



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *JF v Minister of Employment and Social Development*, 2020 SST 1059

Tribunal File Number: AD-20-843

BETWEEN:

J. F.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: December 17, 2020

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused. This appeal will not proceed.

OVERVIEW

[2] The Applicant, J. F., applied for an Old Age Security pension in May 2013. The Minister of Employment and Social Development denied his application. More specifically, the Minister found that the Applicant did not meet the Canadian residence eligibility requirement. The Applicant asked the Minister to reconsider its initial decision, but it upheld the decision in September 2016.

[3] The Applicant challenged the Minister's decision before the Tribunal's General Division, but it dismissed his appeal. The Applicant is now appealing the General Division decision to the Tribunal's Appeal Division. However, for the file to move forward, the Applicant needs leave to appeal.

[4] Unfortunately for the Applicant, I have found that the appeal has no reasonable chance of success. Therefore, I cannot grant him leave to appeal. These are the reasons for my decision.

ISSUE

[5] This is the issue I examine in this decision: Has the Applicant raised an arguable case on which the appeal might succeed?

ANALYSIS

[6] The Tribunal must apply the law and follow certain procedures.¹ As a result, this appeal follows a two-step process: the leave to appeal stage and the merits stage. If the appeal has no reasonable chance of success, then it cannot advance to the merits stage.²

¹ Many of the Tribunal's procedures are set out in the *Department of Employment and Social Development Act* (DESD Act).

² This is explained in sections 58(2) and 58(3) of the DESD Act.

[7] The legal test that the Applicant needs to meet at this stage is a low one: Is there any arguable case on which the appeal might succeed?³ To answer that question, I must determine whether the General Division made at least one of the errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act*.

The Applicant has not raised an arguable case on which the appeal might succeed

[8] The issue before the General Division was whether the Applicant had resided in Canada for at least 20 years. To answer this question, the General Division had to assess many factors that show the Applicant's ties to Canada. The Federal Court's teachings indicate that determining a person's residence is largely a factual issue that requires an examination of the individual's whole context.⁴

[9] In the end, the General Division found that the Applicant had resided in Canada for 19 years and 21 days. As a result, the General Division dismissed the appeal.

[10] In his application for leave to appeal, the Applicant argues, simply, that the General Division made an error of law.⁵ The Tribunal invited the Applicant to provide more information about the reasons for his appeal.⁶ But the Applicant did not respond to the Tribunal's letter.

[11] The Applicant's request lacks clarity. Without more clarification, I do not know how the General Division may have made an error in law. Therefore, I find that the Applicant has not raised an arguable case on which the appeal might succeed.

[12] Regardless of this finding, I cannot stop at the precise ground of appeal that the Applicant has raised.⁷ To that end, I have reviewed the documents on file as well as the decision under appeal. I am therefore satisfied that the General Division did not overlook or misconstrue relevant evidence. My review of the file has also not revealed obvious errors of law.

³ *Osaj v Canada (Attorney General)*, 2016 FC 115; *Ingram v Canada (Attorney General)*, 2017 FC 259.

⁴ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at para 58; *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277 at para 19; *Duncan v Canada (Attorney General)*, 2013 FC 319.

⁵ Page ADN1-4.

⁶ The Tribunal's letter is dated November 25, 2020.

⁷ *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

CONCLUSION

[13] I sympathize with the Applicant's circumstances. Nevertheless, I find that his appeal has no reasonable chance of success. As a result, I have no choice but to refuse leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	S. T., for the Applicant
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