



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *IG v Minister of Employment and Social Development*, 2021 SST 122

Tribunal File Number: GP-19-1768

BETWEEN:

I. G.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Videoconference hearing on: February 3, 2021

Date of decision: February 10, 2021

DECISION

[1] The Claimant is not entitled to an Old Age Security (“OAS”) pension. As of May 28, 2019, he had only 3 years and 218 days of residence in Canada.

OVERVIEW

[2] The Claimant is nearly 87 years old. He was born in what is now Pakistan. He lived there until 2007. He first entered Canada on March 10, 2007, when he was 73 years old. Since then, he has had extensive stays in both Canada and Pakistan. The Minister received the Claimant’s application for the OAS pension on July 11, 2017. The Minister denied the application initially and on reconsideration. The Minister found that the Claimant had no periods of residence in Canada. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for an OAS pension, the Claimant must meet the requirements set out in the *Old Age Security Act*. For a full OAS pension, he would normally need forty years of Canadian residency, although this rule has some exceptions that do not apply to him.¹ For a partial OAS pension, he must have at least ten years of Canadian residency. However, if he has less than twenty years of Canadian residency, he must also reside in Canada to be eligible.²

PRELIMINARY MATTERS

[4] I heard this appeal together with the appeal for the Claimant’s wife, N. G. (“N. G.”).³ The factual background for the two appeals is virtually identical. Given the age and health of Noor and the Claimant, conducting two separate hearings would not have been desirable or necessary. N. G. suffers from dementia, cannot speak, and does not appreciate the nature of the proceedings. The Claimant has no cognitive limitations, but he has a serious heart condition and significant hearing loss. The decision in N.G.’s appeal will be issued immediately following the decision in this appeal.

¹ Subsection 3(1) of the *Old Age Security Act*.

² Subsection 3(2) of the *Old Age Security Act*.

³ Tribunal File GP-19-1770.

[5] Although S. G. (“S. G.”) was listed as the Claimant’s representative, he is not a legal representative. S. G. is the Claimant’s son. He was helping because the Claimant and Noor needed assistance in getting ready for and attending the hearing. This included repeating my questions so that the Claimant could hear them. S. G. did not plan to give evidence. However, it was difficult to conduct the hearing fairly and efficiently with the Claimant as the only witness. I therefore considered S. G. to be only an “administrative” representative, so that he could give evidence too. S. G.’s wife S. G. also attended the hearing and gave assistance. However, she was not a witness.

[6] At the start of the hearing, I confirmed that I would be considering the Claimant’s residence up to May 28, 2019. That was the date of his reconsideration decision.⁴

ISSUES

[7] During which periods was the Claimant resident in Canada?

[8] Is the Claimant entitled to an OAS pension?

ANALYSIS

[9] Since 2007, the Claimant has spent most of his time in either Canada or Pakistan. The following chart (the “Presence Chart”) shows where he has been present from March 10, 2007, to September 11, 2019.

<u>Start Date</u>	<u>End Date</u>	<u>Time</u>	<u>Country</u>
March 10, 2007	May 30, 2008	448 days	Canada
May 31, 2008	October 15, 2008	138 days	Pakistan
October 15, 2008	June 12, 2009	241 days	Canada
June 13, 2009	November 13, 2009	154 days	Pakistan
November 13, 2009	October 13, 2010	335 days	Canada
October 14, 2010	May 19, 2011	218 days	Pakistan
May 19, 2011	March 5, 2012	292 days	Canada
March 6, 2012	June 25, 2012	112 days	Pakistan
June 25, 2012	July 21, 2012	27 days	Kenya
July 21, 2012	January 5, 2013	169 days	Pakistan
January 5, 2013	April 29, 2014	480 days	Canada
April 30, 2014	October 11, 2014	165 days	Pakistan

⁴ GD2-39

October 11, 2014	January 15, 2015	97 days	Canada
January 16, 2015	July 10, 2015	176 days	Pakistan
July 10, 2015	October 19, 2015	102 days	Canada
October 20, 2015	April 11, 2016	175 days	Pakistan
April 11, 2016	August 12, 2016	124 days	Canada
August 13, 2016	October 11, 2016	60 days	Pakistan and Scotland
October 11, 2016	March 27, 2017	168 days	Canada
March 28, 2017	June 16, 2017	81 days	Pakistan
June 16, 2017	October 31, 2017	138 days	Canada
November 1, 2017	April 20, 2018	171 days	Pakistan
April 20, 2018	UNKNOWN	?? days	Canada
UNKNOWN	March 3, 2019	?? days	Pakistan
March 3, 2019	June 27, 2019	117 days	Canada
June 28, 2019	August 5, 2019	39 days	Kenya
August 6, 2019	September 11, 2019	37 days	Pakistan

[10] The Presence Chart is based mostly on the Claimant's written account of his presence since March 10, 2007.⁵ While there is little objective evidence (such as passport stamps) in the Tribunal file, his current passport was referenced at the hearing and his passport appeared to be consistent with the dates given by him. For this reason, his written account forms a useful starting point. Because of the time zone and date differences, I have adjusted the "end dates" for presence immediately before travel to the east.

[11] The main exception to the Claimant's written account was a lengthy 2012 presence in Pakistan that was not in his written account, but appeared in Noor's account.⁶ At the hearing, he admitted being with N. G. in Pakistan during that time. He has also mentioned working in Pakistan in May 2012.⁷ I have accounted for this admission in the Presence Chart. I also added some new 2019 travel dates that were disclosed at the hearing. While the date of one transition between Canada and Pakistan is unknown, it ultimately does not affect my decision.

[12] A further unknown is the Claimant's presence in the United Kingdom (the "U.K."). At the hearing, he said he had been in England four or five times, but his written account only specifically mentions one occasion between 2007 and 2019. The time spent in the U.K. could be significant, as he has several family connections there. In fact, since the spring of 2020, the

⁵ See GD2-32 to GD2-37.

⁶ See GD2-27 in Noor's file.

⁷ GD2-34

Claimant and Noor have been in the U.K. They are currently staying with their son and daughter-in-law in Scotland. However, this happened well after the May 28, 2019, cut-off date, and I am not making any findings relating to their current residence.

During which periods was the Claimant resident in Canada?

[13] For the reasons set out below, I find that the Claimant was resident in Canada from March 10, 2007, to October 13, 2010. This period appears in bold print in the Presence Chart, and totals 1,314 days (3 years and 218 days). It includes two lengthy stays in Pakistan. I will now explain how I came to this conclusion.

[14] A person resides in Canada if he makes his home and ordinarily lives in any part of Canada. A person is present in Canada if he is physically present in any part of Canada.⁸ Being present in Canada does not mean that a person is resident in Canada. While presence is important in determining residence, it is not the only factor. Residence is a factual issue that requires looking at the “big picture” of the person under scrutiny.⁹ The Federal Court of Canada says I should consider the following factors (known as the “Ding Factors”):¹⁰

- (a) ties in the form of personal property;
- (b) social ties in Canada;
- (c) other ties in Canada (medical coverage, driver’s license, rental lease, tax records, etc.);
- (d) ties in another country;
- (e) regularity and length of stay in Canada, and the frequency and length of absences from Canada; and
- (f) the person’s mode of living, or whether the person living in Canada is sufficiently deep-rooted and settled.

[15] I will now apply the Ding Factors to the facts of this case.

Application of the Ding Factors

⁸ Paragraph 21(1) of the *Old Age Security Regulations*.

⁹ *Valdivia De Bustamante v. Canada (Attorney General)*, 2008 FC 1111, at paragraph 37, and *De Carolis v. Canada (Attorney General)*, 2013 FC 366, at paragraph 28.

¹⁰ *Canada (Minister of Human Resources Development) v. Ding*, 2005 FC 76. See also *De Carolis v. Canada (Attorney General)*, 2013 FC 366 and *Valdivia De Bustamante v. Canada (Attorney General)*, 2008 FC 1111.

[16] The Claimant's family is almost equally dispersed across three countries. His parents lived in Pakistan. He has six brothers and one sister. His sister and two brothers (all deceased) lived in Pakistan. Two brothers (still living) are in the U.K. His other brothers were in Canada, although one is now deceased. His daughter lives in Pakistan. He has one son in Canada and two sons in Scotland. All his sons left Pakistan before 2007. In turn, he has three grandchildren in Pakistan, four grandchildren in Canada, and five grandchildren in the U.K.

[17] Several factors point equally to residence in Canada and residence in Pakistan. The Claimant said he kept most of his possessions in both Canada and Pakistan. This included furniture, appliances, utensils, clothing, and personal items.¹¹ While he has provincial health coverage in Canada, free medical care is available in Pakistan. He had bank accounts in both countries.¹² He does not own a home in either Canada or Pakistan. He usually stays with his daughter or his brother in Pakistan. He stays with his son in Canada. I see no evidence of his name being on a lease in either country. He is a citizen of both Canada and Pakistan. He has not filed tax returns in either country since 2007. He regularly travels between the two countries.

[18] Some factors offset each other. In his questionnaire, the Claimant said his Canadian social ties included the "Multicultural Women and Senior Services Association," the Pakistan-Canada Association of Edmonton, and the NDP.¹³ However, at the hearing, he did not seem to know anything about the NDP. His evidence was not completely clear about when he became involved with the Seniors' club. At one point, he referred to the 2016-2017 period. At another, he referred to joining in 2009 and teaching classes there until 2017. He joined the Pakistan-Canada Association in 2018. He now travels on a Canadian passport. While these factors lean toward residency in Canada, other factors lean toward residency in Pakistan. These include having a telephone in Pakistan and receiving a retirement pension from his long-term employer in Pakistan. He worked at a large company (3,000 employees) for almost his entire career and was the second-in-command by the time he retired.

[19] One factor stands out for the Claimant: his role as Chief Executive Officer of the X in Kasur, Pakistan. This is a charity school established by his family. He is not paid for his role.

¹¹ GD2-34 and GD2-35

¹² GD2-3 and GD2-35

¹³ GD2-35 and GD2-36

Once the school opened, an on-site principal carried out day-to-day operations. While one of his brothers seems to have provided the bulk of the financing, the Claimant and his family have also provided support. Registration efforts were already underway by May 25, 2011.¹⁴ In October 2012, a registration certificate was granted to the school, with an effective date of May 1, 2012.¹⁵ May 1, 2012, was also when the Claimant said he started working for the school. His roles included selecting teachers and monitoring their performance.¹⁶ At the hearing, he said he also monitored the number of children attending. He continues to hold this leadership position, although the school has not been open for classes since the COVID-19 pandemic reached Pakistan.

[20] The Claimant's charity school role is significant. It establishes a strong connection to Pakistan, even when he is not physically present in Pakistan. Indeed, it is hard to imagine a stronger connection to a country than facilitating the education of children in that country. He could also still conduct some school "business" from Canada. I must weigh this strong connection against the other Ding Factors. As noted, most of the factors are inconclusive or offset other factors. However, the Presence Chart suggests that he spent more time in Canada than in Pakistan, up to the end of April 2014. After April 2014, he spent just as much (or even more) of his time in Pakistan.

[21] The Presence Chart is based primarily on the Claimant's entries into and exits from Pakistan. At the hearing, I heard evidence that the U.K. authorities do not always stamp passports. This means that some Canadian presence may actually have been U.K. presence. It is also possible that some time outside Canada has inadvertently not been recorded: this was seen with his partial failure to report his entire 2012-2013 trip to Pakistan.

[22] In the circumstances, I find that the Claimant's role at the charity school outweighs the other Ding Factors once the school was being established. Registration efforts were made before May 25, 2011. However, he was in Pakistan from October 14, 2010, to May 19, 2011. Accordingly, I cannot find the Claimant to have been resident in Canada after October 13, 2010 (his likely departure date from Canada). I agree with him that he was resident in Canada after his

¹⁴ GD2-13

¹⁵ GD2-12

¹⁶ GD2-34

March 2007 arrival. His physical presence in Canada was significantly more than his presence in Pakistan, and he was not yet involved with the charity school. I therefore find that he was resident in Canada from March 10, 2007, to October 13, 2010.

[23] I note that the Claimant reports an extended stay in Canada from January 5, 2013, to April 29, 2014 (480 days). This was longer than any other period of presence in either Canada or Pakistan since 2007. However, I must view this in context.¹⁷ If the arithmetic number of days in a country were determinative, the Ding Factors would not be necessary. His dates are entirely self-reported: he did not file copies of his Canadian passport pages, Canada Border Services Agency documents, or any other documents from the period in question. He could not remember why he did not file documents such as passport pages or flight tickets.¹⁸ He may have spent some time in the U.K. Even if I accept that he was in Canada for all 480 days, I see little evidence of what he was doing in Canada during that time. He mentioned teaching some courses at the seniors' club, but those could have been at any time between 2009 and 2017. He also mentioned going to the library. But, as noted, he may well have been dealing with charity school matters from Canada.

[24] Ultimately, the burden of proof is on the Claimant.¹⁹ While his claim to Canadian residency may be stronger in 2013 and early 2014 than it is for subsequent periods, it is still not persuasive. He must still establish on a balance of probabilities that he was resident, as opposed to merely present, in Canada for that 480-day period. On evidence in front of me, I am not satisfied that he met this burden. He still was not sufficiently deep-rooted and settled in Canada, given the weight of his role with the Kasur charity school.

Issues raised by the Claimant

[25] The above analysis addresses most of the issues raised by the Claimant, including his argument that he spent more days in Canada than in Pakistan. However, I would like to address one other issue directly.

¹⁷ *Valdivia De Bustamante v. Canada (Attorney General)*, 2008 FC 1111.

¹⁸ He filed tickets for his November 1, 2017, to April 20, 2018, trip to Pakistan. See GD2-29. The only passport pages filed were from his Pakistan passport that expired in March 2008. See GD2-9 and GD2-10.

¹⁹ *De Carolis v. Canada (Attorney General)*, 2013 FC 366.

[26] The Claimant stressed that he was outside Canada for more than six months on only one occasion. However, assessing residence involves more than just counting how many days each trip lasts. The Ding Factors compel me to consider other things too. While spending less than six months at a time outside Canada may be enough to maintain “tax residency” or provincial health coverage, it does not necessarily establish residency for OAS purposes. I also note that he had multiple periods in Pakistan that were close to six months long. From 2014 onward, these periods were often longer than the intervening periods he was spending in Canada. I cannot consider the length of his stays in Pakistan without reference to his stays in Canada and the other Ding Factors.

Is the Claimant entitled to an OAS pension?

[27] As the Claimant has only 3 years and 218 days of residency in Canada up to May 28, 2019, he is not entitled to an OAS pension as of that date. To qualify for an OAS pension, he needs at least ten years of Canadian residency. That requirement increases to twenty years if he stops residing in Canada.

[28] The Claimant may have had additional Canadian residence since May 28, 2019. He may also accumulate additional Canadian residence in the future. If he applies for an OAS pension in the future, the Minister can decide if he has established additional periods of Canadian residence.

CONCLUSION

[29] The Claimant is not entitled to an OAS pension, because he had less than 10 years of Canadian residence by May 28, 2019. However, if he believes that he has accumulated more residence since then, he may apply again in the future.

[30] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security