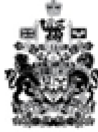

Citation: *HS v Minister of Employment and Social Development*, 2022 SST 1131

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	H. S.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	General Division decision dated July 5, 2022 (GP-21-2186)
Tribunal member:	Neil Nawaz
Decision date:	October 27, 2022
File number:	AD-22-720

Decision

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

Overview

[2] The Claimant is a 79-year-old native of India. He first entered Canada on May 26, 2006 as a visitor. Since then, he has spent time in both Canada and India. He became a permanent resident in 2008 and a Canadian citizen in 2013. He currently lives in Canada.

[3] The Claimant has applied for an OAS pension twice. In his first application, submitted May 2018, he said that he wanted his pension to start as soon as he qualified. In April 2020, Service Canada's International Operations Unit (IOU) informed the Claimant that, since he had accumulated 10 years of residence in Canada, he did not need the assistance of the social security agreement between India and Canada.[1] Then, a few weeks later, Service Canada's regional office in Scarborough told the Claimant that he didn't have 10 years of residence after all—only seven years and 251 days.[2]

[4] Service Canada refused to reconsider its position but encouraged the Claimant to apply again if he believed that he now met the residency requirement.[3] That prompted the Claimant to submit his second application on July 21, 2021, which Service Canada approved, since the Claimant had by then accumulated three more years of Canadian residence.[4] Service Canada granted the Claimant a pension at a rate of 10/40, with payments to begin as of September 2020.

[5] The Claimant thought that he should have been approved for an OAS pension earlier. He appealed Service Canada's first decision—its refusal—to the General

---

[1] See letter from Service Canada's International Operations Unit dated April 27, 2020, GD2-46.
[2] See letter from Service Canada's Scarborough office dated June 3, 2020, GD2-48.
[3] See letter from Service Canada dated July 16, 2021, GD2-88.
[4] The Claimant's second application for OAS benefits is not in this file, presumably because this appeal stems from the first application. However, the file does contain Service Canada's letter, dated August 26, 2021, approving the second application. See GD2-105.

Division.[5] He argued that he was resident of Canada during a more than three-year period between 2014 and 2017 when Service Canada said he lived in India. He insisted that he had accumulated the required 10 years of residence at the time of his first application.

[6] The General Division held a hearing by teleconference and dismissed appeal. It agreed with Service Canada that the Claimant had been a resident of Canada during the following periods:

- July 22, 2007 to February 13, 2014; and
- March 24, 2017 to August 28, 2020.

[7] The General Division found that the Claimant had accumulated 10 years of Canadian residence as of August 28, 2020. It granted the Claimant a partial OAS pension at a rate of 10/40, with payments to begin as of September 2020.

The Claimant's reasons for appealing

[8] The Claimant is now asking for permission to appeal the General Division's decision. He disagrees with the General Division's findings and alleges that the General Division disregarded these factors:

- He lives in his son's house in Canada, where he has an exclusive bedroom that contains all his possessions;
- He has many friends and relatives in Canada and is a member of many seniors' clubs and religious groups;
- He has had a Canadian health card since 2007 and a security guard license since 2012;
- He has no ties to India other than his married son and married daughter and their families;
- He has spent more time in Canada than in India since 2007; and

[5] The Claimant appealed Service Canada's decision on his first OAS application.

- He always intended to remain a resident of Canada, even though he left the country to look after his mother-in-law during her final illness.

[9] The Claimant also identified a number of specific errors that he says the General Division committed in coming to its decision.

Issue

[10] 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.[6]

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.[7] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[8] This is a fairly easy test to meet, and it means that a Applicant must present at least one arguable case.[9]

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

Analysis

[12] 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 does not have an arguable case.

Claimants cannot succeed by rearguing their case

[13] The Claimant comes to the Appeal Division making many of the same points that he made at the General Division. He insists that he was a Canadian resident between

[6] See *Department of Employment and Social Development Act* (DESDA), section 58(1).
[7] See DESDA, sections 56(1) and 58(3).
[8] See DESDA, section 58(2).
[9] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

February 13, 2014 and March 24, 2017. He says that he had no choice but to leave Canada to tend to a sick relative. He maintains that he never intended to stop living in Canada.

[14] Unfortunately, given the the narrow grounds of appeal permitted under the law, the Claimant cannot succeed at the Appeal Division by repeating evidence and arguments that he previously made at the General Division. In short, the Appeal Division is not meant to be a “re-do” of the General Division hearing.

[15] The Claimant argues that the General Division dismissed his appeal in the face of evidence that he has continuously been a Canadian resident since July 22, 2007. I don’t see a reasonable chance of success for this argument.

[16] 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 available evidence. In this case, the General Division reviewed the Claimant’s mode of living during the relevant period and concluded that he ceased to be a Canadian resident for more than three years. It based this conclusion on the following findings:

- Although presence doesn’t determine residence, the Claimant’s long and uninterrupted absence from Canada suggests that he was not a resident of this country from February 13, 2014 to March 24, 2017;
- The Claimant may have filed Canadian tax returns during the relevant period, but he wasn’t working in this country, and his only income was from government benefits;
- The fact that the Claimant maintained memberships at the Brampton public library and YMCA during his time in India did not mean he had continuing ties to Canada;
- The Claimant’s participation in courses, social clubs, and volunteering activities in Canada occurred either before or after his three-year stay in India; and

- The law permits Canadian residents to keep their status even if they leave the country for a year, but they must also bear the burden of showing that their absence from Canada was temporary.

[17] I don’t see an arguable case that the General Division erred in making these findings. My review of its decision indicates that the General Division properly focused on relevant factors indicating residence.[10] In doing so, it meaningfully analyzed the available information and came to the defensible conclusion that the Claimant was not a Canadian resident between February 13, 2014 and March 24, 2017.

There is no arguable case that the General Division made factual or legal errors

[18] To succeed at the Appeal Division, it is not enough to simply disagree with the General Division’s decision. In this case, a significant portion of the Claimant’s written submissions offer criticisms and comments about the General Division’s decision without necessarily specifying how the General Division erred. That said, the Claimant does make several specific allegations of error, which I will address as follows:

– The General Division did not mischaracterize Service Canada’s initial finding about the Claimant’s residence

[19] The Claimant alleges that the General Division was wrong to say that Service Canada admitted to a “mistake” when it initially recognized his 10 years of residence. He says that Service Canada’s Scarborough office never used that word to describe the IOU findings in its letter dated June 3, 2020.

[20] I don’t see an arguable case here. The Claimant has always argued that the IOU got it right when it said that he had accumulated 10 years of Canadian residence. He has always argued that Service Canada’s Scarborough office incorrectly found that he only had seven years and 251 days. Although it is true that Service Canada never used the word “mistake,” I don’t see how it was an error to use that word to characterize the disparity between the two units’ positions.

---

[10] See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 and other cases.

[21] Moreover, the Claimant made a similar argument to the General Division, which rejected it for considered reasons. The General Division found—correctly in my view—that, whatever the IOU may have said, its decision was not the one that counted. It was the Scarborough office whose job it was to make the initial assessment of the Claimant's Canadian residence. More importantly, it was the Scarborough office that later issued the reconsideration decision. As mandated by section 82 of the *Canada Pension Plan*, only that decision could be the subject of an appeal to the General Division.

– **A redundancy does not invalidate the General Division's decision's analysis**

[22] The Claimant takes issue with the General Division's finding that he did not reside in Canada from May 26, 2006 to July 21, 2007. He says that he never claimed to be resident during that period. He suggests that the General Division's failure to notice that fact betrays its lack of attention to his submissions as a whole.

[23] I don't see an arguable case on this point. It is true that the Claimant never claimed Canadian residence between May 26, 2006 and July 21, 2007.[11] However, the General Division's unnecessary examination of this period does not render the rest of its analysis incorrect. To succeed at the Appeal Division, claimants must show that the General Division erred according to one or more of the permitted grounds of appeal. Those grounds are highly specific and do not cover lapses of attention that have no affect on a decision's outcome.

– **The General Division did not contradict itself**

[24] The Claimant alleges that the General Division's decision contains a contradiction. On one hand, the General Division said that many factors must be considered when determining whether and when someone is a Canadian resident.[12] On the other hand, the General Division said that the Claimant's long stay in India outweighed the Claimant's evidence that he remained a Canadian resident.[13]

---

[11] See, for example, the Claimant's letter to Service Canada dated November 19, 2020, GD2-50.
[12] See General Division decision, paragraph 20.
[13] See General Division decision, paragraph 34.

[25] I don’t see a case for this argument because I don’t see a contradiction. It is true that the law requires decision-makers to consider many factors when assessing residence,[14] but that does not mean every factor has to be given equal weight. In this case, the General Division found that the Claimant’s uninterrupted three-year presence in India outweighed the evidence pointing to his continued residence in Canada, such as the fact that he obtained Canadian citizenship, the fact that he filed Canadian income tax returns, and the fact that he maintained memberships in the Brampton public library and YMCA. In its role as finder of fact, the General Division was within its authority to assign weight to the evidence as it saw fit.

– **The General Division did not misinterpret the rule about temporary absences**

[26] According to the Claimant, the General Division forgot that Canadian residents can leave the country for more than a year and still keep their status.

[27] I don’t see an arguable case that the General Division overlooked or misinterpreted this aspect of the law In its decision, the General Division wrote:

> In his written submissions, the [Claimant] also suggested that his residence in Canada could not be interrupted once it was established in 2007. 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.** This rule doesn’t help the [Claimant], because he was absent from Canada for more than a year between February 13, 2014, and March 24, 2017 [emphasis added].[15]

[28] The rule that the General Division cites in the above passage is section 21(4) of the *Old Age Security Regulations*. It says what the General Division says it does. Whether an absence was “temporary” or not is a question of fact. The General Division considered that question and, having looked at all the evidence, decided that the

[14] See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.
[15] See General Division decision, paragraph 38.

Claimant's absence from Canada was not temporary. As finder of fact, that was its right, and the Claimant cannot re-argue that point in this forum.

– **The General Division did not break precedent**

[29] The Claimant also alleges that the General Division failed to interpret section 21(4) of the *Old Age Security Regulations* in compliance with *G.D. v MESD*, a recent Appeal Division decision.[16]

[30] I don't see an arguable case here. In *G.D.*, the General Division flatly ignored significant evidence that the claimant produced in support of her residence claim. There is nothing like that in this case. The General Division may not have given as much weight to the Claimant's preferred evidence as he would have liked, but one cannot say that the General Division ignored or failed to address it.

– **The General Division could not consider the IOU's letter**

[31] The Claimant acknowledges that the IOU did not "hold more authority in the matter of domestic residence than the regional office."[17] However, the Claimant maintains that the General Division should have nevertheless considered the IOU's April 2020 letter, which recognised 10 years of Canadian residence.

[32] I don't see a case that General Division erred in failing to give the IOU's letter weight. As I've already noted, the IOU's letter is not a reconsideration letter, and it therefore could not be the basis of the appeal to the General Division. Nor could it be regarded as evidence—it is merely a standardized letter that Service Canada sends to claimants after determining that they can't benefit from one of the dozens of social security agreements that Canada maintains with countries around the world. It is true that the IOU's letter advised the Claimant that he had 10 years of Canadian residence, but this "finding" appears to have based on nothing more than a casual inspection of the Claimant's original application for OAS benefits. There is no indication that the IOU conducted a full assessment of the Claimant's residency claim or that it had access to

[16] *G.S. v Minister of Employment and Social Development*, 2022 SST 624.
[17] See Claimant's application requesting leave to appeal from the Appeal Division dated October 2, 2022, AD1-16.

information that was later denied Service Canada’s Scarborough office or, for that matter, the General Division.

Conclusion

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

[34] Permission to appeal is therefore refused.

Member, Appeal Division