[TRANSLATION]

Citation: *EG v Minister of Employment and Social Development*, 2023 SST 36

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	E. G.
Representative:	M. S.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated June 3, 2021 (issued by Service Canada)

Tribunal member:	François Guérin
Type of hearing:	Teleconference
Hearing date:	January 12, 2023
Hearing participant:	Appellant's representative (her daughter)
Decision date:	January 17, 2023
File number:	GP-21-1986

Decision

[1] The appeal is allowed in part.

[2] The Appellant, E. G., has been a resident of Canada under the *Old Age Security Act* (OAS Act) from April 5, 2019, when she returned to Canada to live with her family, until the date of this hearing, January 12, 2023. She isn't yet eligible for a partial Old Age Security (OAS) pension because she has only 3 years, 9 months, and 8 days of Canadian residence under the OAS Act. This decision explains why I am allowing the appeal in part.

Overview

[3] The Appellant was born in X, France, on November 16, 1941, to a French father and a British subject mother from the Dominion of Newfoundland. She obtained Canadian citizenship in March 2019, effective retroactively to April 1, 1949, the date the province of Newfoundland entered into Canadian Confederation.[1] On June 11, 2019, she applied for an OAS pension.[2] In her application, she also asked for the Guaranteed Income Supplement.[3] The Respondent (Minister) denied the application because the periods the Appellant claimed are periods of presence, not residence, in Canada.[4]

[4] The Appellant asked the Minister to reconsider its decision.[5] It upheld the decision.[6]

[5] The Appellant appealed the reconsideration decision to the Tribunal.[7]

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[1] GD2-106
[2] GD2-32 to 40
[3] GD2-35, section C1
[4] GD2-29 to 31
[5] GD2-12 to 15
[6] GD2-3 to 6
[7] GD1

What is the Respondent's position?

[6] The Minister says that the Appellant was only present in Canada and was never a resident of Canada under the OAS Act.[8]

What is the Appellant's position?

[7] The Appellant says that her OAS application should not only be subject to administrative review but that, given its exceptional nature, it should be considered on compassionate grounds. The Appellant considers that she is entitled to OAS.[9]

What the Appellant must prove

[8] For the appeal to succeed, the Appellant has to prove, on a balance of probabilities, that she was a resident of Canada under the OAS Act for at least 10 years after she turned 18.

Matter I have to consider first

The Appellant wasn't at the hearing

[9] A hearing can go ahead without the Appellant if she got the notice of hearing.[10] I decided that the Appellant got the notice of hearing because the Appellant's representative—her daughter—was present. She testified that her mother was having health issues and could not be there. She testified during this appeal because she knows the Appellant's history of residence in Canada. She was sworn in. So, the hearing took place when it was scheduled, but without the Appellant.

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[8] GD3-3, paragraph 7
[9] GD1-5, section 6
[10] Section 58 of the *Social Security Tribunal Regulations* sets out this rule.

Reasons for my decision

Was the Appellant a resident of Canada under the OAS Act?

– Case law and Canadian residence

[10] The burden of proof, on a balance of probabilities, is on the Appellant.[11]

[11] For the purposes of the OAS Act, a person resides in Canada if they make their home and ordinarily live in any part of Canada. This concept is distinct from the concept of presence. A person is present in Canada when they are physically present in any part of Canada.[12] A person may be present in Canada without being a resident of Canada.

[12] Residence is a question of fact that must be decided on the particular facts of each case. **A person's intentions aren't decisive.** *Ding*[13] established a non-exhaustive list of factors to be considered to guide the Tribunal in deciding the issue of residence:

- ties in the form of personal property
- social ties in Canada and France
- other ties in Canada (medical coverage, driver's license, rental lease, tax records, etc.)
- ties in another country
- regularity and length of stays in Canada in relation to the frequency and length of absences from Canada
- the person's lifestyle, or whether the person living in Canada has significant roots there

[13] An appellant has to prove that it is more likely than not that they resided in Canada for at least 10 years after they turned 18.

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[11] *De Carolis v Canada (Attorney General)*, 2013 FC 366
[12] Section 21(1) of the *Old Age Security Regulations*
[13] *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76

Appellant's credibility

[14] During her testimony, the Appellant's representative seemed like a pleasant and credible person. She answered the Tribunal's questions directly and without hesitation. The Tribunal had no difficulty accepting her testimony.

[15] The Appellant corrected and clarified certain points in the Minister's submissions, namely paragraphs 4, 5, 14, 15, 19, 20, 21, and 22. At the outset, the Appellant's representative said that she didn't question the facts that caused the Minister to not recognize the 10 years of Canadian residence in the administrative sense, but rather asked that the file be considered on compassionate grounds. She argues that her mother's life wasn't what she wanted, but that her mother was instead a victim of circumstances and administrative red tape that caused, among other things, her application for Canadian citizenship to drag on.

The Tribunal's findings on the Appellant's period of Canadian residence

– **November 16, 1959, to April 4, 2019**

[16] On a balance of probabilities, the Appellant wasn't a resident of Canada under the OAS Act.

[17] November 16, 1959, was the Appellant's 18th birthday. And April 4, 2019, was the day before the day the Appellant moved in with her daughter, according to her daughter's testimony.

[18] The Tribunal is aware that the Appellant has ties in Canada, even accepting the retroactivity of the Appellant's Canadian citizenship. But a person's intentions aren't decisive.

[19] The Appellant owned two houses successively (X Street, which was sold to buy another house on X Street) in Quebec from approximately 2003 to 2014, which she paid taxes and utilities for. She had mortgages with Desjardins and opened a bank account

in January 2004.[14] But, during that period, she had also owned a house in X for almost 60 years, as of the hearing date. She also has French bank accounts. At best, this equates to comparable or equivalent ties.

[20] During that period, the Appellant would have liked to settle in Canada. She was making administrative efforts to have her Canadian citizenship recognized by birth. But, based on the recommendations of her legal counsel, she didn't apply for permanent residence because she was pursuing her application for Canadian citizenship.

[21] The Appellant worked full-time at X for approximately 50 years. From 2003 to 2017, before her retirement, she was accumulating her leave so she could come to her homes in Quebec for at least two months at a time, during which time her application for Canadian citizenship was reviewed. She followed the law and could not be in Canada for more than six consecutive months of the year. This means that the factor of regularity and length of stays in Canada in relation to the frequency and duration of absences from Canada doesn't favour Canadian residence.

[22] The Appellant submitted a hospital card with an address in X.[15] The Appellant's daughter testified that her mother obtained emergency services that she had to pay for because she wasn't covered by a Canadian health insurance plan at the time. She also has a dentist and doctor in Quebec who aren't covered by a Canadian health insurance plan either.

[23] The Appellant has family in Canada. Her children and grandchildren live in Canada. But her lifestyle, or whether she is significantly rooted in Canada, doesn't favour Canadian residence during this period. She worked at X, where she paid social security contributions and taxes.[16] She has been receiving a French pension since approximately 2017 that is deposited in her French bank account. She didn't file tax returns in Canada during that period.

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[14] GD22-56
[15] GD2-55
[16] GD2-97 to 98

– **April 5, 2019, to January 12, 2023**

[24] On a balance of probabilities, the Appellant was a resident of Canada under the OAS Act.

[25] The Appellant's representative testified that her mother has lived at her home continuously since April 5, 2019, the month after she was officially granted Canadian citizenship. She has also had a Canadian passport since July 2, 2021, which is valid until July 2, 2026. She volunteered with disadvantaged children and seniors when her health was better, and mostly since arriving in Canada on April 5, 2019. The Tribunal gives significant weight to the Appellant's daughter's testimony, which the Tribunal considers to be very credible.

[26] The Appellant also has personal property in Canada. The Appellant has her family in Canada—her daughter, two sons, and grandchildren—and exercises her voting rights in Canada. Her son and granddaughter bought their respective homes a few minutes away from the Appellant. Her grandson returned to live with her in a multigenerational home after his studies. So the Tribunal accepts the date of April 5, 2019, as the date of the Appellant's final return to Canada.

[27] The Tribunal agrees that the Appellant still has very strong ties in X (France). She received a pension there, which was deposited in a French bank account. She still owns a house there and pays taxes and utilities for it. Coming from a small island community, she certainly has many friends there.

[28] For this period, the Tribunal prefers to give more weight to the fact that the Appellant hasn't worked since 2017, when she retired. In addition, the Tribunal prefers to give more weight to the factor of regularity and length of stays in Canada in relation to the frequency and length of absences from Canada. According to the Appellant's daughter's testimony, the Appellant now lives with her, even though the Appellant has no public services in her name. The Appellant's immediate family is in Canada, and she lives with them. The Appellant's lifestyle, on a balance of probabilities, appears to be significantly more deep-rooted in Canada than in X.

Conclusion

[29] While I sympathize with the Appellant's unique historical circumstances and the administrative delays she faced in getting her Canadian citizenship, a person's intentions aren't decisive in establishing residence in Canada. I have to make my decision based on the evidence on file and the testimony I heard to determine whether the Appellant was eligible for a partial OAS pension under the OAS Act.

[30] I find that the Appellant has been a resident of Canada under the OAS Act from April 5, 2019, when she returned to Canada to live with her family, until the date of this hearing, January 12, 2023. So she has 3 years, 9 months, and 8 days of Canadian residence. She will be entitled to a partial OAS pension once she has obtained 10 years of Canadian residence.

[31] This means that the appeal is allowed in part.

François Guérin
Member, General Division – Income Security Section