹ The hearing was scheduled for 10 a.m. on August 18, 2020. On July 20, 2020, the representative asked for an adjournment by email given that neither he nor the Appellant were able to proceed on that date.¹²

[9] On July 28, 2020, the Tribunal sent a new notice of teleconference hearing to the Appellant and to his representative from the X legal aid office.¹³ The hearing was now scheduled for 10 a.m. on September 16, 2020. On September 15, 2020, the representative asked for another adjournment by email, since he was unable to reach his client, and his client had told him that he would be out of the country in August.¹⁴

[10] On September 17, 2020, the Tribunal sent a new notice of teleconference hearing to the Appellant and to his representative from the X legal aid office. The hearing was now scheduled for 10 a.m. on October 8, 2020. On September 19, 2020, in an email to the Tribunal, the Appellant wrote that he had to stay abroad because of COVID and that he could not attend, and he asked for an adjournment.¹⁵ On September 28, 2020, the representative also asked for an

⁷ GD2-8 and 9.

⁸ GD2-6 and 7.

⁹ GD2-4 and 5.

¹⁰ GD1-1 to 5.

¹¹ GD0.

¹² GD8.

¹³ GD0A.

¹⁴ GD9.

¹⁵ GD10.

adjournment for the same reasons.¹⁶ On September 30, 2020, the Tribunal responded to the Appellant and to his representative, saying that the requested adjournment was denied because the Appellant and his representative had already requested two adjournments and they had failed to establish exceptional circumstances, given that the appeal would be heard by teleconference. The appeal date of October 8, 2020, was maintained.

[11] On October 8, 2020, the representative was present for the appeal, but the Appellant was not. The representative made a final request for an adjournment because he was unable to reach the Appellant. The Tribunal granted the request, taking care to point out that this was the last time a request for an adjournment was being granted, given their repeated requests. The hearing was now scheduled for November 4, 2020.

[12] On October 27, 2020, the representative contacted the Tribunal to withdraw from the record.¹⁷

[13] On November 4, 2020, the appeal was heard with the Appellant. However, due to technical problems because the Appellant's battery had died, the hearing was held over two days, specifically November 4 and 13, 2020.

WHAT ARE THE ISSUES?

[14] Has the Appellant been a resident of Canada under the OAS Act since September 10, 2007?

[15] If so, is he eligible to receive an OAS pension?

WHAT IS THE RESPONDENT'S POSITION?

[16] The Respondent submits that the Appellant lived in Canada from his entry into Canada on August 10, 1997, until his return to Morocco on September 10, 2007, for a total of 10 years and 1 month of Canadian residence after age 18.¹⁸ The Appellant reported this information in his

¹⁶ GD11.

¹⁷ GD12.

¹⁸ GD4-3, paragraph 7.

first OAS pension application,¹⁹ and the Respondent accepts it, giving him the benefit of the doubt.²⁰

[17] Because the Appellant does not have the minimum required residence in Canada after age 18, since the Respondent considers that he was a resident of Morocco when he applied for an OAS pension, the Respondent used the Canada–Morocco agreement to help him meet the minimum required under the OAS Act for entitlement to an OAS pension.²¹ The Respondent also submits that, in accordance with the Canada–Morocco agreement, the Appellant has a total of 909 creditable days under the national legislation of the Kingdom of Morocco, or 2 years and 179 days, as confirmed by Morocco’s Centre national de sécurité sociale [national social security centre].²²

[18] The Respondent submits that the Appellant therefore has a total of 12 years and 209 days he can use to qualify for an OAS pension in Canada. This is not enough for entitlement to a partial OAS pension because, under the OAS Act, the Appellant needs at least 20 years of residence in Canada after age 18, since the Respondent considers that the Appellant was not a resident of Canada when he applied for an OAS pension.^{23,24}

WHAT IS THE APPELLANT’S POSITION?

[19] The Appellant testified having been a resident of Canada since he first entered into Canada on August 10, 1997. He considers that he was therefore a resident of Canada when he applied for OAS. When he identified himself at the hearing, the Appellant gave his address in X as his home address.

[20] In his first OAS pension application, the Appellant indicated that he was a resident of Canada from August 10, 1997, to September 10, 2007, and that he lived in Morocco from

¹⁹ GD2-37, question 14.

²⁰ GD4-7, paragraph 26.

²¹ Convention on Social Security between Canada and the Kingdom of Morocco, Part III, Chapter 1, Article 8.

²² GD2-19 to 21 and GD4-8, paragraph 30.

²³ Section 3(2) of the OAS Act states that a partial pension may be paid to a pensioner over the age of 65 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 on the day before the day their application was approved, they must have resided in Canada for at least 20 years after the age of 18.

²⁴ GD4-9, paragraph 31.

September 10, 2007, to September 23, 2011, which is three days before the date the application was signed.²⁵

[21] In his second OAS pension application, the Appellant indicated that he was a resident of Canada from August 10, 1997, to May 31, 2005, and that he lived in Morocco from June 1, 2005, to 2016.²⁶

[22] In a letter written in Morocco on February 26, 2014, in response to a question from the Respondent, the Appellant says that [translation] “[he] returned to Morocco penniless despite having lived in Canada for almost eight years.”²⁷

[23] In his reconsideration request dated December 21, 2016, and sent from Morocco,²⁸ the Appellant stated that he knew he did not meet the conditions required to obtain an old age pension and asked for his application to be considered on a humanitarian and exceptional basis given that all his savings had gone up in smoke when he came to Canada and that he had invested all his savings there.

ANALYSIS

[24] Therefore, I have to decide whether the Appellant has been a resident of Canada since September 10, 2007, the last day of residence in Canada recognized by the Respondent.

[25] The burden of proof, on a balance of probabilities, is on the Appellant.²⁹

[26] 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.³⁰ A person can be present in Canada without being a resident of Canada.

²⁵ GD2-37, question 18.

²⁶ GD2-32, question 14.

²⁷ GD2-45 to 47.

²⁸ GD2-6 and 7.

²⁹ *De Carolis v Canada (Attorney General)*, 2013 FC 366.

³⁰ Section 21(1) of the *Old Age Security Regulations*.

[27] 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*³¹ sets out a non-exhaustive list of factors to consider to guide the Tribunal in deciding the issue 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 stays in Canada compared with 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

[28] The Appellant has to prove that it is more likely than not that he lived in Canada during the relevant period, that is, from September 10, 2007, onward.

The Appellant's Credibility and Reliability

[29] When he testified, the Appellant presented himself as a very pleasant person. He gave very long, detailed answers, but, as he said, his memory was not always the best, especially when it came to giving exact dates for trips and travel, for example, or medical visits. However, he did the best he could to explain the sequence of events and the reasons for his assertions.

[30] The Tribunal also notes that the Appellant did not always answer the questions asked of him and that he led the Tribunal to different topics than those being asked about. It was very difficult to keep the Appellant's attention.

³¹ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

[31] The Tribunal finds that the Appellant's version of events is the one he has when giving an answer. His answer to a given question will be different when it is asked on a different occasion.

[32] For example, in his first OAS application, the Appellant indicated that he was a resident of Canada from August 10, 1997, to September 10, 2007.³² In his second OAS application, the Appellant stated that he was a resident of Canada from August 10, 1997, to May 31, 2005.³³ In a letter written in Morocco on February 26, 2014, in response to a question from the Respondent, the Appellant says that [translation] "[he] returned to Morocco penniless despite having lived in Canada for almost eight years."³⁴ The Appellant stated in his testimony that he had always been a resident of Canada since entering Canada on August 10, 1997, and therefore since September 10, 2007, as well.

[33] The Appellant testified that he was in Canada without interruption from 2016 until August 5, 2020, when he left for Morocco with his spouse. The Appellant did not remember his exact comings and goings between Morocco and Canada in 2016. However, the Tribunal notes that the Appellant sent a letter to the Respondent from X on December 12, 2016, which was received on January 9, 2017.³⁵ The Appellant also submitted to the Tribunal an X-ray report dated August 22, 2016, from X, Morocco,³⁶ and a prescription dated February 10, 2016, from X, Morocco.³⁷ Additionally, the Appellant submitted to the Tribunal an ECG report dated April 2, 2018,³⁸ and a prescription issued in X the same day.³⁹ Moreover, a medical report issued on April 27, 2019, in X, Morocco,⁴⁰ mentions an operation that took place on June 1, 2017, for which the doctor recommended a four-month leave from work, although the Appellant testified that he was in Canada on that date. Later in his testimony, the Appellant confirmed this operation. The Tribunal prefers to accept the information written in the medical report, the X-ray report, and the ECG report, and on the prescriptions in question, even though the Appellant

³² GD2-37, question 14.

³³ GD2-32, question 14.

³⁴ GD2-45 to 47.

³⁵ GD2-6 and 7.

³⁶ GD7-3.

³⁷ GD7-13.

³⁸ GD7-9.

³⁹ GD7-14.

⁴⁰ GD7-8.

testified that he had asked for the documents from those health professionals and that he was in Canada.

[34] In his first OAS application, as a contact not related to him by blood or marriage, the Appellant named his son's spouse, who is related to the Appellant by marriage.⁴¹ When he testified, he did not remember who this person was at first. Then he remembered that it was his daughter-in-law, who used a different, more intimate name with him. He explained his definition of family before saying that he had made a mistake in his OAS pension application. He did not answer this question in his second OAS application.⁴² This gives the Tribunal the impression that the Appellant does not give much thought to the questions asked of him before giving answers.

[35] In the reconsideration request he sent to the Respondent, the Appellant indicated that the letter was being sent from X, Morocco, on December 21, 2016.⁴³ However, the Appellant submitted in his testimony that he had sent his reconsideration request from Canada. The Appellant also indicated that a friend had recommended that he write what he wrote in his letter so that the Respondent would consider his request from a humanitarian perspective. The Tribunal prefers to accept the information written in the letter—specifically, that the letter was written in Morocco on December 21, 2016; that, on that date, he did not meet the conditions required to obtain an OAS pension; and that he was asking that his request be considered on humanitarian grounds.

[36] On October 22, 2018, the Appellant called the Respondent to inform it that he was living in Canada in 2016.⁴⁴ He submitted that the Respondent was sending him correspondence in Morocco. The Tribunal cannot help but note that the Respondent sent correspondence to the Appellant at the address he had given it and finds it intriguing that the Appellant waited so long before following up with the Respondent about the status of his OAS pension application if he was truly in Canada the whole time. In addition, a medical report issued on April 27, 2019, in X, Morocco,⁴⁵ mentions an operation that took place on June 1, 2017, for which the doctor

⁴¹ GD2-38, question 17.

⁴² GD2-33, question 18.

⁴³ GD2-6 and 7.

⁴⁴ GD4-5, paragraph 21; and GD2-3.

⁴⁵ GD7-8.

recommended a four-month leave from work, although the Appellant testified having returned to Canada before the end of that period. When he testified, the Appellant confirmed this operation, which also contradicts his testimony that he did not go to Morocco from 2016 until his trip of August 5, 2020.

The Appellant's Statements of Residence

[37] The Appellant explained that, in Morocco, it is customary that, when someone buys a house, the house is for the entire family, and everyone shares it. This probably explains why the Appellant had trouble differentiating between a residence and a mailing address.

[38] The Appellant testified that his address on X Street in X was that of his son Y. B. His son owned the house and sold it to move to X Street in X around 2014. However, during the second part of the hearing, he submitted that the move had taken place in 2016 and that he was no longer sure of the exact date. He had his own room and personal belongings there and still does.

[39] The Appellant testified that his address on X in X is that of his son M. O. His son bought the place about seven years ago. The Appellant had a room and personal belongings there and still does.

[40] The Appellant testified that his family home is in X. That is the address he used for the assessment of his assets to receive Quebec social assistance. He inherited this home, the family home, from his father; it was split among his children. It is a traditional Moroccan house that is shared by the extended family. Right now, there are about eight people living in it. This is where he was during both parts of the hearing, and he described it as his home.

[41] However, in his first OAS pension application, the Appellant indicated that he was a resident of Canada from August 10, 1997, to September 10, 2007, the day he returned to Morocco, and that he lived in X from September 10, 2007, to September 23, 2011, which is three days before the date the application was signed.⁴⁶ In his second OAS pension application, the Appellant indicated that he was a resident of Canada from August 10, 1997, to May 31, 2005,

⁴⁶ GD2-37, question 18.

and that he lived in X from June 1, 2005, to 2016.⁴⁷ It was from this address in Morocco that the Appellant wrote a letter on February 26, 2014, in response to a question from the Respondent, saying that [translation] “[he] returned to Morocco penniless despite having lived in Canada for almost eight years.”⁴⁸ It was also from that address that he submitted his reconsideration request to the Respondent on December 21, 2016.⁴⁹

[42] The Appellant waited until October 22, 2018, to inform the Respondent that he had lived in Canada since 2016,⁵⁰ even though he submitted right away at the hearing that he considers himself a resident of Canada since arriving in Canada on August 10, 1997.

[43] During his testimony, when the Tribunal asked the Appellant to explain the addresses he had used in his OAS pension applications, the Appellant stated that he had never lived on X in X and that he could spend two months there at his son’s place. He indicated that address because he was there when he made his application. As a result, the Tribunal has serious doubts about the residence information used by the Appellant on his forms with governments.

Reliability of Moroccan Reporting of Residence under the Canada–Morocco Agreement

[44] When testifying about the period recognized by the Kingdom of Morocco under the Canada–Morocco agreement, the Appellant stated, during the first part of the hearing, that the Moroccan authorities had made a mistake and that they had reported the information of his son who has the same first name as him. However, the Tribunal notes that the request for information that the Respondent sent to the Caisse nationale de la sécurité sociale [national social security fund] (CNSS) on February 10, 2012,⁵¹ clearly shows the Appellant’s date of birth, as does the response received from the CNSS on June 7, 2012.⁵² Between the first and second parts of the hearing, the Appellant indicated that he had checked the accuracy of that information with his

⁴⁷ GD2-32, question 14.

⁴⁸ GD2-45 to 47.

⁴⁹ GD2-6 and 7.

⁵⁰ GD2-3.

⁵¹ GD2-50 and 51.

⁵² GD2-56.

son. During the second part of his testimony, the Appellant confirmed that the information in the documents shared by the Moroccan authorities was accurate and about him.

[45] The Tribunal also notes that the second response the Respondent received from the CNSS, dated August 24, 2017, and which confirms the periods credited under the legislation of Morocco, shows a different date of birth for the Appellant than the one shown on all his other documents, specifically June 4, 1942.⁵³ During the second part of the hearing, the Appellant testified not knowing about that date of birth. He explained that the date of January 1, 1942, had been assigned to him given that he was born in a village, that his exact date of birth was not known, and that this is how the colonial civil registry went about assigning dates of birth at the time. The Appellant also testified that the Moroccan Registration Number on the document was not his. Additionally, the Tribunal notes that the Canadian Social Insurance Number (SIN) provided in that response is the same one indicated in the request the Respondent made to the Moroccan authorities.⁵⁴ The Tribunal prefers to accept the information in this document to help the Appellant meet the minimum period for entitlement to a partial OAS pension.

[46] I will now consider the *Ding* factors in my analysis to decide whether the Appellant was residing in Canada. To come to my conclusion, I will use the testimony heard and the documents filed by both parties.

Have the Appellant's general ties been stronger in Morocco or in Canada since September 10, 2007?

[47] The Tribunal finds that the Appellant's general ties are stronger in Morocco than in Canada, since his ties in Canada are more subjective than objective.

[48] When the Tribunal asked the Appellant why his ties were stronger in Canada and his roots in Canada were now more significant, the Appellant submitted that he had been very attached to Canada since well before his arrival in Canada. He was impressed and touched by the hospitality of Montréalers, Quebecers, and Canadians during a visit to X with the Moroccan navy. That was when he decided to settle in Canada. He really likes Canada, which he considers

⁵³ GD2-72 to 74.

⁵⁴ GD2-24 to 29.

the best country in the world. That is why he has felt more like a resident of Canada than anywhere else since arriving in Canada on August 10, 1997.

[49] The Appellant also testified having deeper roots in Canada than in Morocco because he sold all his possessions in Morocco to immigrate to Canada as an entrepreneur in 1997. All his savings went up in smoke in Canada. He is now Canadian, he has voted in Canada and, even though he has dual citizenship, he considers his Canadian citizenship to be stronger. His son studied in Canada, and he now has his grandson in Canada. However, the Tribunal notes that a person's intentions are not decisive.

[50] The Tribunal can only find that, even though the Appellant has some ties in Canada, these ties in Canada are not strong enough, and the roots he has established in Canada are not significant compared with his ties and roots in Morocco.

Does the Appellant have personal property in Canada, and does it compare favourably to the personal property he has had in Morocco since September 10, 2007?

[51] The Tribunal finds that the ties in the form of personal property show a stronger connection with Morocco since September 10, 2007, because the Appellant has a comparable arrangement at his son's home in X and his son's home in X; he has personal belongings in both places. In addition, he has his house in X that he owns with other family members; he has personal property there as well.

[52] The Appellant testified having his own room with his own furniture and his own personal belongings at his son's place in Canada and having no utilities in his name. The Appellant leaves his possessions at his son's place when he is not there. The Appellant testified having the same kind of arrangement when staying with his son in X, Morocco. The address in X is the same one he gave as his home address in his first OAS pension application⁵⁵ on September 27, 2011, and in his second OAS pension application on May 12, 2016.⁵⁶ In addition, the Appellant has a house in his name in X that he, along with his brothers and sisters, inherited from his father; he testified

⁵⁵ GD2-35 to 38.

⁵⁶ GD2-30 to 34.

from there during the hearing and has personal belongings there as well. The Appellant testified having clothing and personal items at all three places.

[53] Although the Appellant has ties in the form of personal property in Canada, the Tribunal finds that the balance of probabilities leans more toward residence in Morocco, given that the Appellant has a comparable arrangement at his son's home in X and his son's home in X; he has personal belongings in both places. In addition, he has his house in X that he owns with other family members; he has personal property and belongings there as well. In the Tribunal's view, the ties in the form of personal property do not support Canadian residence.

Are the Appellant's social and family ties stronger in Canada or in Morocco?

[54] The Tribunal finds that the Appellant's social and family ties show a stronger connection with Morocco since September 10, 2007, based simply on their number and family connection.

[55] The Appellant testified that his son Y. B. lives in Canada. He is the one he says he lived with in X, and the Appellant followed him when he moved to X. He also has a grandson and, for some months now, a granddaughter.

[56] The Appellant confirmed that, when staying with his son Y. B. in X, he has his own room, his own furniture, and his own personal belongings. This is also the case at his son's place in X when the Appellant is there. The son pays for all the father's needs when he stays with that son. His son J. B., who is in Germany, also sends him money as needed. The Appellant describes the family as very close and very tight-knit.

[57] However, based on the Appellant's own testimony, he has more social and family ties in Morocco. In Canada, he has only a son, a daughter-in-law, two grandchildren, and some friends. However, in Morocco, he has a daughter, who has three children of her own; a son, who has three children of his own and who, when the Appellant is in X, accommodates him in his home, where he has his own room with his own personal belongings; and a family with whom he owns a family home in X. He also has many family members and friends in Morocco.

[58] The Appellant does have social and family ties in Canada. However, based simply on their number, the Appellant has more social and family ties in Morocco. For this reason, the Tribunal finds that the Appellant's social and family ties are greater in Morocco and do not support Canadian residence from September 10, 2007, onward.

The Appellant's Other Ties in Canada and in Morocco

[59] The Appellant stated in his testimony that he had been receiving Quebec social assistance for approximately two years. He testified that there was an investigation and that he had given them a sworn statement that he was living with his son and that his son was no longer supporting him financially. He indicated that he would have to reimburse Quebec social assistance for the sums received depending on how his situation with OAS resolved. He testified receiving about \$1,000 a month. The Tribunal understands that this payment is temporary support and is subject to reimbursement once he is approved for OAS.

[60] The Appellant submitted that he had a lease in his name from April to June 2019 and from July 2019 to June 2020, which coincides with when his spouse received psychiatric services at X hospital. The lease was in his name and was co-signed by the Appellant's son, who was the one who paid the monthly rent to the property owner.

[61] The Appellant testified also having had a card from the Régie de l'assurance maladie [Quebec's health insurance plan] (RAMQ) that expired around 2016. He got a new card around 2018. This also roughly coincides with when the Appellant's spouse had to receive psychiatric care at X hospital.

[62] The Appellant testified that he had a Canadian driver's licence until approximately 2012 or 2013. He was not exactly sure.

[63] The Appellant testified having an account with Laurentian Bank and a bank card. He has no credit cards or financial services accounts in Canada. He does not have a property or life insurance policy either. He has only a cell phone paid by his son. He testified having absolutely nothing in the way of financial services or a contract in Morocco. However, at another point in his testimony, and when the Tribunal asked him about the pension he was receiving from the

Moroccan national navy, the Appellant admitted that this pension was being paid into his bank account in Morocco. While the Tribunal understands that the Appellant's memory may fail him given his age, and in the absence of documentary evidence, the Tribunal can only conclude that the Appellant contradicted himself at different times in his testimony. And it can give little weight to the Appellant's testimony in terms of the information he provides, more specifically the expiry dates of his RAMQ [coverage] and driver's licence and his comparable administrative ties in Morocco since September 10, 2007.

[64] The Appellant testified having family in Morocco. He has three brothers and three sisters. He also had a half-brother in Morocco who is now deceased. The Appellant has four children. He has a daughter from a first marriage who has three children of her own and who live in Morocco. He also has three sons from a second marriage, and that wedding took place in Morocco as well: Y. B. in Canada, who has two children of his own in Canada; M. O. in Morocco, who has two children of his own in Morocco; and J. B. in Germany, who has two children of his own in Germany.

[65] The Appellant confirmed that, when staying with his son M. O. in X, he has his own room, his own furniture, and his own personal belongings. As is the case when he stays with his son Y. B. in Canada, his son M. O. pays for all his father's needs when he is in X. His son J. B., who is in Germany, also sends him money as needed. The Appellant describes the family as very close and very tight-knit.

[66] The Appellant testified that he inherited part of the family home in X, Morocco, around 2003 after his father's death and that he shares it with his family in accordance with local tradition.

[67] The Appellant testified receiving a pension from the Moroccan navy pension fund for his years of service when he was a civil servant before he even [immigrated] to Canada in 1997. This pension is deposited monthly into his bank account in Morocco and cannot be deposited into an overseas account. The Appellant described this pension as very small.

[68] The Appellant also testified that his extended family is very close and all over Morocco. His family helps him financially, even going as far as paying for the renewal of his Canadian

passports, which he did in X, Morocco, in 2009 and 2014,⁵⁷ and for the Appellant's transport between X, X, and X, as needed.

[69] The Appellant does have some ties in Canada. He says that he has a bank account and a bank card, as is his right as a Canadian citizen, regardless of where he is in the world. The Appellant says that he has also been receiving social assistance for about two years and that he is eligible for RAMQ. However, given the contradictions in the information the Appellant provided in his OAS pension applications and in his testimony, the lack of documentary evidence in the Appellant's file to establish ties in Canada aside from his own statements in his OAS pension applications, and [the fact] that they contain conflicting information, the Tribunal gives very little weight to these other ties in Canada. And it finds that these ties do not show Canadian residence under the OAS Act from September 10, 2007, onward.

[70] The Tribunal finds that the Appellant's ties in Morocco are greater and that his roots go deeper there. He has only a child and two grandchildren in Canada, compared with two children and five grandchildren in Morocco. His brothers and sisters and his family are mainly in Morocco, although he testified also having family in Germany, France, and Switzerland. He owns a family home in X and, when he is in X or in X, he has only a room with personal belongings that he leaves when he is away.

[71] For these reasons, the number and proximity of his family members in Morocco compared with his family in Canada, his living arrangements in X and in X and his property in X, and the fact that the Appellant is receiving in Morocco a retirement pension from the Moroccan navy that is deposited into a Moroccan bank account, the Tribunal finds that the Appellant's ties are stronger in Morocco than in Canada and that he has deeper roots there, which does not support Canadian residence.

Regularity and Length of Stays in Canada Compared with the Frequency and Length of Absences from Canada

[72] The Tribunal finds that the regularity and length of stays in Canada compared with the length of absences from Canada do not show Canadian residence from September 10, 2007, to

⁵⁷ GD2-64.

March 16, 2019. However, the Appellant's situation changed on March 17, 2019, until the Appellant's return to Morocco on August 5, 2020.

[73] When he testified, the Appellant stated that, since 2007, he had gone back and forth between Canada and Morocco and that his children paid for his travel, provided him with his basic necessities, and gave him money, but that he spent more time in Canada. He estimates that he spends about seven or eight months in Canada per year. The Appellant testified that this situation had not changed since September 10, 2007.

[74] However, 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.⁵⁸ A person can be present in Canada without being a resident of Canada.

[75] The Appellant also testified having a son in Germany. He has family in France and Spain as well; he visits them for about a month at a time. In addition, their son J. B. bought a house in Spain around 2016, and he has been there only once. When he travels, his sons are the ones who pay for his plane tickets and the general expenses he incurs. Since 2007, he has gone to visit his son and his family in Germany roughly three times, for periods of about a month each time.

[76] The Tribunal asked the Appellant why he had submitted a medical report from a clinic in X, Morocco, dated April 27, 2019.⁵⁹ The Appellant testified that he had requested this medical certificate [*sic*] of his spine from Canada after his operation in Morocco on June 1, 2017, during an incident that happened over his vacation. He had simply requested this medical report for his file. The Appellant testified that he stayed in Morocco for about three months in 2017 and that he had gone there only once that year. The Appellant testified that he was not working, even though this medical report recommends a four-month leave from work. He did not remember the exact date of his return either. The Tribunal also notes that this statement contradicts part of the Appellant's testimony when he said that he was in Canada without interruption from 2016 until August 5, 2020, when he left for Morocco with his spouse.

⁵⁸ Section 21(1) of the *Old Age Security Regulations*.

⁵⁹ GD7-8.

[77] The Appellant testified from Morocco. He testified having left Canada on August 5, 2020. He has not purchased a return ticket. He is currently on a trip there with his spouse following the deaths of his sister-in-law and one of his cousins. He was able to get two seats, one for him and one for his spouse, on a flight chartered by the Moroccan Embassy for the repatriation of Moroccan citizens due to COVID. The Appellant testified that the Embassy had secured him seats on an exceptional basis because of his sister-in-law's death even though he claims to be a resident of Canada.

[78] The Appellant testified that he did not go to Morocco in 2018. However, when the Tribunal asked him why Dr. Amine provided a medical report of an ECG dated April 2, 2018, from X,⁶⁰ the Appellant testified that he had requested the document and that it dated from before April 2, 2018. Yet, the Tribunal also notes a prescription from the same physician and with the same date that mentions a next appointment date of June 26, 2018.⁶¹ The Appellant testified that this prescription was just to remind him of the names of the medications. The Tribunal prefers to accept the information as indicated in the ECG report signed by the specialist and the prescription confirming that the Appellant was in X on April 2, 2018. As a result, the Tribunal questions the Appellant's travels in Morocco in 2018.

[79] In his first OAS application, the Appellant indicated that he left Canada on September 10, 2007, and that he lived in Morocco until September 23, 2011, three days before the signing of the application on September 26, 2011.⁶² In his second OAS application, the Appellant indicated that he left Canada on May 31, 2005, and that he lived in Morocco from June 1, 2005, until an unspecified date in 2016, but the application was signed on May 7, 2016.⁶³ In his reconsideration request dated December 21, 2016, the Appellant indicated that his letter was being sent from X, Morocco.⁶⁴

[80] The Tribunal prefers to accept the information indicated in the Appellant's OAS application that he lived in Morocco until at least the date of his OAS application and

⁶⁰ GD7-9.

⁶¹ GD7-14.

⁶² GD2-35 to 38.

⁶³ GD2-30 to 34.

⁶⁴ GD2-6 and 7.

continuously until December 21, 2016, the date of the Appellant's reconsideration request. In his OAS applications, the Appellant himself considered himself a resident of Morocco, as he submitted to the Respondent. In addition, in his reconsideration request, which itself was sent from X on December 21, 2016, the Appellant stated that he was perfectly aware that he did not meet the conditions required to obtain an OAS pension and asked for his application to be considered on a humanitarian and exceptional basis. His personal situation did not change for the entire period from September 7, 2007, onward, and the Tribunal finds that the Appellant's personal situation in terms of the regularity and length of stays in Canada compared with the frequency and length of absences from Canada from September 7, 2007, to March 16, 2019, does not support Canadian residence for him.

[81] However, the Tribunal finds that the Appellant's situation changed during the period from March 17, 2019, to August 5, 2020.

[82] The Appellant testified that his spouse had received psychiatric treatment at X hospital in X. The Appellant testified that he had been in Morocco since August 5, 2020, because the physician treating his spouse had discharged her. When he testified, the Appellant read a letter from his spouse's attending physician that confirms that she was treated in 2019. However, the physician does not discuss the treatments or the frequency of visits. The Appellant testified that these documents had been submitted to the Respondent for his spouse's OAS application. The Appellant testified that his spouse started her psychiatric treatment on March 17, 2019. In the beginning, she was hospitalized for a month and a half.

[83] The Appellant testified that his son rented a studio in the short term for his parents from April to June 2019 on X until they could get a one-year lease on X from July 2019 to June 2020. The Appellant testified that the lease was in his name but that his son was the one paying for it, since the Appellant has no money. The Appellant testified that his son did not want his parents to live with him while his mother was having psychiatric problems; he did not want his own children to see their grandmother in this state. These two apartments were chosen for their proximity to X hospital, where the Appellant's spouse was being treated.

[84] The Appellant testified that he also had an operation at X hospital, in December 2019, for disk herniation.

[85] The Tribunal finds that the Appellant's personal situation in terms of the regularity and length of stays in Canada compared with the frequency and length of absences from Canada from March 17, 2019, to August 5, 2020, supports Canadian residence for him.

[86] The Tribunal finds that the Appellant has not met the burden of showing that the regularity and length of stays in Canada compared with the length of absences from Canada demonstrate Canadian residence until March 16, 2019.

The Appellant's Mode of Living, or Whether the Appellant's Life in Canada is Substantially Deep-Rooted

[87] The Appellant submitted in [*sic*] that, when he is in Canada, his activities consist of going for walks with his grandson. He does some volunteering, such as translation and helping people at the supermarket. He helps patients in hospitals and his elderly neighbours in the winter or with their vegetable gardens. He likes helping people. The Appellant submitted that, when he was in Morocco, he also helped his friends and family in the field, with olives. He visited his family and friends. He testified that he took more pleasure in helping people out in Canada, since he finds that people appreciate the help.

[88] The Appellant testified that his lifestyle had not changed since 2007. He goes back and forth between Canada and Morocco and visits his children, mainly in X, in X, and sometimes in Germany. The Appellant also indicated in his second OAS pension application that he lived in X until May 7, 2016, when he signed the OAS pension application; the Tribunal gives a lot of weight to this admission. In addition, in the reconsideration request he sent from X on December 21, 2016, the Appellant stated that he was perfectly aware that he did not meet the conditions required to obtain an OAS pension and asked for his application to be considered on a humanitarian and exceptional basis. The Tribunal also gives a lot of weight to the Appellant's testimony that his lifestyle had not changed since 2007.

[89] Since September 10, 2007, the Appellant's situation has been comparable when he stays with his son Y. B. in X and when he stays with his son M. O. in X, even though, when he comes

to Canada, he spends more time there. I can only find, on a balance of probabilities, that, from September 10, 2007, to March 17, 2019, the Appellant did not make his home and ordinarily live in any part of Canada, and that he was a resident of Morocco.

[90] However, the Appellant's situation changed on March 17, 2019, when his spouse was admitted to X hospital for psychiatric treatment during one of his stays in Canada. The Appellant testified that his children supported him and that he had never applied for Quebec social assistance until approximately two years ago. He testified currently receiving Quebec social assistance. However, he did not remember exactly since when. This seems to coincide with the period when the Appellant's spouse started receiving psychiatric treatment at X hospital on March 17, 2019, and the period when the Appellant was living in a temporary studio on X from April 2019 to June 2019, and then on X from July 2019 to June 2020, though it was his son Y. B. who was paying that rent for the Appellant. The Appellant also testified that, during that period, he had an operation for disk herniation in December 2019. For this period, the Tribunal prefers to give more weight to the regularity and length of stay in Canada given the nature of the medical obligation requiring the Appellant to stay in Canada. In addition, he was not living with his son Y. B., which means that this period cannot be compared to the period from September 7, 2007, to March 16, 2019.

[91] Therefore, for the period from March 17, 2019, until his return to Morocco on August 5, 2020, the Tribunal finds that the Appellant was a resident of Canada under the OAS Act. This amounts to a period of 507 days—or 1 year, 4 months, and 19 days—in addition to the period calculated by the Respondent.

CONCLUSION

[92] I am sensitive to the Appellant's arguments when he says that he is a Canadian citizen and that he loves Canada. I also understand and accept that he has ties in Canada. However, the Tribunal finds that, despite his ties in Canada and his stays in Canada, which can be more or less lengthy, to visit his Canadian family, the Appellant's ties in Morocco are stronger.

[93] When he testified, the Appellant stated that he went back and forth between Canada and Morocco and that his children paid for his travel, provided him with his basic necessities, and

gave him the money he needed, but that he still spent more time in Canada. However, 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 can be present in Canada without being a resident of Canada.⁶⁵

[94] The family ties, in terms of both the immediate family and the extended family, are greater in Morocco. The Appellant has only a room with furniture both in X and in X, whereas he has a house in X. The Tribunal gives a lot of weight to these family ties and to his house in X, which is his true home base and place of residence.

[95] The onus is on the Appellant to prove that he made his home and ordinarily lived in Canada. The Tribunal finds that the Appellant did not meet this onus from September 10, 2007, to March 16, 2019, since his ties in Canada are not as strong and his roots are not as deep as they are in Morocco.

[96] However, from March 17, 2019, the Tribunal finds that the Appellant was a resident of Canada under the OAS Act during his spouse's treatment until his return to Morocco on August 5, 2020, because his situation changed during that period and it cannot be compared to his situation from September 10, 2007, to March 16, 2019.

[97] Consequently, I find that the Appellant's total period of residence in Canada is now 5,099 days, or 13 years and 354 days, specifically: 3,683 days (10 years and 1 month) for the period from August 10, 1997, to September 10, 2007; 909 days (2 years and 179 days) as recognized by Morocco's Centre national de sécurité sociale under the Canada–Morocco agreement; and 507 days (1 year, 4 months, and 19 days) for the period from March 17, 2019, to August 5, 2020, when the Appellant and his spouse were in Canada continuously, received treatment, and lived in an apartment that was in their names and that was their own in X.

[98] In addition, I find that the Appellant is not a resident of Canada under the OAS Act and that he needed to have resided in Canada for at least 20 years to be eligible for OAS, which he has not, since the Appellant's total period of Canadian residence is 13 years and 354 days.

⁶⁵ Section 21(1) of the *Old Age Security Regulations*.

[99] The appeal is allowed in part.

François Guérin
Member, General Division – Income Security