[TRANSLATION]

Citation: *GS v Minister of Employment and Social Development*, 2022 SST 624

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	G. S.
Representative:	M. H.
Respondent:	Minister of Employment and Social Development
Representative:	Suzette Bernard

Decision under appeal:	General Division decision dated October 27, 2021 (GP-19-1701)

Tribunal member:	Jude Samson
Type of hearing:	Teleconference
Hearing date:	May 5, 2022
Hearing participants:	Appellant's representative Respondent's representative
Decision date:	July 5, 2022
File number:	AD-22-53

Decision

[1] The appeal is allowed in part. The Applicant resided in Canada from May 31, 1995, to June 12, 2010. This decision will reduce the amount of the overpayment on her account.

Overview

[2] G. S. is the Applicant in this case. From April 2006, the Minister of Employment and Social Development (Minister) paid her the Allowance for the Survivor, followed by an Old Age Security (OAS) pension and the Guaranteed Income Supplement. The Minister found that the Applicant had resided in Canada since she arrived in the country in 1995.[1]

[3] In 2016, the Minister launched an investigation into the Applicant's residence in Canada. Following the investigation, the Minister found that the Applicant hadn't resided in Canada since October 13, 2002.

[4] As a result, the Minister decided that the Applicant wasn't entitled to the benefits she had received. So, the Minister asked her to pay back more than $161,000.[2]

[5] The Applicant appealed the Minister's decision to the Social Security Tribunal's General Division. The General Division found that the Applicant had resided in Canada from May 31, 1995, to February 10, 2007, which reduced the amount of the overpayment on her account.

[6] The Applicant is now appealing the General Division decision to the Tribunal's Appeal Division. I find that the General Division made an important mistake about the facts of the case. It also didn't properly apply the legal test for residence in Canada.

---

[1] In this context, "residence" has a very specific meaning. Section 21(1) of the *Old Age Security Regulations* defines whether a person **resides** in Canada or is **present** in Canada.
[2] I assume this also resulted in an equally large or even larger debt on the Applicant's husband's account, but that decision wasn't appealed to the Tribunal. Because of this, his case isn't before me.

[7] In the circumstances, I am allowing the appeal in part and giving the decision that the General Division should have given. I find that the Applicant resided in Canada from May 31, 1995, to June 12, 2010. The Minister retains the right to consider the Applicant's residence in Canada after July 19, 2018.

Issues

[8] I have to decide the following issues:

a) Did the General Division make errors of fact and law when it found that the Applicant's residence in Canada was interrupted on February 10, 2007?

b) If so, how should I fix this error?

c) When did the Applicant reside in Canada?

Analysis

[9] I can intervene in this case only if the General Division made at least one of the errors set out in the law.[3] Based on the wording of the law, any error of law could trigger my powers to intervene.

[10] For an erroneous finding of fact to justify my intervention, however, it has to meet the following criteria:

- The General Division decision is based on that finding.
- The General Division made the finding in a perverse or capricious manner or without regard for the material before it.[4]

[3] These errors (also known as "grounds of appeal") are listed under section 58(1) of the *Department of Employment and Social Development Act*.
[4] See, for example, *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraph 6.

The General Division made errors of fact and law when it found that the Applicant's residence in Canada was interrupted on February 10, 2007

[11] Residence in Canada is one of the criteria for determining a person's eligibility for benefits under the *Old Age Security Act*.

[12] The Applicant says that she has resided in Canada since she arrived in 1995. However, the Minister decided that she hadn't resided in Canada since October 13, 2002, when she travelled from Canada to her home country of Algeria.

[13] This means that the issue before the General Division was whether the Applicant had resided in Canada during the relevant periods.

– The General Division based its decision on an important error of fact when it found that the Applicant had "admitted" residing in Algeria

[14] The General Division based its decision on an important mistake about the facts of the case when it found that the Applicant had **admitted** that she had **resided** in Algeria in the last two years on her passport application form dated February 11, 2009.[5]

[15] Before I continue, I should add some context. The Applicant and her husband owned a family home in Algeria before settling in Canada. The family home has always stayed in the husband's name, even after they left and after he died.

[16] But the couple's eldest son didn't follow them to Canada. He preferred to stay in the family home, and he took full responsibility for it after his parents and four siblings left.[6] In any case, the Applicant usually stays in the family home during her stays in Algeria.

[17] In 2009, while in Algeria, the Applicant noticed that her Canadian passport was expired. So, on February 11, 2009, she applied for a passport at the Embassy of Canada in Algiers. On her application, she answered the "Address of permanent

[5] The passport application starts at GD2-110 in the appeal record.
[6] See the son's letter at GD7-5 in the appeal record.

residence" question by providing the address of the family home in Algeria. Later, she answered the "Addresses in the last TWO (2) years" question by saying "Same as current address."[7]

[18] The General Division described these answers as "admissions" and found that the Applicant's residence in Canada was interrupted on February 11, 2007, two years before the date of the passport application.[8]

[19] I find that the General Division, in describing the Applicant's answers as admissions, made an erroneous finding of fact in a perverse or capricious manner or without regard for the material before it.

[20] The relevant questions, which appear on a passport application form, would not lead someone to think that their answers might also affect their residence in Canada under the *Old Age Security Act*. The form doesn't warn of this possibility.

[21] That conclusion is strengthened in this case, which involves a woman of a certain age who has always been a homemaker and who has lived according to Algerian and Muslim traditions. Why would she have thought that a question about her address could have such major implications?

[22] When she testified before the General Division, the Applicant explained that she had indicated her address in Algeria on her passport application because that was where she was when she completed it and because her new passport needed to be sent there. After it was explained to her that the question might have broader implications, she said that it was a simple mistake.

[23] I have trouble understanding the doubt that the General Division cast on the Applicant's testimony on this point.[9] Those answers aren't inconsistent, especially for

---

[7] See GD2-112 in the appeal record.
[8] The General Division used the word "admission" but gave it the meaning of a "confession" because the fact admitted is bad for the admitter. The General Division discussed this admission in paragraphs 69 and 72 of its decision.
[9] See the General Division decision at paragraphs 69 and 71.

someone with two permanent addresses. Based on that form, how could she grasp the complex meaning of "residence," which means the sole country to which you have the strongest ties?

[24] In addition, the Applicant wasn't told about the issue with her application until about 10 years later. So, why would she not have answered the same way on her next passport application, when there were no repercussions in the five years between the two applications?[10]

[25] The General Division placed significant weight on the Applicant's admission, which had serious repercussions. It goes far beyond what the Applicant could have imagined when she completed her passport application. So, in my view, the Tribunal has to be careful when assessing whether a person's statement can be described as a confession or admission.

[26] Before concluding on this issue, I want to acknowledge the importance of statements made on government forms. But, in this situation, I find that the General Division was wrong to find that the Applicant's answers on her passport application were an admission concerning her residence under the *Old Age Security Act*.

[27] Rather than an admission, the Applicant's passport application was an important piece of evidence to be considered along with all the others.

– **The General Division made an error of law by misapplying the legal test for residence in Canada**

[28] To address this issue, that is, the Applicant's period of Canadian residence, the General Division had to consider many factors and decide to which country the Applicant's ties were stronger.

[29] I admit that the General Division doesn't need to discuss each and every piece of evidence in the record and is presumed to have considered and weighed all the

[10] The question was a little different on the 2014 application. The form asked for the Applicant's "Current home address." See GD2-124 in the appeal record.

evidence.[11] However, I find that the General Division made an error of law by not considering the Applicant's **entire** context.[12]

[30] Viewed from a different angle, it made an error of law by not engaging in a meaningful analysis of the evidence.[13] In other words, the General Division didn't mention important evidence, including evidence that contradicted its finding.

[31] For example, the General Division placed significant weight on what the Applicant had reported on her Canadian passport applications submitted in Algeria. But it overlooked the fact that the Applicant had always filed her federal tax returns and had done so on time.[14] These are another form of reporting that the Applicant does annually and that affects her status in Canada.

[32] In addition, the General Division devoted a single section of its decision to the assessment of the Applicant's residence throughout the period from February 11, 2007, to July 19, 2018.[15] In that section, the General Division relied mainly on the following:[16]

- the Applicant's 2009 and 2014 passport applications
- the return of both of her sons to Algeria from Canada
- the number and length of her absences from Canada from December 2010 to July 2018

---

[11] See *Simpson v Canada (Attorney General)*, 2012 FCA 82 at paragraph 10; and *Yantzi v Canada (Attorney General)*, 2014 FCA 193 at paragraph 4.
[12] The Federal Court discussed this requirement in *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at paragraph 58; and *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277 at paragraph 32.
[13] The Federal Court of Appeal described this type of error in *Bellefleur v Canada (Attorney General)*, 2008 FCA 13 at paragraphs 3 and 7; and *Canada (Minister of Human Resources Development) v Quesnelle*, 2003 FCA 92 at paragraphs 8 and 9.
[14] See GD2-54 in the appeal record.
[15] See the General Division decision at paragraphs 70 to 74.
[16] Although the General Division also discussed the Applicant's living situation in both countries and the fact that most of her family was in Algeria, these circumstances didn't change during the period in question.

[33] However, the Applicant says that she was in Canada on February 11, 2007, and that her absences from Canada weren't as long at the time.[17] She points out that the General Division's assessment overlooked several facts, including the following:

- A history shows that the Applicant received a lot of medical care from 2007 to 2010.[18]
- Her daughters testified to the considerable support she had given them at the time, either to help them raise their young children or because of their significant medical needs.[19]
- She received social assistance until March 2007.[20]

[34] I accept the Applicant's argument in this point. I find that the General Division didn't consider the Applicant's entire context, especially at the beginning of that period. In addition, it seems to have ignored some important evidence.

I will give the decision the General Division should have given

[35] At the hearing, there were no objections to my giving the decision the General Division should have given.[21] The Applicant isn't arguing that the General Division prevented her from presenting her case in any way.

[36] I agree. This means that I can decide when the Applicant resided in Canada.

---

[17] See AD5 in the appeal record. According to the Canada Border Services Agency, the Applicant entered Canada on January 25, 2007 (see GD2-91 in the appeal record).
[18] See GD2-83 and GD2-84 in the appeal record.
[19] Listen to Part 2 of the audio recording of the General Division hearing from 0:30:00 to 0:39:00 and from 0:55:45 to 0:59:00.
[20] See the General Division decision at paragraph 65 c.
[21] Sections 59(1) and 64(1) of the *Department of Employment and Social Development Act* give me the power to fix the General Division's errors in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paragraphs 16 to 18.

The Applicant's residence in Canada

– The relevant period: February 11, 2007, to July 19, 2018

[37] The General Division found that the Applicant had resided in Canada from May 31, 1995, to February 10, 2007. The Minister didn't appeal the General Division decision. So, the relevant period now begins on February 11, 2007.

[38] At the General Division hearing, the Applicant testified that she had stayed in Canada throughout the COVID-19 pandemic. This was to show that she had resumed residence in Canada.

[39] But, without more up-to-date information, the General Division found that it could not decide the Applicant's residence in Canada after her last documented departure from Canada on July 19, 2018.[22] I am faced with the same lack of information.

[40] For this reason, I will respect the limits of the General Division decision. The Minister retains the right to decide the Applicant's residence in Canada after July 19, 2018.

– The legal test for residence in Canada

[41] In the above paragraphs, I referred to the legal test for residence in Canada. In short, a person's residence is largely a factual issue that requires an examination of the person's whole context.[23] While there may be other relevant factors, I have to consider the following when assessing a person's residence:[24]

- their personal property in Canada

---

[22] At the General Division hearing, for example, the Applicant and her daughters could not remember whether the Applicant had returned to Canada in March 2019 or March 2020. Listen to Part 3 of the audio recording of the General Division hearing at 0:56:20.
[23] See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at paragraph 58; and *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277 at paragraph 32.
[24] The Federal Court cited these factors with approval in *De Carolis v Canada (Attorney General)*, 2013 FC 366 at paragraph 32; and *De Bustamante v Canada (Attorney General)*, 2008 FC 1111 at paragraph 38 (among others).

- their social ties in Canada
- their other ties in Canada
- their ties in another country
- the number and length of their stays in Canada
- the number and length of their absences from Canada
- their lifestyle and establishment in Canada

[42] The weight given to each factor can vary from case to case.[25]

– **The Applicant resided in Canada from February 11, 2007, to June 12, 2010**

[43] It is clear that the Applicant had ties to both Canada and Algeria during that period. Here is a table summarizing her main ties to each country:

Canada	Algeria
Her two daughters (with whom she shares the highest level of interdependence among her children) and their families live in Canada.	Her three sons and their families live in Algeria. Most of her siblings are there too.
Her primary health care professionals are in Canada, and she has had a health card since April 1, 2007.	She sees health care professionals as needed.
She has a bedroom exclusively for her and her husband in her daughter's home. Her few personal belongings, such as her clothes and tableware, are kept there.	Her husband owns the family home, but the couple's eldest son is responsible for it. The Applicant and her husband have a bedroom in that house for when they visit the country.

[25] This is stated in *Singer v Canada (Attorney General)*, 2010 FC 607, affirmed by 2011 FCA 178.

Canada	Algeria
She filed her annual federal tax returns.	On her February 11, 2009, passport application, she indicated that she had had a permanent residence in Algeria in the last two years.
She attends religious and community events.	She has many friends that she sees regularly.
She received social assistance until March 2007.	
Her Canadian passport expired in 2007, and she renewed it in 2009.	She had an Algerian passport.

[44] Given her age and culture, the Applicant had no bank account, no driver's licence, and no contracts in her name.

[45] Overall, I find that the above factors tilt the scales slightly toward residence in Canada. But, given that the ties to both countries are strong, I place significant weight on the factor related to the number and length of stays in one country versus the other.

[46] On this point, the Applicant says that she was in Canada for most of that period. She points out that both of her daughters had young children during that period and that she was there to support them. Her history of medical visits also supports this.[26]

[47] At the General Division hearing, the Applicant was asked why she had waited until February 2009 to renew her old Canadian passport, which had expired in March 2007. The Applicant answered that she didn't need it because she was in Canada.[27]

[26] The history of medical care starts at GD2-79 in the appeal record.
[27] Listen to Part 3 of the audio recording of the General Division hearing at 0:19:00.

[48] The Minister relied more heavily on plane tickets and the traveller history provided by the Canada Border Services Agency.[28] According to this information, the Applicant:[29]

- entered Canada on January 25, 2007
- left Canada on February 15, 2007
- entered Canada on November 13, 2007
- entered Canada on April 24, 2009
- entered Canada on October 8, 2009
- entered Canada on April 9, 2010
- left Canada on June 12, 2010

[49] I question this information for several reasons. To begin with, dates of entry into the country are less relevant without exit dates. Moreover, it is clear that the Applicant was in Canada between February 15, 2007, and November 13, 2007, even though her information says otherwise. During that period, she signed and filed her Allowance application and had several medical visits.[30]

[50] As a result, the Applicant has satisfied me that she was actually in Canada during that period. This strengthens my finding that she maintained her residence in Canada from February 11, 2007, to June 12, 2010.

– **The Applicant didn't reside in Canada from June 13, 2010, to July 19, 2018**

[51] At the General Division hearing, the Applicant admitted that her absences from Canada grew longer from 2012 until her husband's death in 2015. During those years,

[28] See the plane ticket at GD2-97 and the traveller history at GD2-91 in the appeal record.
[29] Starting at GD4-26 in the appeal record, there is a table that the Minister prepared summarizing the information about the Applicant's movements.
[30] See GD2-7 to GD2-11, GD2-83, and GD2-84 in the appeal record.

multiple health problems—hers but particularly her husband's—kept her from returning to Canada as often as she would have liked.

[52] However, I have to assess the Applicant's residence based on the strength of her ties to Canada, not on her intentions to reside in Canada.[31]

[53] Although the Applicant admits that her absences from Canada grew longer from 2012 to 2015, there is compelling evidence that her lengthy absences actually began in June 2010 and continued until 2018. On this point, I place significant weight on the list of trips prepared by Air Algérie, the Applicant's preferred airline since June 2007.[32] This list is consistent with the entries into Canada logged by the Canada Border Services Agency.[33]

[54] The Applicant's lengthy absences are shown in a table that the General Division prepared at page 20 of its decision. Although I have noted some minor errors in the table, the Applicant hasn't really disputed the conclusion that flows from it: During those years, she spent much more time in Algeria than in Canada.

[55] Despite the Applicant's continuing ties to Canada, significant weight has to be placed on her frequent and lengthy absences, which prevent me from concluding that she resided in Canada during that period.

Conclusion

[56] Overall, I have found that the General Division made errors of fact and law when it found that the Applicant's residence in Canada was interrupted on February 10, 2007. These errors justify my intervention in this case and allow me to give the decision the General Division should have given.

[57] I find that the Applicant resided in Canada from May 31, 1995, to June 12, 2010.

---

[31] This is stated in *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at paragraphs 58 and 59.
[32] See GD10-32 in the appeal record.
[33] See GD2-91 in the appeal record.

[58] This means that the Applicant is eligible for a partial OAS pension and for the Supplement from August 2006. Her eligibility for these benefits continues until the end of her residence in Canada in June 2010, and for six months after that.[34]

[59] The Applicant's eligibility for the Allowance depends on her husband's residence in Canada. I admit that there is some logic in applying the findings in this decision to the husband's situation. But that decision is up to the Minister. The decision in the husband's case wasn't appealed to the Tribunal. So, I can't make a finding on this issue.

[60] The evidence suggests that the Applicant might have re-established residence in Canada, and her eligibility for benefits, after July 19, 2018. The Minister retains the option of assessing the Applicant's Canadian residence after that date.

[61] It is also up to the Minister to determine the specific amounts the Applicant is entitled to, based on the period of Canadian residence accepted by the Tribunal and any other relevant factor.

[62] Since I didn't accept the entire period of Canadian residence claimed by the Applicant, I am allowing her appeal in part.

Jude Samson
Member, Appeal Division

[34] See sections 9(3), 11(7)(b), and 11(7)(d) of the *Old Age Security Act*.