



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *CA v Minister of Employment and Social Development*, 2021 SST 55

Tribunal File Number: GP-19-1872

BETWEEN:

C. A.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: François Guérin

HEARD ON: January 15, 2021

DATE OF DECISION: January 29, 2021

REASONS AND DECISION

DECISION

[1] The appeal is allowed in part.

[2] The Tribunal finds that the Appellant was a resident of Canada under the *Old Age Security Act* (OAS Act) from January 20, 2015, to November 15, 2015, and from February 8, 2019, onward.

[3] Since the Guaranteed Income Supplement (GIS) is payable only for the month you leave Canada and for six months after that, the Appellant was eligible to receive the GIS during the period from February 2015 to May 2016, inclusive, and from March 2019 onward.

[4] The Tribunal finds that the Appellant was not a resident of Canada under the OAS Act from January 23, 2007, to January 20, 2015, and from November 15, 2015, to February 8, 2019.

OVERVIEW

[5] The Appellant was born in Canada and turned 65 on May 19, 2003. The Appellant submitted an Old Age Security (OAS) pension application in which he asked to be considered for the GIS benefit. The Respondent approved the Appellant's OAS and GIS applications and began to pay him a full 40/40ths pension and the GIS in June 2003, the month after the month of his 65th birthday, at the single rate.

[6] After doing a routine check with the Canada Revenue Agency (CRA), the Respondent conducted an investigation. It found that the Appellant had not been eligible for the GIS since August 2007 because, according to the Respondent, the Appellant stopped being a resident of Canada on January 23, 2007, and that he had since married in Morocco, on October 14, 2014. The Respondent considers that the Appellant's residential ties and bonds have been stronger in Morocco since January 23, 2007. However, the Appellant is still entitled to a full 40/40ths OAS pension because it is payable outside Canada.

[7] The Appellant requested a reconsideration of the decision, and the Respondent upheld its decision on reconsideration. The Appellant appealed this decision to the Social Security Tribunal (Tribunal).

PRELIMINARY MATTER

[8] The Appellant submitted additional documentation after the hearing,¹ specifically his divorce certificate, which he mentioned in his submission and at the hearing. The *adouls* received the divorce certificate on December 5, 2019, and it came into effect that same day. I accepted this document as having been received after the hearing, since the Appellant had agreed to share it with the Tribunal at the hearing. As agreed at the hearing, the Tribunal shared the document with the Respondent, and no comments are required or expected from it.

[9] The Tribunal asked the Appellant to send it the effective and expiry dates of his Moroccan permanent residence certificate, issued by the Sûreté nationale marocaine [Moroccan police], and, if possible, to send it a copy of this certificate.² The Appellant submitted a copy of his Moroccan registration certificate expiring on December 23, 2014 (there is no effective date on this certificate, but the Appellant testified that he had had it since approximately 2012), and his Moroccan registration card valid from May 20, 2015, to June 1, 2020. At the hearing, the Appellant testified that he had not renewed his registration and that he was not thinking of going back to Morocco. The Tribunal notes that the Moroccan registration card was issued to him when he was in Canada for an extended period while recovering from a surgery at home in X. The Tribunal accepted this document after the hearing because the Moroccan registration certificate was discussed at the hearing and could have affected the decision on the Appellant's residence in Canada.

WHAT IS THE ISSUE?

[10] Has the Appellant been a resident of Canada under the OAS Act since January 23, 2007, and is he eligible for the GIS?

¹ GD7.

² GD6.

WHAT IS THE RESPONDENT'S POSITION?

[11] The Respondent submits that the Appellant left Canada definitively on January 23, 2007, when he signed a long-term, indefinite lease in Morocco for which rent is payable each month, and that the GIS can be paid to him only for the six months that follow a final or temporary departure from Canada. The Respondent also submits that, since January 23, 2007, the Appellant has been present in Canada only when he is in the country and has not been a resident of Canada under the OAS Act. The Respondent submits that a GIS overpayment of \$68,594.59 was generated for the period from August 2007 to June 2018.

WHAT IS THE APPELLANT'S POSITION?

[12] During his testimony and in his Notice of Appeal, the Appellant submitted that the Respondent's decision is unfounded and that he has always been a resident of Canada since birth. He only goes on trips to Morocco every year for roughly six months. He considers that he is entitled to receive the GIS.

ANALYSIS

[13] I must therefore decide whether the Appellant has been a resident of Canada under the OAS Act since January 23, 2007, and whether he is eligible for the GIS.

[14] The burden of proof, on a balance of probabilities, is on the Appellant.³

[15] For the purposes of the OAS Act, 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.⁴ A person can be present in Canada without being a resident of Canada.

³ *De Carolis v Canada (Attorney General)*, 2013 FC 366.

⁴ Section 21(1) of the *Old Age Security Regulations*.

[16] Residence is a question of fact to be determined on the particular facts of each case. A person's intentions are not decisive. The *Ding* decision⁵ sets out a non-exhaustive list of factors to be considered 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 versus the frequency and length of absences from Canada
- f. The person's mode of living, or whether the person living in Canada is substantially deep-rooted

[17] The Appellant has to prove that it is more likely than not that he has lived in Canada since January 23, 2007.

Has the Appellant been a resident of Canada under the OAS Act since January 23, 2007, and is he eligible for the GIS?

[18] The Tribunal asked the Appellant various questions to establish his ties to Canada in accordance with *Ding*.⁶

[19] The Appellant testified that he went to Morocco around 2004. He went there for an adventure. At first, he would spend about two or three months there. He loved Morocco and its sun. He noticed that he could spend the winters there cheaply given that the cost of living there is lower than in Canada. He says that he lives there modestly and [translation] "in the Moroccan way." He knows that he has to spend six months in Canada and admits that he has not always

⁵ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

⁶ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

followed that rule. His entire family is in Canada. Among his siblings, six brothers and sisters are still living, and he has many nieces and nephews. He describes his family as very close-knit.

[20] According to the Appellant, he and his brother have been roommates for about 20 years. He asked his brother to come live with him because they were both single. At the time, the Appellant was the signatory of the lease. It was for an apartment on X Street. Utilities were in the Appellant's name. They then moved to X Street with their brother G. A., now deceased; the lease was in his name. Since the three of them were brothers, it was a friendly agreement. They moved together to X on July 1, 2007, and his brother M. A. signed the lease. The Appellant testified that approximately 85% of the furniture in those apartments belonged to him and still does. The brothers have separate bedrooms. The lease and utilities are in the name of his brother M. A.

[21] The Appellant testified that, if there were a problem, he would return to Canada. Morocco is just a country he visits in the winter, a vacation spot, but his country is Canada. He has been vacationing in Morocco only since 2004, though he has spent a few days in France on occasion, either on the way to or from Morocco, to get cheaper plane tickets, and in Spain, when he had to leave Morocco after each three-month stay before he got his Moroccan permanent resident card.

[22] Since about 2005, he has been spending six months in Canada and six months in Morocco. According to the Appellant, his Moroccan friends suggested that he get his own place in Morocco, which would be cheaper than renting an apartment every time he returns to Morocco for about six months, even if he keeps this lease year-round. Therefore, on January 23, 2007, he signed an apartment lease with rent beginning on March 1, 2007. This allowed him to save on housing costs in Morocco and to have a place to stay that was more affordable and of better quality than if he were to rent only for the duration of his stay.

[23] The Appellant says that he started dating his spouse after he met her. She is related to his Moroccan friends. She is a warm-hearted woman and a nurse by profession. He felt that it would be good for them to marry. In the end, they decided to divorce because of cultural differences and their respective ways of looking at life, and so that they could both be free again. He had tried to sponsor his spouse, but Citizenship and Immigration Canada rejected the application. He

did not appeal the sponsorship application because the process was too expensive. He admits that he did not inform Service Canada of his marriage out of ignorance of the rules. However, he did inform the CRA of his change in marital status when he married in 2014 and when he divorced in 2019.

[24] I will now look at the factors mentioned earlier to determine whether the Appellant has been a resident of Canada under the OAS Act since January 23, 2007.

- a. Ties in the form of personal property: The Appellant has been sharing an apartment with his brother for about 20 years. He owns 85% of the furniture, and he leaves it in X when he is in Morocco.
- b. Social ties: The Appellant has no children, whether in Canada or in Morocco. He comes from a family of 10 children, six of whom are still living. He has many nieces and nephews in Canada. He has no family in Morocco. He was married in Morocco from October 14, 2014, to December 5, 2019. During that time, he had in-laws there. They are still his friends because they met before the wedding and it was an amicable divorce. He has long-time friends in Canada with whom he regularly throws dinner parties when he is in Canada. In Morocco, he sees friends occasionally, but he admits that he is more of a loner there. Those friendships do not go as far back as those he has in Canada.
- c. Other ties in Canada: The Appellant has been continuously covered by the RAMQ [Quebec's health insurance plan] since the health insurance system began in Quebec. He has his medical checkups when he returns to Canada. When he was in Morocco in 2014, he fell and broke his hip. The Appellant testified that he informed the RAMQ [Quebec's health insurance plan] of his long stays in Morocco when he submitted his claim for health services received abroad because of his fall in 2014. He also testified that he did not remember the exact questions that the RAMQ [Quebec's health insurance plan] asked him. However, he was partially reimbursed for his medical expenses in Morocco according to the scale in effect in Quebec. He has a driver's licence in Canada. He had a car in Canada until 2017 or 2018. He bought it from his

sister-in-law when his brother died. When he was in Morocco, he would put it into storage for the winter and notify his auto insurer. He has been receiving the Québec Pension Plan since June 1998. He does his income taxes in Canada every year with the help of a professional accountant. He has no financial investments in Canada. He has had his current bank account in Canada for about 25 years with a debit card and a credit card.

- d. Ties in Morocco: He has never had a car or a driver's licence in Morocco. He has never worked in Morocco and does not need to file tax returns there. He signed a lease in Morocco for an apartment he has been renting since March 1, 2007. He will not be renewing it on March 1, 2021, and he does not know whether he will return to Morocco. He says that he lives simply and modestly in Morocco. If he has to use health services, he has to pay for them out of pocket. He has no financial investments in Morocco. He had a tourist bank account for about two years, but he felt that it was not worth it and that he does not need one. He uses his Canadian cards to get money when he is in Morocco.
- e. Regularity and length of stays in Canada versus the frequency and length of absences from Canada: The Appellant testified that he had been going to Morocco for approximately six months a year since around 2005. The Appellant admitted that his stays in Morocco had sometimes been longer than six months. He also admitted that he had not informed the Respondent of his Moroccan trips of more than six months. He did not know that he had to inform the Minister of this kind of absence.

Start date	End date	Country	Length	Comments (if necessary)
Unknown	June 14, 2007	Morocco		Lease in Morocco beginning on March 1, 2007, signed on January 23, 2007
June 14, 2007	Unknown	Canada		Medical visits in Canada in July, August, and September
Unknown	June 14, 2008	Morocco		

June 14, 2008	November 3, 2008	Canada	142 days	
November 3, 2008	June 14, 2009	Morocco	223 days	
June 14, 2009	October 13, 2009	Canada	121 days	
October 13, 2009	June 5, 2010	Morocco	235 days	
June 5, 2010	November 14, 2010	Canada	162 days	
November 14, 2010	June 9, 2011	Morocco	207 days	
June 9, 2011	September 16, 2011	Canada	99 days	
September 16, 2011	May 26, 2013	Morocco	618 days	
May 26, 2013	October 14, 2013	Canada	141 days	
October 14, 2013	January 20, 2015	Morocco	463 days	Wedding October 13, 2014
January 20, 2015	November 15, 2015	Canada	299 days	Treated for broken hip
November 15, 2015	May 8, 2016	Morocco	175 days	
May 8, 2016	October 19, 2016	Canada	164 days	
October 19, 2016	May 8, 2017	Morocco	201 days	
May 8, 2017	November 21, 2017	Canada	197 days	
November 21, 2017	May 12, 2018	Morocco	172 days	
May 12, 2018	September 16, 2018	Canada	127 days	
September 16, 2018	February 8, 2019	Morocco	145 days	
February 8, 2019	November 28, 2019	Canada	293 days	See GD3-1
November 28, 2019	March 30, 2020*	Morocco		See GD3-1 Divorce December 5, 2019 *planned return but delayed due to COVID. Actual return May or June 2020

- f. The person’s mode of living, or whether the person living in Canada is substantially deep-rooted: The Appellant testified that he was a member of the FADOQ [Quebec federation of seniors] and that he occasionally attended some of their social activities, but he admitted that he did not like [translation] “the senior world.” He prefers those who are young at heart and in spirit. He sees his friends with whom he has dinner parties, but he admits that his circle of friends is shrinking as time goes on. In

Morocco, he is more of a loner and goes to a park to read. He spends about six hours outside and goes on walks in the city. He also watches European television. In Morocco, he is not as close to his Moroccan friends.

[25] The Tribunal notes that the Appellant has several ties to Canada. The Appellant has an apartment in X with his brother, though the lease is currently in his brother's name. The Appellant owns 85% of the furniture in the apartment, and he leaves it there when he is in Morocco. He does his income taxes in Canada only and receives medical services related to his residence in Quebec. He had a car in Canada until 2017 or 2018, which he put into storage when he was in Morocco. His family, brothers, sisters, nieces, and nephews are all in Canada. He was indeed married to a Moroccan citizen in Morocco from October 14, 2014, to December 5, 2019, and therefore had a spouse and in-laws there during that time, but this was only temporary and relatively brief.

[26] On September 24, 2019, when he was in Canada, the Appellant informed the Respondent in writing that he was not going to renew his Moroccan permanent residence permit, ending on January 1, 2020. Actually, according to the card later received from the Appellant, this date was June 1, 2020. In addition, the Appellant informed the Respondent that he had begun divorce proceedings with his spouse that would end in December 2019.⁷ He also indicated that he had never cut his residential ties to Canada.

[27] However, the Tribunal finds that the fact that he signed a lease in Morocco, that he had permanent residence in Morocco for part of that period, and that he was married to a Moroccan citizen living in Morocco tilts the scales toward Moroccan residence. Still, the Tribunal also understands that signing a year-round lease can be cheaper and provide a place to stay that is more affordable and of better quality than renting an apartment in the short term. Additionally, the Tribunal understands that a tourist visa entails administrative procedures and travel that require leaving the country after a while and that it is easier to simply apply for permanent residence once and for all to avoid administrative procedures and repeatedly leaving the country. Moreover, the Tribunal understands that, although the *adouls* made the Appellant's divorce from

⁷ GD3-2.

his spouse official on December 5, 2019, their marital status meant that they were, in fact, no longer spouses. The Tribunal is considering these arguments in its decision about the Appellant's actual dates of residence.

[28] Once again, residence is a question of fact to be determined on the particular facts of each case. A person's intentions are not decisive. In this case, the Tribunal finds that the most important factor is the regularity and length of stays in Canada versus the frequency and length of absences from Canada.

[29] For the purposes of the OAS Act, a person resides in Canada if they make their home **and ordinarily live** in any part of Canada. This is why it is important to inform Service Canada when a pensioner leaves Canada for more than six months over a 12-month period. Therefore, in this particular case, the Appellant's absences from Canada of more than six months do not support that he ordinarily lives in Canada. The Appellant does not dispute the dates of entry into and departure from Canada that Service Canada has collected since July 23, 2007.

[30] The GIS provides a supplement to the base OAS pension and is paid to low-income seniors. This means that it directly supports low-income seniors so that they can maintain an adequate standard of living, and it therefore indirectly supports the local economy.

[31] When a person resides outside Canada under the OAS Act, they can return to Canada and be present in Canada without necessarily residing in Canada, even if they are a Canadian citizen. The above table of entries and departures shows that, since the signing of the Appellant's lease in Morocco on January 23, 2007, his stays in Canada have been shorter than his stays in Morocco. Therefore, in the Tribunal's view, and based on the regularity and length of stays in Canada versus the frequency and length of absences from Canada, it is reasonable to find that, although the Appellant is a Canadian citizen and has very strong ties to Canada in several respects, he does not ordinarily live in any part of Canada, but rather in Morocco. As a result, the Appellant was not eligible for the GIS during the periods from August 2007 to January 2015, inclusive, and from June 2016 to February 2019.

[32] However, the Tribunal finds that there were two periods where the Appellant was a resident of Canada and ordinarily lived in any part of Canada under the OAS Act. The first was

from January 20, 2015, to November 15, 2015. The Appellant returned to ordinarily live in any part of Canada, in X, because he underwent surgery for a broken hip there and stayed in the apartment he shares with his brother in Canada while recovering from his surgery. He returned to ordinarily live in Morocco on November 15, 2015, in his apartment, which is leased in his name and where he reunited with his spouse. Since the GIS is payable only for the month you leave Canada and for six months after that, the Appellant is no longer eligible to receive the GIS from June 2016 to February 2019, inclusive. The Appellant was therefore eligible to receive the GIS from February 2015 to May 2016, inclusive.

[33] The second period began on February 8, 2019. The Appellant left Morocco on February 8, 2019, and returned to ordinarily live in Canada, in X. He was in Canada from February 8, 2019, to November 28, 2019, for a total of 293 consecutive days. While in Canada, he wrote two letters to the Respondent. In the first letter, dated September 24, 2019, he informed the Respondent that he was not going to renew his Moroccan permanent residence permit, ending on January 1, 2020 (according to the card later received from the Appellant, this date was June 1, 2020) and that he was going to divorce his spouse in December 2019.⁸ In the second letter, dated November 19, 2019, he informed the Respondent of his absence from Canada from November 28, 2019, to March 30, 2020.⁹ This trip to Morocco was therefore a trip of less than six months to formalize his divorce. At the hearing, the Appellant told the Tribunal that his return flight to Canada was cancelled because of the global COVID pandemic and that he was repatriated to Canada in May or June 2020, but he did not remember the exact date. The Tribunal understands that this delay was out of the Appellant's control. He also told the Tribunal at the hearing that he would not renew his lease in Morocco, ending on February 28, 2021. As a result, the Tribunal finds that the Appellant returned to ordinarily live in Canada on February 8, 2019, and the Appellant has therefore been eligible to receive the GIS since March 2019.

⁸ GD3-2.

⁹ GD3-1.

CONCLUSION

[34] I am sensitive to the Appellant's arguments; however, given the particular facts of this case, the Tribunal finds that the Appellant was a resident of Canada under the OAS Act during the period from January 20, 2015, to November 15, 2015, and from February 8, 2019, onward.

[35] The Appellant was therefore eligible to receive the GIS during the period from February 2015 to May 2016, inclusive, and from March 2019 onward.

[36] The onus is on the Appellant to prove that he made his home and ordinarily lived in Canada. The Tribunal finds that the Appellant has not met this onus and that the Appellant was not a resident of Canada under the OAS Act from January 23, 2007, to January 20, 2015, and from November 15, 2015, to February 8, 2019. Since the GIS is payable only for the month you leave Canada and for six months after that, the Appellant was therefore not eligible for the GIS during the periods from August 2007 to January 2015, inclusive, and from June 2016 to February 2019, inclusive.

[37] The appeal is allowed in part.

François Guérin
Member, General Division – Income Security