



Citation: *PM v Minister of Employment and Social Development*, 2023 SST 410

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** P. M.

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

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**Decision under appeal:** General Division decision dated October 4, 2022  
(GP-21-583)

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**Tribunal member:** Neil Nawaz

**Decision date:** April 6, 2023

**File number:** AD-22-743

## **Decision**

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

## **Overview**

[2] The Applicant was born in South Africa in April 1941. He came to Canada as an immigrant in May 1975 and became a Canadian citizen three years later. In December 1979, he moved to the United States.

[3] The Applicant has spent much of his life travelling, and he has owned or rented homes in several countries, including France and the United Kingdom. While the Applicant occasionally visited Canada after 1979, he began spending more time here again in 2012. In August 2015, he rented an apartment in X, Nova Scotia, and has spent much of his time there since then.

[4] In September 2018, the Applicant applied for an Old Age Security (OAS) pension. The Minister determined that the Applicant had resided in Canada for four years and granted him a partial pension at 4/40<sup>ths</sup> of the full amount. The Applicant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] At the Applicant's request, the General Division conducted a hearing by way of documentary review. It allowed the appeal in part, recognizing more than four years of Canadian residence between May 1975 and December 1979 and another three years between May 2015 and June 2018. The General Division assessed the Applicant's OAS pension entitlement at 7/40<sup>ths</sup> of the full amount.

## **The Applicant's reasons for appealing**

[6] On October 14, 2022, the Applicant applied for permission to appeal the General Division's decision. In his application, he did not provide any reasons for appealing but asked the Tribunal to suspend proceedings until March 2023, when he expected to be finished receiving treatment for cancer. In a letter dated November 1, 2022, I granted

the request and allowed the Applicant to make written submissions up to March 6, 2023.<sup>1</sup>

[7] To date, the Tribunal has not received any further submissions from the Applicant. Late last month, Tribunal staff left the Applicant two voicemails reminding him of the missed deadline, but no one has returned the calls.<sup>2</sup>

[8] I am satisfied that the Applicant or his representatives had adequate time to prepare submissions. I am also satisfied that the Applicant or his representatives knew or should have known that the Tribunal would be proceeding in the absence of submissions after March 6, 2023.

## Issue

[9] 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.<sup>3</sup>

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.<sup>4</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>5</sup> This is a fairly easy test to meet, and it means that an Applicant must present at least one arguable case.<sup>6</sup>

[10] I have to decide whether the Applicant has an arguable case.

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<sup>1</sup> See Tribunal's letter to the Applicant dated November 1, 2022, AD2.

<sup>2</sup> See Tribunal's telephone conversation logs dated March 27-28, 2023.

<sup>3</sup> See *Department of Employment and Social Development Act* (DESDA), section 58(1) as it read until December 5, 2022. The grounds of appeal for income security appeals to the Appeal Division changed after that date but, since the Applicant submitted his request for permission to appeal in October 2022, I am proceeding under the old rules.

<sup>4</sup> See DESDA, sections 56(1) and 58(3).

<sup>5</sup> See DESDA, section 58(2).

<sup>6</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## Analysis

[11] 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 Applicant has not raised an arguable case.

[12] The Tribunal has given the Applicant ample opportunity to provide reasons for appealing. I understand that the Applicant is dealing with a serious health issue, but I cannot put this file on hold indefinitely.

[13] To succeed at the Appeal Division, an applicant must do more than simply disagree with the General Division's decision. An applicant 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 grounds of appeal permitted under the law.

[14] In my review of this file, I saw no indication that the General Division ignored or misconstrued any significant aspect of the Applicant's submissions. While the Applicant may not agree with its conclusions, the General Division was within its authority to weigh the evidence on file and draw reasonable inferences from it.<sup>7</sup> From what I can see, the General Division did its best to assess the available information about the Applicant's whereabouts and living arrangements over a more than 40-year period. In doing so, it correctly applied the relevant provisions of the *Old Age Security Act* and associated case law, taking into account the key factors that determine residence.<sup>8</sup> In the end, it concluded that the Applicant had resided in Canada for a total of seven years.

[15] I see no reason to interfere with this conclusion.

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<sup>7</sup> See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

<sup>8</sup> The General Division specifically relied in the factors outlined in a case called *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

## Conclusion

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

[17] Permission to appeal is therefore refused.



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Member, Appeal Division