



Citation: *LL v Minister of Employment and Social Development*, 2022 SST 522

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: L. L.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated April 7, 2022
(GP-21-866)

Tribunal member: Neil Nawaz

Decision date: June 16, 2022

File number: AD-22-280

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Claimant lives Greece. She applied for an Old Age Security (OAS) pension in March 2015 and again in November 2016. On both occasions, the Minister refused the Claimant's applications because she had not submitted, as requested, evidence proving that she had ever resided in Canada.¹

[3] The Claimant appealed the Minister's reconsideration decision to the Social Security Tribunal. The General Division decided that an oral hearing was unnecessary and decided the appeal based on the evidence on file. The General Division then dismissed appeal after finding that the Claimant's documents did no more than show that she had visited Canada on several occasions. The General Division went as far as to say that the Claimant's documents did more to prove that she was a long-time resident of Greece than Canada.

[4] The Claimant is now asking for permission to appeal the General Division's decision. She maintains that she is a landed immigrant to Canada. She insists that she had been Canadian resident since 1963. She suggests that the General Division failed to apply the Agreement on Social Security Between Canada and Greece.

[5] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant's appeal does not have a reasonable chance of success.

¹ The Minister initially approved the Claimant for a partial pension at the rate of 31/40 (see letter dated August 24, 2017 – GD2-29). However, the Minister later changed her mind after an investigation found no evidence that the Claimant had ever lived in Canada.

Issue

[6] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.²

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.³ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ This is a fairly easy test to meet, and it means that a Applicant must present at least one arguable case.⁵

[7] I have to decide whether the Claimant has an arguable case.

Analysis

[8] The Claimant comes to the Appeal Division making essentially the same argument that she made at the General Division. She insists that she is entitled to an OAS pension because she was a Canadian resident from 1963 to 1995.

[9] I don't see a reasonable chance of success for this argument.

[10] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law.

² *Department of Employment and Social Development Act* (DESDA), section 58(1).

³ DESDA, sections 56(1) and 58(3).

⁴ DESDA, section 58(2).

⁵ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[11] In this case, I don't see any indication that the General Division committed an error in arriving at its decision. The General Division reviewed the available evidence and made the following findings:

- The Claimant submitted several Greek passports indicating that she lived in Greece and had only visited Canada;
- The Greek passports contained an incomplete record of the Claimant's comings and goings over the years;
- The Claimant offered no evidence that she had ever sought or received health care in Canada;
- The Claimant offered no evidence that she had ever owned or leased a home in Canada;
- Most of the Claimant's documents (such as a bus pass, health card, social insurance card, and statement of pensionable earnings) were too few and inconsistent to prove any Canadian residence; and
- The file contained none of the usual documentation that might substantiate Canadian residence such as utility bills, bank or credit card statements, and income tax reports.

[12] Based on these findings, the General Division concluded that the Claimant had failed to meet the burden of proving that she had ever resided in Canada.

[13] One of the General Division's jobs is to establish facts. In doing so, it is entitled to some leeway in how it chooses to weigh the evidence.⁶ I see no reason to second-guess the General Division's conclusion, which it reached after what strikes me as a careful assessment of the evidence and applicable law.

[14] The Claimant also alleges that the General Division overlooked the social security agreement between Canada and Greece. This allegation does not raise an arguable case either. Decision-makers are required only to consider factors that are

⁶ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

relevant to the issues at hand. In this case, the General Division found “no evidence to establish the [Claimant] ever established residence in Canada, let alone for the 20 years necessary for her to be eligible for a partial OAS pension.”⁷ The Canada-Greece agreement helps OAS applicants reach certain minimum thresholds only if they are, or have been, Canadian residents. Lacking any Canadian residence, the Claimant’s years in Greece are of no use to her for the purpose of qualifying for OAS benefits.

Conclusion

[15] The Claimant has not identified any grounds of appeal that have a reasonable chance of success.

[16] Permission to appeal is therefore refused.



Member, Appeal Division

⁷ General Division decision, paragraph 28.