



Citation: *HS v Minister of Employment and Social Development*, 2022 SST 710

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

Decision

Appellant: H. S.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated July 16, 2021 (issued by Service Canada)

Tribunal member: James Beaton
Type of hearing: Teleconference
Hearing date: June 22, 2022
Hearing participants: Appellant
Interpreter
Decision date: July 5, 2022
File number: GP-21-2186

Decision

[1] The appeal is dismissed.

[2] This means that the Appellant, H. S., continues to be eligible for a partial Old Age Security (OAS) pension of 10/40 as of September 2020. But he isn't entitled to payments before that.

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

Overview

[4] The Appellant was born in India on X. He first came to Canada on May 26, 2006, on a visitor visa. Since then, he has spent time in Canada and India. He became a Canadian citizen on August 2, 2013.¹ He currently lives in Canada.

[5] The Appellant has applied for an OAS pension two times.

[6] He first applied on May 7, 2018. He said he wanted his pension to start as soon as he qualified.² On April 27, 2020, Service Canada's International Operations Unit (IOU) told the Appellant that he had met the requirement of having 10 years of residence in Canada, so he qualified for an OAS pension.³ On June 3, 2020, the Minister told the Appellant that the IOU had made a mistake, and he hadn't met the residency requirement.⁴

[7] The Appellant asked the Minister to reconsider, but the Minister maintained its decision. However, the Minister encouraged the Appellant to apply again, if he believed that he now met the residency requirement.⁵ The Appellant sent in his second

¹ See GD10 and GD2-23.

² See GD2-7 to 11.

³ See GD2-46 and 47.

⁴ The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada.

⁵ See GD2-88 and 89.

application on July 21, 2021, which the Minister approved.⁶ The Minister granted a pension of 10/40, with payments beginning as of September 2020.

[8] The Appellant appealed the Minister's reconsideration decision on his first application. He argues that he should receive pension payments earlier than September 2020 for two reasons. First, the IOU said he was eligible for payments before then. Second, he resided in Canada during three time periods when the Minister says he didn't reside in Canada. That would mean that he met the residency requirement earlier than the Minister calculated.⁷

What the Appellant must prove

[9] To receive a **full** OAS pension, the Appellant has to prove he resided in Canada for at least 40 years after he turned 18.⁸ This rule has some exceptions. But the exceptions don't apply to the Appellant.⁹

[10] If the Appellant doesn't qualify for a full OAS pension, he 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 they turned 18. For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount.

[11] To receive a partial OAS pension, the Appellant must prove that he resided in Canada for at least 10 years after he turned 18.¹⁰ He must prove this on a balance of probabilities. This means he must show that it is more likely than not he resided in Canada during the relevant periods.¹¹

⁶ The Minister says this in its submissions at GD6-3. Since this appeal isn't about the second application, it wasn't included in the file.

⁷ See GD1-7 to 11 and GD9-2 to 22.

⁸ See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant also has to be at least 65 years old and a Canadian citizen or legal resident of Canada. And he must have applied for the pension. The Appellant has met these requirements.

⁹ See section 3(1)(b) of the OAS Act.

¹⁰ See section 3(2) of the OAS Act.

¹¹ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

Matters I have to consider first

I accepted the document sent in after the hearing

[12] The Appellant emailed the Tribunal after the hearing.¹² In it, he asked the Tribunal to send him any written submissions that the Minister had made after he sent in his written submissions on January 22, 2022.¹³ The Minister didn't make any written submissions since then, so there was nothing to send the Appellant. However, I accepted his email as part of the appeal record.¹⁴

Reasons for my decision

[13] I find that the Appellant is eligible for a partial OAS pension of 10/40 as of September 2020. But he isn't entitled to payments before that.

[14] The Appellant had resided in Canada for 10 years as of August 28, 2020, including:

- from July 22, 2007, up to and including February 13, 2014
- from March 24, 2017, up to and including August 28, 2020

[15] I considered the Appellant's eligibility from May 26, 2006, up to and including March 23, 2017. I chose the first date because that is when the Appellant first came to Canada. I chose the second date because the Minister agrees that the Appellant resided in Canada after that date.¹⁵

[16] Here are the reasons for my decision.

¹² See GD12.

¹³ See GD9.

¹⁴ In his email, the Appellant also mentioned that his income can be found on his income tax returns from 2007 onward. He already said this at the hearing.

¹⁵ See GD6-14.

The test for residence

[17] The law says that being present in Canada isn't the same as residing in Canada. "Residence" and "presence" each have their own definition. I have to use these definitions in making my decision.

[18] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.¹⁶

[19] A person is **present** in Canada when they are physically present in any part of Canada.¹⁷

[20] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:¹⁸

- where he had property, like furniture, bank accounts, and business interests
- where he had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where he had other ties, like medical coverage, rental agreements, mortgages, or loans
- where he filed income tax returns
- what ties he had to another country
- how much time he spent in Canada
- how often he was outside Canada, where he went, and how much time he spent there
- what his lifestyle was like in Canada
- what his intentions were

¹⁶ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

¹⁷ See section 21(1)(b) of the OAS Regulations.

¹⁸ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *Valdivia De Bustamante v Canada (Attorney General)*, 2008 FC 1111; *Duncan v Canada (Attorney General)*, 2013 FC 319; and *De Carolis v Canada (Attorney General)*, 2013 FC 366.

[21] This isn't a complete list. Other factors may be important to consider. I have to look at **all** of the Appellant's circumstances.¹⁹

When the Appellant resided in Canada

[22] The Appellant **resided in Canada** during the following periods:

- from July 22, 2007, up to and including February 13, 2014
- from March 24, 2017, up to and including August 28, 2020

[23] The Minister agrees that he resided in Canada during these periods.²⁰ This decision isn't about these periods. They aren't in dispute.

[24] The Appellant **did not reside in Canada** during the following periods:

- from May 26, 2006, up to and including July 21, 2007
- from February 14, 2014, up to and including March 23, 2017

[25] The Minister says that he didn't reside in Canada during these periods. I will now explain why I agree with the Minister about each of these periods. Then I will address the Appellant's arguments about his second application and the IOU's letter.

– The Appellant didn't reside in Canada from May 26, 2006, to July 21, 2007

[26] The Appellant didn't reside in Canada from May 26, 2006, to July 21, 2007.

[27] During this period, the Appellant was **present** in Canada from May 26, 2006, to November 21, 2006. He was in India for the rest of this period.²¹

[28] Even when the Appellant was present in Canada, I find that he didn't reside here. He arrived on May 26, 2006, on a visitor visa. He was visiting his son, who had lived in Canada since 2000. He stayed at his son's house. The Appellant's spouse came with

¹⁹ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

²⁰ See the Minister's submissions at GD6. Sometimes the Minister says that it accepts the Appellant was present or resident in Canada from July 22, 2007, up to February 12, 2014, and sometimes it says February 13, 2014. Since the Minister didn't explain why it gave two different dates, I chose to accept the date that was most favourable to the Appellant.

²¹ See GD1-21.

him. His daughter, his son-in-law, another son, and his mother-in-law stayed in India. He left his personal property there as well.²²

[29] The Appellant says he wanted to settle in Canada as soon as he arrived, but he didn't have his permanent resident documents yet. He went back to India to get those when they were ready. However, after he got his documents, he didn't return to Canada right away. He testified that he had been a legal consultant in India. He had to transition his clients to other consultants before he returned to Canada.²³

[30] This shows me that the Appellant didn't make his home and ordinarily live in Canada during this period. When he first arrived, he was here as a visitor. He left his personal property and business ties in India; he didn't bring his personal property to Canada until July 2007.²⁴ It was also after he returned to Canada in July 2007 that he got a library card and took a language course and a resume-writing workshop here.²⁵ He didn't return to India in November 2006 **only** to get his permanent resident documents. Instead, he stayed to take care of his business affairs. During this time period, he was in India longer than he was in Canada.

– **The Appellant didn't reside in Canada from February 14, 2014, to March 23, 2017**

[31] The Appellant didn't reside in Canada from February 14, 2014, to March 23, 2017. Before this, he had been living in Canada since 2007, still at his son's house. He returned to India by February 14, 2014, to care for his ill mother-in-law. He stayed at his mother-in-law's house until March 23, 2017.²⁶

²² See GD2-71 to 85 and the hearing recording.

²³ The Appellant said this at the hearing.

²⁴ See GD1-21.

²⁵ See GD2-77 and 78, and the hearing recording. Although the Appellant didn't specify when in 2007 he got a library card, I find it more likely than not that it was after he returned to Canada in July. I doubt that he could have gotten a library card without being physically in Canada, or that he would have had any reason to get one while in India.

²⁶ See GD1-22, GD9-16, and the hearing recording.

[32] The Appellant was in India for a long time. Although presence doesn't determine residence, it is still important. Here, the length of time that the Appellant spent in India supports that he didn't reside in Canada during this period.

[33] The Appellant believes that he resided in Canada during this period because:

- he filed income tax returns in Canada²⁷
- he left his possessions in Canada, except for some clothes²⁸
- he became a Canadian citizen in 2013²⁹
- he received letters from Canadian government officials congratulating him on his 75th birthday and his golden wedding anniversary³⁰
- he was a member of the Brampton library and the Mississauga YMCA³¹

[34] I acknowledge the Appellant's arguments. But none of these things means he resided in Canada. They are only factors I have to consider. In this case, they don't outweigh the significant length of time that the Appellant was present in India. His **long and uninterrupted presence** in India shows that his ties to India were stronger than his ties to Canada during this period.

[35] I also note that, although the Appellant was filing taxes, he wasn't working (in Canada or elsewhere). His only income was from government benefits. And while he might have maintained memberships at the library and YMCA, he could not have made much use of them while in India.

²⁷ The Appellant said this at the hearing. He didn't provide copies of his income tax returns, but I accept that he filed them.

²⁸ The Appellant said this at the hearing.

²⁹ See GD10 and GD2-23.

³⁰ See GD2-83 to 85.

³¹ The Appellant said this at the hearing.

[36] The Appellant listed other things that he believes support his residence in Canada. However, they don't relate to the time periods I have to decide about. These include:

- completing a Language Instruction for Newcomers to Canada course and a resume-writing and interview workshop in 2007
- volunteering with Big Brothers Big Sisters in 2013
- being elected to the Triple Crown Senior Citizens Club in April 2017 (after he returned to Canada)³²

[37] He joined the Garvia Gujarat Seniors Club of Brampton in 2017, although it isn't clear if this was before or after he returned to Canada.³³ Even if it was before, this would only show that he had an additional tie to Canada in early 2017. It would not show that his ties to Canada were **greater** than his ties to India. He was still physically present in India, as he had been for about three years.

[38] In his written submissions, the Appellant also suggested that his residence in Canada could not be interrupted once it was established in 2007.³⁴ However, the law doesn't say this. The law **does** say that a person who establishes their residence in Canada may still be considered to reside in Canada even if they leave for a year. For this rule to apply, they must also show that their absence from Canada was temporary in nature.³⁵ This rule doesn't help the Appellant, because he was absent from Canada for more than a year between February 13, 2014, and March 24, 2017.

[39] In deciding that the Appellant didn't reside in Canada during this period, I considered two additional factors. On balance, I decided that they don't support strong ties to Canada **or** India. So they didn't help me decide where the Appellant resided.

[40] First, the Appellant owned a house in India during this period. But that house has been owned by him or other members of his family since 1993. His son lived there at

³² See GD2-76 to 79, 81, and 82.

³³ See the hearing recording.

³⁴ See GD9-8.

³⁵ Section 21(4) of the OAS Regulations says this.

one point. Since 2013 or 2014, no one has lived there. That was when the Indian authorities declared it unsuitable for people to live in. It was demolished and hasn't been rebuilt yet.³⁶

[41] Second, the Appellant worked as a security guard in Canada from 2012 or 2013 until he returned to India. He resumed that job when he returned to Canada in 2017. It is unclear from his testimony whether he had to reapply for that job in 2017. In any case, the work wasn't steady. He worked for only brief periods at a time, when the company asked him to. He maintained his security guard licence throughout his time in India. The only requirement was to submit an application. He didn't need to be working to renew his licence. He confirmed that he didn't work in India.³⁷

The Appellant qualified for a partial OAS pension in August 2020

[42] The Appellant qualified for a partial OAS pension of 10/40 on August 28, 2020. That is when he had resided in Canada for 10 years after he turned 18. (He was already 65 years old, was a Canadian citizen, and had applied for the pension.)³⁸

[43] As of August 28, 2020, the Appellant had resided in Canada for 10 years after he turned 18:

- From July 22, 2007, to February 13, 2014, he resided in Canada for 6 years and 207 days.
- When he started residing in Canada again on March 24, 2017, he had to reside in Canada for another 3 years and 158 days to reach 10 years. He met that requirement on August 28, 2020.

[44] The Appellant is eligible for a pension of 10/40 the full amount. This is because he had resided in Canada for 10 full years when he qualified.

³⁶ See GD2-74 and the hearing recording.

³⁷ The Appellant said this at the hearing.

³⁸ Sections 3 to 5 of the OAS Act set out these requirements.

[45] In his written submissions, the Appellant argued that every partial year of residence over 180 days must be rounded up to a full year of residence.³⁹ However, the law doesn't say this. Instead, the law says that partial years are rounded down.⁴⁰

When payments start

[46] The Appellant's pension starts in September 2020.

[47] OAS pension payments start the first month after the pension is approved.⁴¹ The Appellant's pension was approved in August 2020.⁴²

[48] Now I will explain why the Appellant's arguments about his second application and the IOU's letter don't affect my decision.

Procedural issues

[49] The Appellant argues that he was entitled to payments before September 2020 based on procedural issues.

[50] First, he says that he should not have had to reapply for an OAS pension. Instead, the Minister should have held his first application until he became eligible (that is, until he had 10 years of residence), and then approved it.

[51] In this case, I have found that the Appellant didn't have 10 years of residence until August 2020. The earliest he could be paid was September 2020. That is when he became eligible for payments. Whether or not he should have had to reapply, the result is the same. He is eligible for payments as of September 2020, but not before that.

³⁹ See GD9-2 to 22.

⁴⁰ Section 3(4) of the OAS Act says this.

⁴¹ See section 8(1) of the OAS Act.

⁴² The law sets out several possible dates for approval of an OAS pension. The approval takes place on the latest of those dates. In the Appellant's case, the latest date was in August 2020. See section 8 of the OAS Act and section 5 of the OAS Regulations.

[52] Second, the Appellant says I should follow what the IOU said, and find that he had 10 years of residence before August 2020. He argues that the IOU's letter is a binding decision, and the IOU didn't make a mistake.

[53] This appeal is an appeal from the Minister's reconsideration decision, not the IOU's letter. The Appellant is asking me to find that the Minister gave him erroneous advice or made an administrative error. The Tribunal doesn't have the jurisdiction (authority) to do this. Only the Minister and the Federal Court have that authority.⁴³

Conclusion

[54] The Appellant is eligible for a partial OAS pension of 10/40 as of September 2020. But he isn't entitled to payments before that.

[55] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section

⁴³ See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278; and *Pincombe v Canada (Attorney General)*, [1995] FCJ 1320.