



Citation: *LL v Minister of Employment and Social Development*, 2022 SST 523

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

Decision

Appellant: L. L.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 7, 2020 (issued by
Service Canada)

Tribunal member: Jean Lazure
Type of hearing: On the record
Decision date: April 7, 2022
File number: GP-21-866

Decision

[1] The appeal is dismissed.

[2] The Appellant, L. L., is not entitled to a partial pension under the *Old Age Security Act* (OAS Act).

Overview

[3] The Minister received a first application for an Old Age Security (OAS) pension by the Appellant on March 3, 2015¹. The Minister received a second application on November 1, 2016².

[4] Of note, both applications indicated the Appellant was not a resident of Canada. As a result, the Applicant needed 20 years of residence in Canada to qualify for an OAS pension.

[5] Following the applications, correspondence was exchanged between the Minister and the Appellant for a few months. On August 24, 2017, the Minister sent the Appellant a letter of choice³ for a partial pension of 31/40ths or to return to Canada to reside for a full year. On September 6, 2017, the Appellant chose the partial pension, which included a back payment of \$18,077.88⁴.

[6] However, the Minister changed his mind. There was never payment of an OAS pension or of any retroactivity. Instead, the Minister launched an investigation into the matter⁵. This investigation took place over a number of months and further correspondence was exchanged between the Minister and the Appellant.

¹ This is found in the file on page GD2-93.

² This is found in the file on page GD2-97.

³ This is found in the file on pages GD2-129 and GD2-132.

⁴ This is found in the file on page GD2-130.

⁵ This is found in the file on page GD2-13.

[7] On May 14, 2019, the Minister denied the Appellant an OAS pension because she had not resided in Canada for at least 20 years⁶. On October 7, 2020, the Minister maintained his decision upon reconsideration⁷. The Appellant appealed the Minister's decision to the Tribunal's General Division.

Issue

[8] The OAS Act allows applicants to receive a partial pension when they are not eligible for a full pension. If the applicant is not a resident of Canada, the applicant must have resided in Canada for at least 20 years in order to be eligible for a partial pension.⁸

[9] Therefore, the issue before me is whether the Appellant accumulated at least 20 years of residence before her application for an OAS pension.

Reasons for my decision

[10] I find that the Appellant has not accumulated at least 20 years of residence in Canada before her application for an OAS pension.

[11] The applicable legal criteria for residence are set out in *Canada (Minister of Human Resources) Development v. Ding*.⁹ I am to consider several factors in determining whether the residence conditions have been met:

- ties in the form of personal property;
- social ties in Canada;

⁶ This is found in the file on page GD2-15.

⁷ This is found in the file on page GD2-188.

⁸ Subsection 3(2)(b), *Old Age Security Act*.

⁹ FC 76.

- other fiscal ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.);
- ties in another country;
- regularity and length of visits to Canada, as well as the frequency and length of absences from Canada;
- and the lifestyle of the person or his establishment in Canada.

[12] The Appellant has the burden to prove Canadian residence.¹⁰

The Appellant's documentary evidence does not prove residence in Canada

[13] The Appellant filed the following documentary evidence:

- A Canadian immigration identification card from May 1963¹¹;
- Her Greek passports from 1963 to 1964, from 1970 to 1975, from 1981 to 1986, from 1993 to 1998, and from 2003 to 2008¹²;
- A Greek driver's licence valid from 1984 to 1994¹³;
- A bus pass from Montreal from August 1986¹⁴;
- An Ontario Health card valid from October 1994 to January 1995¹⁵;
- A Statement of Pensionable Earnings from Retraite Quebec dated March 31, 2016, which only has earnings for 1970 and 1971¹⁶;

¹⁰ A Appellant must prove that it is **more likely than not** that he/she was a resident of Canada, per *De Carolis v. Canada (Attorney General)*, 2013 FC 366, and *L-79404 v. MSD* (2004) (RT).

¹¹ Page GD2-159.

¹² These are found in the file on pages GD2-26 to GD2-62.

¹³ Page GD2-19.

¹⁴ Page GD2.24

¹⁵ Page GD2-24.

¹⁶ Page GD2-74.

- A Toronto East General and Orthopaedic Hospital card¹⁷;
- A social insurance number card¹⁸;
- An international certificate of vaccination¹⁹;

[14] Unfortunately for the Appellant, these documents prove very little in terms of Canadian residence. In fact, some hinder the Appellant's case more than they help it.

[15] The Canadian immigration identification card proves the Appellant arrived in Canada on May 9, 1963. Of note, the Appellant's birth date is listed as August 5, 1939.

[16] The Minister had raised the issue of a discrepancy in the Appellant's birth dates between her two applications. Indeed, her initial application received on March 3, 2015, listed August 5, 1939, as her birth date, while her second application received November 1, 2016, listed July 21, 1939, as her birth date. The Appellant later indicated²⁰ the July date to be her birth date but never explained the discrepancy.

[17] The passports were in fact submitted by the Appellant on three separate occasions to the Minister: in April 2017²¹, in June 2018²², and in July 2019²³. I believe this indicates the Appellant wished for the Minister and now wishes for me to rely on these to make a determination on residence.

[18] Unfortunately, as I stated above, these are documents that hurt the Appellant's case more than they help it. As the Minister points out, all of these passports are Greek, seemingly were issued in Greece, and they all seem to list Greece as the Appellant's residence.

¹⁷ Page GD2-24.

¹⁸ Page GD2-24.

¹⁹ Page GD2-21.

²⁰ In a questionnaire dated April 26, 2018, found in the file on page GD2-72.

²¹ Pages GD2-108 to GD2-125.

²² Pages GD2-26 to GD2-62

²³ Pages GD2-142 to GD2-168.

[19] Also of note in the passports, there is a handwritten note next to a stamp admitting the Appellant to Canada in June 1993²⁴. It says « Has not lived in Canada since 1973 ». There are precious few other details in the passports about the Appellant's comings and goings.

[20] These passports sway me into thinking the Appellant was much more likely a Greek resident than a Canadian resident during the periods they cover, which are significant. The Greek driver's licence does much the same.

[21] The certificate of vaccination seems to be issued by the U.S. Department of Health, Education, and Welfare, and is of no help to the Appellant.

[22] I find that the other documents filed by the Appellant (bus pass, health card, hospital card, SIN card, Statement of Pensionable Earnings) are much too few in number and too inconsistent to prove any Canadian residence.

[23] I find that the absence of much of the usual documentation used to substantiate Canadian residence is very telling. There are no bank account or credit card statements and no income tax reports. There is no proof of health care sought in Canada and no proof of health care coverage in Canada.

[24] There are no leases or proof of ownership of Canadian property. In fact, the file indicates that the owner of the Appellant's claimed address indicated that the Appellant stayed there when her and her family were visiting from Greece. As the Minister indicates, "There is no indication that the Appellant and her family owned, rented, or leased a home in Ontario or Quebec for any period of time they were in Canada."²⁵

[25] Finally, the Appellant has also never filed a list of her presences in Canada and absences from same.

²⁴ Page GD2-33.

²⁵ Page GD6-11.

[26] Of note, the Minister asked for much of the above documentation, which was never provided by the Appellant. The Appellant filed such a letter by the Minister²⁶ and wrote on it, in handwriting “you could check on your own”.

[27] However, it is the Appellant that has the burden of proof to prove her residence in Canada. And I find that on the balance of probabilities, the applicable standard of proof, the Appellant has failed to meet this burden.

[28] I find there is no evidence to establish the Appellant ever established residence in Canada, let alone for the 20 years necessary for her to be eligible for a partial OAS pension.

Conclusion

[29] The Appellant, L. L., is not entitled to a partial pension under the *Old Age Security Act* (OAS Act).

[30] This means the appeal is dismissed.

Jean Lazure
Member, General Division – Income Security Section

²⁶ Notably, in a letter dated June 30, 2020, and found in the file at page GD2-185.