



Citation: *CS v Minister of Employment and Social Development*, 2022 SST 835

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

# Decision

**Appellant:** C. S.  
**Representative:** Sonali Brown

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated February 24, 2021 (issued by Service Canada)

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**Tribunal member:** Wayne van der Meide

**Type of hearing:** Teleconference

**Hearing date:** July 19, 2022

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** August 5, 2022

**File number:** GP-21-709

## Decision

[1] The appeal is allowed.

[2] The Appellant, C. S., met the residence requirement to receive the Guaranteed Income Supplement (GIS). This means the Appellant was eligible for the GIS from August 2016 to February 2019.

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

## Overview

[4] The Minister of Employment and Social Development (Minister) started paying the Appellant an Old Age Security (OAS) pension in May 2011.<sup>1</sup>

[5] A person who receives an OAS pension is also eligible for the GIS if they meet certain requirements. For example, their income needs to be below a certain level and they have to stay in Canada. If they leave Canada for more than six months, they are no longer eligible for the GIS.

[6] The Minister started paying the Appellant the GIS in May 2011.

[7] The Minister stopped the Appellant's GIS payment in August 2016.

[8] The Minister says the Appellant stopped residing in Canada in January 2016. This means the Appellant isn't eligible for the GIS after July 2016.

[9] The Minister agrees that the Appellant started residing in Canada again by March 2019. This means that she was again eligible for the GIS starting in March 2019.

[10] The Minister decided that the Appellant had to repay \$24,615.89. This is how much the Appellant received in GIS payments from August 2016 to February 2019.

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<sup>1</sup> The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada.

[11] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[12] The Appellant says that she has resided in Canada continuously since coming here in October 1991. She has never left Canada for more than six months. She says that, beginning in January 2016, she went to Sri Lanka to get more affordable medical treatment and to deal with a land dispute.

[13] The Minister says that, between January 2016 and February 2019, the Appellant didn't reside in Canada because:

- she was in Canada for a total of only six months during this period.
- she obtained "residence" visas in Sri Lanka.
- she was dealing with an ongoing land dispute in Sri Lanka.

## **What the Appellant must prove**

[14] To receive the GIS, the Appellant has to prove she resided in Canada from January 2016 to February 2019.

[15] The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she resided in Canada during the relevant period.<sup>2</sup>

## **Reasons for my decision**

[16] I find that the Appellant's absences between January 3, 2016, and February 16, 2019, didn't interrupt her residence or presence in Canada.

[17] This means she was eligible for the GIS from August 2016 to February 2019.

[18] Here are the reasons for my decision.

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<sup>2</sup> See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

## The test for residence

[19] 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.

[20] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.<sup>3</sup>

[21] A person is **present** in Canada when they are physically present in any part of Canada.<sup>4</sup>

[22] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:<sup>5</sup>

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

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<sup>3</sup> See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

<sup>4</sup> See section 21(1)(b) of the OAS Regulations.

<sup>5</sup> 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.

[23] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.<sup>6</sup>

### **I believe the Appellant**

[24] The Appellant testified at the hearing. She answered my questions and those of her representative spontaneously and in a straightforward manner. I believe what she told me. She gave a more nuanced description of her life than what is in the file.

[25] The Appellant sometimes provided inconsistent information to the Minister. I don't believe she intended to mislead the Minister. The Minister asked her to provide specific details about where she resided as far back as 2008. It is normal that she made some mistakes.

### **The Appellant resided in Canada from October 1991 to January 2016**

[26] I find the Appellant resided in Canada from October 16, 1991, to June 23, 2016.

[27] Although the Minister doesn't **seem** to disagree that the Appellant resided in Canada during this period, I make this finding for two reasons. First, I need to make a finding for this period because it is a factor in determining where the Appellant resided in later periods. Second, the Minister hasn't been consistent or clear about when the Appellant stopped residing in Canada.

[28] As part of its investigation, the Minister requested and considered evidence about where the Appellant resided as far back as 2008.<sup>7</sup>

[29] In the initial decision, the Minister said that "beginning January 3, 2016 **or prior** you did not establish Canada as your primary residence and were therefore not eligible to [*sic*] the Guaranteed Income Supplement"<sup>8</sup> [emphasis added].

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<sup>6</sup> See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

<sup>7</sup> See GD2-30.

<sup>8</sup> See GD2-27.

[30] In the Reconsideration Decision Letter, the Minister said that the Appellant was “a non-resident for OAS purposes **as on** January 2016”<sup>9</sup> [emphasis added].

[31] The Minister’s submissions also seem to imply that the Appellant wasn’t a resident of Canada before January 2016. It said that the “Appellant had not demonstrated residential ties to Canada that one would expect to see if they were making their home here.”<sup>10</sup> It also said that “the information and documents that were provided did not strongly support that [the] Appellant was living permanently in Canada, nor had she established that Canada was her primary residence.”<sup>11</sup>

[32] I find that the Appellant did reside in Canada from October 1991 to January 2016. These are my reasons.

[33] The Appellant was born in Sri Lanka. She came to Canada on October 16, 1991. She became a permanent resident on February 9, 1996. She became a Canadian Citizen in 2000.<sup>12</sup> She says she automatically lost her Sri Lankan citizenship when she became a Canadian citizen.

[34] Between 1991 and 2002, the Appellant didn’t leave Canada. Between 2003 and 2016, she visited Sri Lanka 20 times and India, once. When she visited Sri Lanka or India, she would stay about three weeks at a time.

[35] The Appellant says she lived with her mother in Canada for about 10 years from 1991 to 2001. They lived at X in Toronto. In 2001, she had to leave her mother’s home because the homeowners had put in place a rule that only one person could live in her mother’s home.

[36] The Appellant says that, since 2001, she has been renting a room. She started paying \$450 a month in rent. She says her rent is now \$550 per month. In 2006, the homeowner moved from X to X, Ontario. The Appellant moved with them.

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<sup>9</sup> See GD1-7.

<sup>10</sup> See GD6-18.

<sup>11</sup> See GD6-19.

<sup>12</sup> See GD6-1.

[37] The Appellant says that, from time to time, she would leave the room she rented to stay with friends for a few weeks. She did this, for example, when renovations triggered her allergies or when the homeowner had family staying over.

[38] The Appellant says she has never had lease agreements because the people renting to her are also friends. This makes sense to me.

[39] At the hearing, the Appellant said that she had never bought a house of her own because she could not afford it. She also said she began working in Canada around July 1991. I think she made a mistake because she wasn't in Canada until October 1991.

[40] The Appellant said at the hearing that her first job was with a X TV station called X. She said she worked there for about 10 years. I think she made a mistake about either when she started with this company or how long she worked there. I say this because this company provided a letter of employment dated March 30, 2005.<sup>13</sup>

[41] The Appellant provided an offer of employment as a personal support worker dated March 9, 2006.<sup>14</sup>

[42] The Appellant says she retired in 2016 when she was 70 years old.

[43] The Appellant has been an active volunteer with a charity in Canada named the X since 1991.<sup>15</sup>

[44] The Appellant says she has filed Canadian income tax returns every year since 1991. I believe her even though she has proof for only the years 2000 to 2018.<sup>16</sup>

[45] The Appellant provided evidence of taking educational courses in Canada going as far back as 1992 and as recent as 2005.<sup>17</sup>

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<sup>13</sup> See GD2-220.

<sup>14</sup> See GD2-217.

<sup>15</sup> See GD2-403.

<sup>16</sup> See GD2-102 to GD2-192.

<sup>17</sup> See GD2-221 to GD2-225.

[46] The Appellant says that she has had government health insurance in Canada since she first arrived.

[47] She provided letters from doctors. The first says that she was a patient from March 2008 to February 2014.<sup>18</sup> The second letter says she has been a patient since February 2014. This second letter is dated February 27, 2020.<sup>19</sup>

[48] The Appellant also provided a record of extensive Ontario Health Insurance Plan (OHIP) claims between 2012 and 2019.<sup>20</sup> It seems that the Minister didn't ask for records prior to this period. The Minister gave the Appellant the form to approve the release of these records.<sup>21</sup>

[49] The Minister argues that “[a]ll of this demonstrates the transient nature of [the] Appellant with respect to her residence in both countries, her native homeland and Canada. [...] Creating confusion with respect to where she actually resides.”<sup>22</sup>

[50] The Minister's “confusion” or difficulty making a decision about residence isn't relevant. The Minister should make clear findings of residence. The Minister should not use vague language like “or prior” with respect to findings about residence. Eligibility is based on specific findings of residence.

### **The rules about deemed residence apply to all of the Appellant's absences between January 2016 and February 2019**

[51] I find that the Appellant's trips to Sri Lanka between January 3, 2016, and February 2019 **didn't** interrupt her residence in Canada because of section 21(4) of the *Old Age Security Regulations*. I will now explain why.

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<sup>18</sup> See GD2-211.

<sup>19</sup> See GD2-210.

<sup>20</sup> See GD2-441 to GD2-453.

<sup>21</sup> See GD2-439.

<sup>22</sup> See GD6-18.



## Deemed residence

[52] The law says a person's absence doesn't interrupt their residence or presence in Canada if:

- they weren't absent for more than one year
- their absence was temporary
- the person resides in Canada

[53] The law refers to "any interval of absence."<sup>23</sup> This means that I have to consider each of the Appellant's absences, not the entire period between January 2016 and February 2019.

## None of the Appellant's absences were for more than one year

[54] I have reviewed the Appellant's passport, her questionnaires, and reports by the Canada Border Services Agency.<sup>24</sup> I have also reviewed evidence of medical services in Canada and financial transactions inside and outside Canada.<sup>25</sup> I find that the Appellant was present during the period in question as follows:

From	To	Place	Days
January 3, 2016	May 11, 2016	Sri Lanka	129
May 11, 2016	June 23, 2016	Canada	43
June 23, 2016	December 19, 2016	Sri Lanka	180
December 20, 2016	January 30, 2017	Canada	42
January 30, 2017	February 14, 2017	India	16
February 14, 2017	July 23, 2017	Sri Lanka	160
July 23, 2017	August 19, 2017	Canada	27
August 19, 2017	February 15, 2018	Sri Lanka	181
February 15, 2018	February 25, 2018	Canada	10
February 25, 2018	April 4, 2018	Sri Lanka	39
April 4, 2018	June 16, 2018	Canada	73
June 16, 2018	December 12, 2018	Sri Lanka	180

<sup>23</sup> See section 21(4) of the OAS Regulations.

<sup>24</sup> See GD2-39 to GD2-41, GD2-76 to GD2-86, GD2-463, GD2-464, and GD2-231.

<sup>25</sup> See GD2-341 to GD2-394, GD2-209, GD2-210, GD2-234 to GD2-255, and GD2-275 to GD2-340.

December 13, 2018	December 20, 2018	Canada	7
December 20, 2018	February 16, 2019	India and Sri Lanka	59

### **All of the Appellant's absences were temporary**

[55] All of the Appellant's absences were "temporary." I will now explain why.

[56] First, the Appellant didn't intend to leave Canada permanently. For every absence, she planned to come back to Canada:

- She went mainly to get Ayurvedic massage treatments that cost \$80 per treatment in Canada but only \$5 to \$15 in Sri Lanka. When her condition improved as a result of the treatments, she came back to Canada.<sup>26</sup>
- She agrees that she also went to deal with a land dispute. Specifically, she was trying to evict people from her mother's home.

[57] This tells me that she didn't intend to relocate to Sri Lanka. She went to do certain things. When these things were done, she intended to come back to Canada.

[58] Second, she didn't sever ties with Canada:

- She continued to file income tax returns in Canada.
- She kept her Canadian bank accounts and credit cards. She used her Canadian bank accounts in Sri Lanka.<sup>27</sup>
- The Minister argues that the Appellant's bank records don't show the type of activity one would expect. I disagree. When she was in Canada, her banking records do show activity, including cash withdrawals, and purchases from grocery stores, restaurants, and pharmacies.<sup>28</sup>

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<sup>26</sup> See GD2-438.

<sup>27</sup> See GD2-281 to GD2-393.

<sup>28</sup> See GD2-131 to GD2-133, GD2-344 to GD2-347, GD2-359, and GD2-373 to GD2-375.

- The Minister notes that the Appellant said that she did keep a place to live when she went to Sri Lanka.<sup>29</sup> At the hearing, the Appellant clarified that, when she was away from Canada, she didn't pay rent for any **full month** she was away. But she did pay a full month's rent when she was in Canada in a given month, regardless of how long. She left all her belongings in Canada except for some clothes she took with her. Every time she returned, she re-occupied her room.
- When she came back to Canada, she received medical treatments using her Canadian health insurance.

[59] Third, she didn't anchor herself in Sri Lanka:

- She didn't open a bank account or purchase property. She didn't work. She rented a room and went to massage treatments two or three times a week. She did some charity work, just as she had done in Canada.
- She wasn't a citizen of Sri Lanka. She was a citizen of Canada. In 2016, 2017, and 2018, she obtained residence visas in Sri Lanka.<sup>30</sup> She told me that she did so because residence visas were less expensive than visitor visas. I believe her. I don't believe that obtaining a residence visa because it is cheaper means she anchored herself in Sri Lanka.

[60] The Appellant has consistently said that she went to Sri Lanka mainly to receive medical treatments that were less expensive there than in Canada. She also said that, for certain trips, she wasn't well enough to return to Canada. She needed to continue treatments until she was better. She said that, if she didn't need to go to Sri Lanka for those treatments, she would have preferred to stay in Canada, which is her home. I believe her.

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<sup>29</sup> See GD2-46.

<sup>30</sup> See GD2-77, GD2-78, and GD2-80.

**The Appellant was “a person resident in Canada” every time she left**

[61] I have already found that, between October 1991 and January 2016, the Appellant resided in Canada. This means that she was “a person resident in Canada”<sup>31</sup> when she left for her trip to Sri Lanka between January 3, 2016, and May 11, 2016.

[62] I have also found that this absence was temporary and didn’t exceed one year. For these reasons, between January 3, 2016, and May 11, 2016, the Appellant is deemed to have been both present and residing in Canada.

[63] She was in fact present in Canada between May 11, 2016, and June 23, 2016.

[64] In these circumstances, a plain application of the law means that she was a person resident in Canada when she left for Sri Lanka on June 23, 2016. And I have already found that all of her absences were temporary and that none exceeded one year.

[65] As a result, she is deemed not to have interrupted her presence or residence in Canada between June 23, 2016, and December 19, 2016.

[66] The same analysis applies to all of her subsequent absences from Canada.

[67] I think it is important to say that, if the Appellant’s pattern of absences continued, they would, at some point, no longer be “of a temporary nature.” However, for the reasons I have given, that isn’t the case here.

**Conclusion**

[68] The Appellant met the residence requirement to receive the GIS. This means the Appellant was eligible for the GIS from August 2016 to February 2019.

[69] So, the appeal is allowed.

Wayne van der Meide  
Member, General Division – Income Security Section

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<sup>31</sup> See *Old Age Security Regulations*, section 21(4)