



Citation: *TC v Minister of Employment and Social Development*, 2022 SST 324

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: T. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated August 13, 2020 (issued by Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Teleconference

Hearing date: February 3, 2022

Hearing participants: Appellant
Appellant's witnesses
Interpreter

Decision date: March 8, 2022

File number: GP-20-1664

Decision

[1] The appeal is dismissed.

[2] The Appellant, T. C., isn't eligible for a full or partial Old Age Security (OAS) pension. She needed at least 10 years of residence in Canada to be eligible for an OAS pension. I decided she only had 9 years and 34 days as of the hearing date, February 3, 2022.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant was born in India on September 27, 1943. She came to Canada as a permanent resident in December 1990. She became a Canadian citizen in 2000. She has gone back to India many times over the years. But she says she feels that Canada is her home because she has family in this country and has settled here.¹

[5] The Appellant applied for an OAS pension on June 27, 2017.² She said she wanted her pension to start as soon as she qualified.³

[6] The Minister of Employment and Social Development (Minister) refused the Appellant's application. The Minister said the Appellant hadn't provided information to show she resided in Canada long enough to qualify for an OAS pension.⁴

[7] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division. The Appellant says she has submitted all the documents she can to prove when she was in Canada.⁵

¹ See GD2-145.

² The Appellant also applied in 2008, but the Minister denied her application because she didn't provide information and documents as requested. See GD2-50.

³ See GD2-55.

⁴ The Minister manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at GD2-138.

⁵ See GD1-1

What the Appellant must prove

[8] For the Appellant to receive a full OAS pension, she must prove she resided in Canada for at least 40 years after her 18th birthday.⁶ This rule has some exceptions, but they don't apply to the Appellant.⁷

[9] If the Appellant doesn't qualify for a full OAS pension, she might qualify for a partial pension. A partial pension is based on the number of years (out of 40) that a person resided in Canada after their 18th birthday. For example, a person with 12 years of residence receives a partial pension of 12/40ths of the full amount.

[10] For the Appellant to receive a partial OAS pension, she must prove she resided in Canada for at least 10 years after her 18th birthday. If the Appellant doesn't reside in Canada when her application is approved, she must prove she has 20 years of prior residence in Canada.⁸

[11] The Minister doesn't have to prove the Appellant didn't reside in Canada or wasn't present in Canada. The Appellant has to prove on a balance of probabilities (or, that it is more likely than not) that she resided in Canada and was present in Canada for the times she claims.⁹

Reasons for my decision

[12] I have decided the Appellant isn't eligible for an OAS pension.

[13] I considered the Appellant's eligibility for the OAS pension from December 25, 1990, up to and including the hearing date, February 3, 2022. I chose the first date because that is when the Appellant first came to Canada. She isn't claiming she resided

⁶ See s. 3(1)(c) of the *Old Age Security Act*. The Appellant must also be at least 65 years old, be a citizen or legally resident in Canada, and must have applied for the pension. The Appellant has met these requirements.

⁷ See s. 3(1)(b) of the *Old Age Security Act*.

⁸ See s. 3(2) of the *Old Age Security Act*.

⁹ The Federal Court of Canada said this in *De Carolis v. Canada (Attorney General)*, 2013 FC 366.

in Canada before then. I chose the second date because there was enough evidence to make a decision up to the hearing date.¹⁰

[14] I reached my decision by considering the following issues.

Is the Appellant eligible for an OAS pension?

[15] The Appellant hasn't resided in Canada for at least 10 years. This means she isn't eligible for an OAS pension.

The test for residence

[16] Being present in Canada, being a Canadian citizen, or having permanent resident status as an immigrant, doesn't mean a person resides in Canada for OAS purposes. The *Old Age Security Regulations* define residence and presence. I must use these definitions when I am deciding if the Appellant resided in Canada.

[17] A person resides in Canada if they make their home and ordinarily live in any part of Canada.¹¹ A person is present in Canada when they are physically present in any part of Canada.¹²

[18] To decide if the Appellant made her home and ordinarily lived in Canada, I have to look at the "big picture" and consider things like:

- where she has property such as furniture, bank accounts, and business interests
- where she has social ties, such as friends, relatives, and membership in religious groups, clubs, or professional organizations
- where she has ties such as medical coverage, rental agreements, mortgages or loans

¹⁰ The Minister made submissions about the Appellant's residence up to October 6, 2021. The Appellant gave credible evidence about her residence between that date and the hearing date. The Federal Court of Canada suggested the Tribunal should determine eligibility for benefits in a broad time period where possible. See *Fu v Attorney General of Canada*, 2019 FC 527.

¹¹ See s. 21(1)(a) of the *Old Age Security Regulations*.

¹² See s. 21(1)(b) of the *Old Age Security Regulations*.

- where she files income tax returns
- what ties she has to another country
- how much time she spends in Canada
- how often she is outside of Canada, where she goes, and how much time she spends there
- her lifestyle and way of living in Canada
- her intentions¹³

[19] This isn't a complete list. There may be other things that are important in a particular case. I have to look at all the Appellant's circumstances.¹⁴

When the Appellant resided in Canada

[20] I find the Appellant **resided in Canada** in the following periods since December 25, 1990:

- April 26, 1996, up to and including July 4, 1999
- March 10, 2016, up to and including February 3, 2022

[21] I find the Appellant **didn't reside in Canada** in the following periods since December 25, 1990:

- December 25, 1990, up to and including April 25, 1996
- July 5, 1999, up to and including March 9, 2016

[22] I will now explain why I decided the Appellant did or did not reside in Canada during these periods.

¹³ The Federal Court of Canada said this in *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *De Bustamante v Canada (Attorney General)*, 2008 FC 1111; *Duncan v Canada (Attorney General)*, 2013 FC 319; *De Carolis v Canada (Attorney General)*, 2013 FC 366.

¹⁴ The Federal Court of Canada said this in *Canada (Minister of Human Resources Development v Chhabu*, 2005 FC 1277.

– **When the Appellant was present in Canada**

[23] I first looked at when the Appellant was present in Canada. Presence isn't the only thing to consider in deciding residence. But it's an important factor, especially if a person has ties to more than one country, as the Appellant does.

[24] I find the Appellant was **present** in Canada as follows:

- from December 25, 1990, to an unknown date before August 23, 1991
- from April 17, 1995, to July 15, 1995
- from April 26, 1996, to July 4, 1999
- from February 26, 2000, to December 30, 2000
- on December 24, 2008
- on May 6, June 1, September 16, and September 23, 2009
- on January 18, May 7, August 18, and August 23, 2010
- on August 30, 2010
- on November 10, 2010
- from March 10, 2016, to February 3, 2022

[25] The Appellant says she was present in Canada more often than this. In August 2020, she gave these dates for when she was in and out of Canada:

- | | |
|---|-----------|
| • December 25, 1990, to June 27, 1992 | in Canada |
| • June 28, 1992, to February 16, 1993 | in India |
| • February 17, 1993, to February 17, 1994 | in Canada |
| • February 18, 1994, to April 17, 1995 | in India |
| • April 17, 1995, to November 26, 1999 | in Canada |
| • November 27, 1999, to February 26, 2000 | in India |
| • February 26, 2000, to December 30, 2000 | in Canada |
| • December 30, 2000, to May 30, 2001 | in India |
| • May 30, 2001, to November 25, 2004 | in Canada |
| • November 25, 2004, to March 15, 2006 | in India |
| • March 15, 2006, to January 9, 2008 | in Canada |

- January 9, 2008, to December 24, 2008 in India
- December 24, 2008, to March 9, 2016 in India
- March 9, 2016, to August 8, 2020 in Canada¹⁵

[26] However, I don't accept most of what the Appellant said about when she was present in Canada. Here is why.

[27] Starting with her first application, the Appellant has given inconsistent information about when she was in Canada. At the hearing, she and her husband told me the family had a hard time figuring out the exact dates, because they don't have some of the Appellant's passports, the ones they do have are hard to read, and they didn't keep many old documents like airline tickets. They believe the Appellant's statement of August 2020 is the most accurate, to the best of their knowledge. They told me they got this information from the Appellant's passports and from old airline tickets.

[28] I believe the Appellant has tried to give accurate information. It isn't her fault that she doesn't have old passports, boarding passes, and other records. Most people don't keep records for more than about seven years. Nor is it her fault that the Canada Border Services Agency records don't go back to 1990, that passports aren't always stamped, and that they can be hard to read.

[29] However, the Appellant has changed her mind many times about when she was present in Canada.¹⁶ She didn't have any reference points—like important events—to show why she thought she was in or out of Canada at various times. Her uncertainty about the dates tells me that her memory isn't very reliable on this subject. It means that, for things that happened more than a few years ago, I have to rely on what the documents show rather than what the Appellant or her family members recall.

¹⁵ See GD2-144, 143, 142. The Appellant gave similar dates in April 2019. See GD2-107.

¹⁶ See GD2-6, GD2-37, GD2-43, GD2-56, GD2-59, GD2-96, GD2-118.

– **The Appellant didn't reside in Canada from December 1990 to April 1996**

[30] The Appellant didn't reside in Canada from December 25, 1990, to April 25, 1996.

[31] During this period the Appellant spent very little time in Canada. At the most, she was here for about eight months in 1990–1991, and three months in 1995.

[32] She entered Canada on December 25, 1990.¹⁷ But she was gone by August 23, 1991. That was when her Indian passport was issued in Calcutta. The passport shows she gave a permanent address in Calcutta.¹⁸

[33] There are no documents to show the Appellant returned to Canada until April 17, 1995. She went through U.S. Immigration at Vancouver on July 11, 1994. Other stamps in her passport show she was in Hong Kong shortly before and after that date. There is nothing to show she was admitted into Canada in June or July 1994, so I conclude she was likely in transit when she went through U.S. customs. After entering Canada in April 1995, she was admitted to another country (likely Hong Kong) on July 15, 1995.¹⁹

[34] When the Appellant was in Canada, she stayed with her husband in a house he owned in Surrey, B.C.²⁰ But they also had a house in India. One of their sons lived there with them before they moved to Canada. He continued to live in the house after that. The Appellant and her husband still own the home. They stay there when they are in India. The Appellant keeps clothing there. She didn't move any furniture to Canada.

[35] The Appellant went back to India many times because she wanted to see her children who still lived there. Her husband still had business interests in India and he had to go to look after them. Sometimes he travelled at the same time as the Appellant.

[36] I accept that the Appellant came to Canada intending to live here eventually. But she didn't do anything to show she gave up her home in India. She was drawn back

¹⁷ See GD2-10.

¹⁸ See GD2-19 and 21.

¹⁹ See GD2-22-34.

²⁰ The Appellant said this at the hearing. Her son confirmed it at GD2-150.

there in less than a year. In the meantime, there is no evidence that she did anything to make Canada her home, including in the first eight months. She didn't join any organizations, she didn't work, she didn't open a bank account. She got a B.C. medical card in January 1991, which she still has.²¹ But I don't know the basis on which it was approved or why it wasn't cancelled later, since the Appellant admitted she was absent from Canada for long periods.

[37] There is no evidence showing the Appellant had ties to Canada other than the fact that she was present here for two short periods, and had some family here. But she also had family in India. This lack of evidence means that presence is even more significant. And the Appellant simply wasn't present in Canada long enough for me to find that she made her home and ordinarily lived in Canada during this period.

– **The Appellant resided in Canada from April 1996 to July 1999**

[38] The Appellant resided in Canada from April 26, 1996, to July 4, 1999.

[39] The Minister agreed the Appellant resided in Canada for most of this period. Her passport shows she entered Canada on April 26, 1996.²² The Minister argued the Appellant left in February 1999. The Appellant said she left in November 1999. I can't see either date in the Appellant's passport. The best evidence I can see is that she was in India on July 5, 1999.²³ There is no evidence she entered any other country between April 26 and July 5, so I find she left Canada on July 4, 1999.

[40] Because the Appellant already had some ties in this country (her own room in her son's home, and close family members who lived here) her long presence here persuades me that she resided in Canada during this period.

– **The Appellant didn't reside in Canada from July 1999 to March 2016**

[41] The Appellant didn't reside in Canada from July 5, 1999, to March 9, 2016.

²¹ See GD2-142.

²² See GD2-26.

²³ See GD2-32.

[42] I accept that she was present in Canada at times during this period. The longest period she could prove was from February to December 2000.²⁴ This was just seven months after she left in July 1999. In some circumstances, an absence of less than one year would mean her residence continued.²⁵ I find that it didn't in this case. This is because the Appellant ended her residence in Canada when she left in July 1999.

[43] By that time, her husband had sold his home in Surrey. The Appellant was staying in her sister's guest room. There is no evidence that she worked, paid taxes, had any community connections, or did anything to show she made her home and ordinarily lived in Canada. When she left in July 1999, she went back to her home in India and resumed her usual lifestyle there.

[44] The Appellant stayed with her sister when she returned to Canada in February 2000. Other than her presence, there is nothing to show she re-established her home in Canada. She left for India again 10 months later. There is no evidence she returned to Canada after that until December 24, 2008.²⁶

[45] I considered the fact that the Appellant started getting a Canada Pension Plan (CPP) retirement pension as of February 2019.²⁷ This means she must have worked and contributed to the CPP sometime before she turned 65 in 2008. But she is only receiving just over \$6.00 per month. She couldn't have worked for very long. The most likely conclusion is that she did a small amount of work when she was residing in Canada from 1996 to 1999.

[46] I placed no weight on the fact that the Appellant filed an income tax return in Canada in 2007.²⁸ It isn't evidence that she was residing in Canada, because she had no income.

²⁴ She entered Canada next on February 26, 2000. She entered Singapore on December 30, 2000. See GD2-26 and 31.

²⁵ See s. 21(4) of the *Old Age Security Regulations*.

²⁶ See the Appellant's traveller history from Canada Border Services Agency at GD2-93.

²⁷ See GD4-3.

²⁸ See GD2-147-149.

[47] The Appellant had nine doctor visits in B.C. in 2009 and 2010.²⁹ But she wasn't in Canada the entire time, because her Canada Border Services Agency travel history shows she re-entered Canada in August 2010.³⁰ There is no evidence of any other activity in Canada during these years. I agree with the Minister that these visits only show the Appellant saw her doctor while she was present in Canada. They do not, by themselves, establish that she resided in Canada.

[48] Because the Appellant was in India when she wasn't in Canada, and continued to have strong ties there, her short stays in Canada aren't enough to persuade me that she made her home and ordinarily lived in Canada during this period.³¹ Besides, the Appellant herself stated that she resided in India during this period.³²

– **The Appellant has resided in Canada since March 2016**

[49] The Appellant resided in Canada from March 10, 2016, up to the hearing date, February 3, 2022.

[50] In its submission of October 6, 2021, the Minister agreed that the Appellant has resided in Canada since March 9, 2016.³³ I take that to mean the Minister also agreed the Appellant was present in Canada between those dates, or that any absence wasn't enough to end her residence.

[51] I see no reason why I should decide differently, except that I find the Appellant's residence started on March 10, 2016. That is when she returned to Canada.³⁴ Since then, she has been living in her own room at her son's home in Surrey.

[52] At the hearing, the Appellant told me she hasn't left Canada since March 2020. I accept this evidence because I believe that she is honest, and that she can remember

²⁹ See GD2-119-121.

³⁰ See GD2-93.

³¹ The Appellant's residence statements and passport stamps show she was also in Hong Kong, Singapore, and China. However, she told me that she was only in these countries for short periods while she was on her way to India. She said that all her time outside Canada was spent at her home in India.

³² See GD2-142.

³³ See GD3-15.

³⁴ See GD2-93

what has happened in the past two years. So I find the Appellant's residence has continued up to the hearing date.

The Appellant isn't eligible for an OAS pension

[53] The Appellant hasn't resided in Canada long enough to be eligible for an OAS pension.

[54] As of February 3, 2022, the Appellant had resided in Canada for 9 years and 34 days:

- From April 26, 1996, to July 4, 1999, she resided in Canada for 3 years and 69 days.
- From March 10, 2016, to February 3, 2022, she resided in Canada for 5 years and 330 days.
- Adding up these two periods gives a total of 8 years and 399 days, or 9 years and 34 days.

[55] The Appellant hasn't resided in Canada for at least 10 full years. This means she isn't eligible for an OAS pension.

Conclusion

[56] As of February 3, 2022, the Appellant isn't eligible for an OAS pension.

[57] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section