[TRANSLATION]

Citation: *GS v Minister of Employment and Social Development*, 2022 SST 1773

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

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

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated August 11, 2021 (issued by Service Canada)

Tribunal member:	François Guérin
Type of hearing:	Videoconference
Hearing date:	July 5, 2022
Hearing participants:	Appellant Appellant's representative Respondent Person in training for the Respondent
Decision date:	July 19, 2022 [*sic*]
File number:	GP-21-2366

Decision

[1] The appeal is dismissed.

[2] The Appellant, G. S., wasn't a resident of Canada under the *Old Age Security Act (*OAS Act*)*, on a balance of probabilities, from June 29, 2011, to July 5, 2022.

[3] This means she doesn't qualify for the Guaranteed Income Supplement (GIS) for the period from June 2011 to June 2022.

[4] This decision explains why I am dismissing this appeal.

Overview

[5] The Appellant immigrated to Canada on May 26, 1976, at the age of 27. She returned to Argentina on January 8, 1998, with 21 years and 228 days of Canadian residence. She turned 65 on September 15, 2009. She applied for an Old Age Security (OAS) pension,[1] and applied for the GIS.[2] Her application was approved based on the Respondent's (also known as the Minister) analysis, for a partial 21/40 OAS pension and a GIS benefit in January 2011.

[6] On April 11, 2019, the Minister informed the Appellant that it was starting an investigation to verify the Appellant's eligibility for benefits.[3] After the investigation, the Minister found that the Appellant didn't meet the Canadian residence requirements under the *Old Age Security Act* (OAS Act) and had only been present in Canada since June 29, 2011.[4]

[7] The Appellant asked the Minister to reconsider this decision,[5] and it upheld it.[6]

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[1] GD2-3 to GD2-7.
[2] GD2-4, question 11.
[3] GD2-118.
[4] GD2-204 to GD2-205.
[5] GD2-212 to GD2-215.
[6] GD2-267 to GD2-268.

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

What is the issue?

[9] Was the Appellant a resident of Canada under the OAS Act since June 29, 2011?

What is the respondent's position?

[10] The Minister says that the Appellant was a resident of Canada under the OAS Act from February 26, 1976, to January 8, 1998, for a total of 21 years and 228 days of Canadian residence.

[11] The Minister says that the Appellant hasn't been a resident of Canada under the OAS Act since January 9, 1998, the day after she left Canada for Argentina. Also, she didn't re-establish her Canadian residence on June 29, 2011, like she claims.[8] The Minister says that a GIS overpayment of $70,692.21 was created for the period from June 2011 to October 2019 and asks she pay it back.[9]

What is the Appellant's position?

[12] The Appellant says that she has re-established residence in Canada since she returned to Canada on June 29, 2011, and that her ties and mode of living are significantly rooted in Canada. In addition, the Appellant says that the regularity and length of her stays in Canada compared with the length of her absences from Canada clearly show that she is rooted in Canada.[10]

What the Appellant has to prove

[13] For the appellant to succeed, she has to prove, on a balance of probabilities, that she was a resident of Canada under the OAS Act since June 29, 2011.

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[7] GD1.
[8] GD6-2, para 2.
[9] GD6-11, para 28.
[10] GD1-5 to GD1-6.

Matters I have to consider first

The Appellant was represented at the hearing

[14] At the hearing, the Appellant was represented by J. J., a friend of the Appellant. He confirmed that he wasn't paid. He also testified during this appeal because he is familiar with the Appellant's situation about her Canadian residence history. He was sworn in.

[15] The Tribunal reminded the parties that the hearing was informal.

Reasons for my decision

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

– **Case law and Canadian residence**

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

[17] 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**.

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

a. ties in the form of personal property

b. social ties in Canada and Argentina

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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 (MHRD) v Ding*, 2005 FC 76.

c. other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.)

d. ties in another country

e. regularity and length of stays in Canada in relation to the frequency and length of absences from Canada

f. the person's mode of living, or whether the person living in Canada has significant roots there

[19] The Appellant has to prove that it is more likely than not that she resided in Canada since June 29, 2011.

Appellant's credibility

[20] The Appellant was very pleasant and credible when she testified. She answered the Tribunal's questions directly and without hesitation.

[21] But, during her testimony, the Appellant admitted things that cast doubt on the information in her submissions. For example, the Appellant admitted that she hadn't reported her departures and absences from Canada to the Régie de l'assurance-maladie du Québec [Quebec's health insurance board] (RAMQ) since she regained coverage in 2011.

[22] The Tribunal asked the Appellant whether the two lease agreements[14] she submitted to the Tribunal were signed on exactly the same date as when the lease period started. She testified that they were but the Tribunal finds this highly unlikely given that they were agreements signed by long-time friends.

[23] The Tribunal asked why the two leases she submitted for the rental periods starting in 2011[15] and 2013[16] were signed on official Quebec leases issued in

[14] GD1-25 and GD1-29.
[15] GD1-26 to GD1-28.
[16] GD1-31 to GD1-33.

September 2020. She replied that she didn't know how it worked and that, as soon as she learned that she needed an official lease from Quebec, she asked the property owner to put this agreement on an official lease. But, the Tribunal considers that highly unlikely.

[24] The Appellant says that the rental agreements were in fact signed on the date indicated on them—the first day of the rental period—because she needed them to apply for OAS. But, the Tribunal doubts this assertion, given that the two agreements, which were practically written two years apart, have the same typographical and French errors, and description of the rental unit, which the Appellant called into question, saying that it was a studio apartment rather than a room in 2013.

[25] In testimony, the Appellant admitted that the date of signature shown next to her signatures on the 2011 and 2013 leases she submitted on the 2020 leases aren't the dates on which the leases were signed and that this is simply a transfer of the information from the 2011 and 2013 lease agreements onto official leases. That makes the Tribunal doubt the administrative practices she follows to document her actions. This practice of changing what is written in documents also leaves room for doubt about the dates on both lease agreements.

[26] The Appellant says that the rental agreements were signed on the date noted on the agreements—the first day of the rental period—because she needed them to file her OAS application. If so, the Tribunal wonders why the Appellant didn't ask for the wording of the agreements to be changed before signing them. The Tribunal will give little weight to leases and rental agreements in its analysis.

[27] The Appellant did indicate on her OAS application that she was receiving a pension in Argentina.[17] But, the Tribunal notes that the pension amount she reported to the CRA wasn't the pension amount she was receiving (about $800 per month). Instead, it was the amount she was allowed to withdraw in Canada because of the exchange limits imposed by the Argentine government (about $500 per month). When

[17] GD2-5, question 15.

asked why the amounts she reported didn't answer the question asked, the Appellant said she was reporting only the money she could get out of Argentina.

[28] The GIS provides a supplement to the basic OAS pension and is paid to low-income seniors. Pensioners' income is based on income in the base calendar year under sections 12 and 13 of the OAS Act. This also includes pension income received outside Canada. This means that the GIS is income-dependent and is based on income from the previous (base) year.

[29] This situation regarding the pension amounts received in Argentina tells the Tribunal that the Appellant didn't accurately answer the questions on the forms, but interpreted her answers based on what she thought was fair and reasonable.

[30] The burden of proof remains on the Appellant.

– **The Appellant's testimony**

[31] The Appellant testified that she hadn't lived outside Canada since re-establishing her Canadian residence on June 29, 2011. As proof, she claims that she had always spent more than 183 days in Canada each year since then.

[32] As for her personal property, the Appellant testified that, from 1998 to 2011, some of her property was stored with friends.[18] The larger pieces of furniture were left for two years at the co-op housing, which disposed of it when she stopped renting there. Her intention was to return to Canada earlier, but her mother's illness forced her to stay in Argentina longer. The Appellant also testified that she had acquired personal property in Argentina but that, since returning to Canada, she had given it to her daughter. She also acquired personal property in Canada that she leaves in Canada when she goes to Argentina.

[33] As for her social ties, the Appellant testified that she doesn't have direct family in Canada. She also has no further contact with her ex-husband. She comes from a family of three children in Argentina. Her sister lives in Argentina. Her brother, who passed

[18] GD1-101 to GD1-110.

away three years ago, also lived in Argentina. They had their respective children. She doesn't really socialize with them. This means she only has her daughter and grandson.

[34] But, she has many friends in Canada that she considers [translation] "her chosen family." She has lived in Canada for 34 years. She testified that she attends classes and conferences, does volunteer work, and has always maintained ties with her friends in Canada, even during her long absence in Argentina from 1998 to 2011.

[35] Since returning to Canada on June 29, 2011, the Appellant testified that she had rental agreements for the housing where she lived. She also applied for housing with the Office municipal d'habitation de Montréal [Montreal housing authority]. She testified that it offered her a studio apartment but she wanted a larger one. The Appellant testified that she paid for housing in cash and that, when she went to Argentina, she paid the property owner in advance for the months when she would be absent. That housing was only for her, except when she rented a room.

[36] The Appellant testified that she is a Canadian citizen, has a Canadian passport, her address is in Canada, and had regained RAMQ coverage.[19] She has a doctor in Quebec, receives the Québec Pension Plan (QPP), which has considered her to be a resident of Canada since 2011, since it no longer applies the withholding tax for non-residents. The Appellant indicated that she didn't tell the RAMQ about her trips outside Quebec because she knew she didn't need to.

[37] The Appellant testified that she had never bought travel insurance in Canada to cover a medical emergency outside Canada. She admitted that, when she is in Argentina, she gets medical services from clinics and public hospitals there. If necessary, she also has access to private clinics and hospitals if she wishes, but would have to pay for services.

[19] GD5-40 and GD5-41.

[38] The Appellant also testified that she had gone to El Salvador in 2018 to get dental treatment.[20] When asked about this, the Appellant said that she had gone abroad because the care in Canada was too expensive.

[39] The Appellant testified that she receives the QPP for her years of contributions to the Quebec Health Insurance Plan. In Argentina, she also receives a state pension for her years of contributions to the Argentine program that is deposited in her bank account in Argentina.[21]

[40] The Appellant testified that she has a Quebec driver's licence.[22] But, she doesn't have a car in Canada, so she doesn't have car insurance either. She has had a driver's licence in Canada since she first arrived in the country. It expired when she returned to Argentina from 1998 to 2011. She testified that she had an Argentine driver's licence when she bought a car there. She sold it around 2012. She no longer has an Argentine driver's licence. In Canada, she uses public transit, and has transit fares.[23]

[41] The Appellant testified that she has always filed her tax returns in Quebec and Canada, except when she was in Argentina from 1998 to 2011. In 1998, her authorized representative filed her 1998 tax returns on her behalf.

[42] The Appellant testified that she had a real estate investment with a partner for about two years. That was before returning to Argentina in 1998, but she doesn't remember the exact years. She sold her shares to her when their agreement ended. Otherwise, she has never had any financial investments or life, housing, or tenant insurance in Canada. Her only financial investment was a contribution to the Canadian university bursary, which she contributed to until about 2009 and from which she began making withdrawals for her daughter's education in 2010. She doesn't have any of these types of investments in Argentina except her house.

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[20] GD5-1, GD5-23, and GD5-24.
[21] GD2-170.
[22] GD5-41 and GD5-42.
[23] GD5-40.

[43] She has had a bank account with RBC since 1991[24] and was with Caisses Desjardins before then. She has a debit card and a credit card.[25] Her will was written in Quebec.[26] This is her first will and she showed the invoice for it during her testimony. She has a cell phone account with Videotron. She receives her mail in Canada.[27]

[44] Regarding her ties to Argentina, the Appellant testified that she does have a house in her name but that she left it to her daughter, who is responsible for paying the bills for that house. She explained that she obtained land from the municipality where she had a house built and moved in around 2004 or 2005.

[45] She testified that she has very little social contact in Argentina and spends most of her time with her daughter and grandson who are close ties. She testified that she had finally gotten the official ownership documents for the house in 2021 and that she will now proceed to transfer the house to her daughter. Since the house is in her name, the utilities associated with it are also in her name.

[46] She has a bank account in Argentina where her Argentine pension is deposited because it can't be sent outside of Argentina. She confirmed that she still has Argentine citizenship and didn't renounce it as she didn't consider it necessary. She also confirmed that she never had Guatemalan residence or citizenship. Her ex-husband was from Guatemala.

[47] The Appellant claimed that she spends more time in Canada since June 29, 2011, than in Argentina.[28] So, she believes that this shows that the regularity and length of her stays in Canada compared with the frequency and duration of absences from Canada favour Canadian residence. The Appellant testified that the dates in this chart are correct to the best of her recollection.

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[24] GD1-53.
[25] GD5-42.
[26] GD1-61.
[27] GD5-31 to GD5-39.
[28] GD1-37.

Start date	End date	Country	Duration	Comment (if necessary)
2011-06-29	2012-01-10	Canada	196 days	Exhibit 2 to GD1-37
2012-01-11	2012-05-18	Argentina	129 days	
2012-05-19	2012-12-03	Canada	199 days	
2012-12-04	2013-05-29	Argentina	177 days	
2013-05-30	2013-11-29	Canada	184 days	
2013-11-30	2014-06-11	Argentina	194 days	
2014-06-12	2014-12-26	Canada	198 days	
2014-12-27	2015-05-25	Argentina	150 days	See GD2-121
2015-05-26	2015-11-27	Canada	186 days	
2015-11-28	2016-05-18	Argentina	173 days	
2016-05-19	2016-11-25	Canada	191 days	
2016-11-26	2017-05-16	Argentina	172 days	
2017-05-17	2017-11-23	Canada	191 days	
2017-11-24	2018-05-14	Argentina	172 days	
2018-05-15	2018-12-12	Canada	212 days	
2018-12-13	2019-05-07	Argentina	146 days	
2019-05-08	2019-12-03	Canada	210 days	
2019-12-04	2021-09-28	Argentina	665 days	Testimony
2021-09-29	2022-07-05	Canada	280 days	Testimony

[48] The Appellant testified that she didn't think she would spend that much time in Argentina when she went there in 1998. But, because of her mother's condition, she had to stay. So, she left her position in Quebec. To make a living in Argentina and to be able to care for her mother, she found a job teaching in X. So, she moved there with her mother and daughter. Her mother passed away in 2001, her daughter got pregnant in 2005 at the age of 15. The Appellant had to wait until her daughter was self-sufficient before thinking of returning to Canada. But, she maintained contact with some Canadians. She had appointed an authorized representative, a friend of hers, to look after her personal affairs while she was in Argentina.

[49] During her absence from Canada from 1998 to 2011, the Appellant testified that she maintained her ties with her coworkers, the members of the cooperative, and her many friends in Canada either by telephone or by other electronic means. She also testified that in Argentina, she really only has her daughter and grandson, and that her social ties had been very limited and only professional with her former coworkers. She didn't make friends there either.

[50] Regarding her trips to Argentina since 2011, she confirms that the dates in the table above are correct.[29] She testified that she was unable to return to Canada in 2020 because of COVID-19. She testified that she had last entered Canada on September 29, 2021. She also has no planned trips to Argentina at this time.

[51] So, from June 11, 2011, to September 28, 2021, the day before her last entry into Canada, the Tribunal finds that the Appellant spent a total of 1,767 days in Canada and 1,978 days in Argentina. She has now been in Canada since September 29, 2021, which is 280 days.

[52] The Tribunal asked the Appellant why the receipts for her airline tickets always show round-trip tickets from Buenos Aires to Montreal rather than round-trip tickets from Montreal to Buenos Aires. The Appellant explained that she did this because it was cheaper on her first trip to Montreal on June 29, 2011, to buy a round-trip ticket than to buy a one-way ticket.[30] The Tribunal suggested to the Appellant that she was only coming to Canada on June 29, 2011, on vacation since her return trip to Argentina was already scheduled. The Appellant testified that she would return to Argentina to finalize some things. But, that demonstrates to the Tribunal that the Appellant came to Canada only for set periods, and that she did so from Argentina which implies a vacation in Canada, especially since she did so over a very long period. The Appellant testified that when she returned to Canada on September 29, 2021, she came with a one-way ticket from Buenos Aires to Montreal.

[53] The Tribunal asked the Appellant whether she had a Canadian passport between 2001, when her Canadian passport expired after she returned to Argentina in 1998,[31] and the passport that was issued on May 4, 2011.[32] She testified that she didn't remember but didn't believe so.

[54] The Tribunal also asked the Appellant why her passport was issued on April 15, 2016, in Buenos Aires if she was, as she says, a resident of Canada. She explained

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[29] GD1-37.
[30] GD1-39.
[31] GD2-18.
[32] GD2-16.

that this was because her passport expired while she was on vacation and she didn't know she could renew it while it was still valid.

[55] The Appellant testified that she lives an active life in Canada. She does volunteer work, attends activities at the library and other places, visits friends, and goes to aqua fitness classes. But in Argentina, she is, as she said, cooped up at home and doesn't socialize because she has no ties with her former colleagues. The Tribunal asked why she returns to Argentina every year if her living conditions there are that difficult. She said that her activities are limited to looking after the house, going to the sea, and that is all. She also goes to see her daughter and grandson.

[56] The Tribunal also asked the Appellant why none of the letters of support[33] she submitted discuss her frequent trips to Argentina but only say that they have known her for some time, that she is involved with certain organizations, and takes part in activities in Canada. The Tribunal submitted that this seems to show that these individuals either don't really know her, or that they are trying to hide certain information. The Appellant responded that she didn't think she needed to talk about those things and still maintained contact with those people during her absences. The Tribunal isn't satisfied with this explanation. It suggests to the Tribunal that the letters of support were more scripted than personally written by their signatories.

[57] The Appellant testified that her mode of living is more rooted in Canada through her activities, family doctor, rental agreements, etc. She believes that she settled in Canada in mind and fact.

[58] The Tribunal asked the Appellant to explain why she thought her ties to Canada were stronger than her ties to Argentina given the fact that she was born and raised in Argentina, that she lived in Argentina for 43 years, which is more than 55% of her life (even by giving her the benefit of the doubt for her Canadian residence from 2011 to 2022), that she owns a house that is in her name, that she had spent about the same time there since 2011 as she had in Canada (see table and comments), and that her

[33] GD1-99, GD1-100, GD1-197, GD2-243, GD2-250, GD2-262 to GD2-263, and GD4-2.

only daughter and granddaughter live there. She said that the time she spent in X, Argentina was very depressing. It is a small village where there is no quality of life. The water can go out for a few days. She only has ties to her daughter and grandson which she described as being very strong, although she is also very fond of [translation] "her chosen family" in Canada. She feels sad in Argentina, has no social life there, and stays cooped up at home. Since her daughter is now self-sufficient, she can now choose where she can live.

[59] The Tribunal also asked the Appellant why—given that her daughter and grandson are also Canadians—she doesn't have them come to Canada to join her, given the difficult living conditions the Appellant says they are experiencing in Argentina. The Appellant said that she suggested that her daughter come to Canada, but she is staying in Argentina because the child's father is also there. The biological bond seems very strong, just like, the Tribunal believes, the biological bond between the Appellant and her daughter. She testified that if her daughter came back to Canada, she would go to Argentina less often and for less time.

[60] The Tribunal asked the Appellant to explain why—if her ties to Canada are so strong—she didn't return to Canada at least once for a short stay from 1998 to 2011. She replied that this was because of her financial situation and her family obligations with her daughter. The Tribunal doesn't accept this explanation since, during that time, she took possession of land and had a house built on it. Also, she could have come to Canada for a few weeks with her daughter, who is also Canadian.

[61] The Appellant believes that she abandoned her residence in Argentina and that her only ties there are her daughter and grandson, since she returned to Canada on June 29, 2011. Also, she left her house and furniture to her daughter, who is responsible for her care. She believes she has stronger ties to Canada.

– **Appellant's addresses since June 29, 2011**

[62] During that period, the Appellant testified that she lived at two addresses. X in Montreal from June 29, 2011, to August 29, 2013, and X in Longueuil from August 30,

2013, to this day. These addresses are from long-time friends. On X Street, it was a room in the property owners' apartment.

[63] The Appellant testified that she knew that the property owner reported her rental income for her agreements with her on her tax returns. She testified that she had been paying her rent with cash since their first agreement. She also paid the rent in advance when she was absent from Canada. She has been paying her by cheque since 2019. When asked by the Tribunal why she didn't submit her bank statements to prove her cash and cheque transactions, the Appellant testified that she hadn't thought about it.

[64] The Tribunal asked the Appellant why she followed this family when they sold their home in Montreal to move to Longueuil. She testified that they are friends, it brings her security, and what they had proposed to her was appealing.

[65] The Appellant testified that cable and utilities like heating and electricity are included in her rent. She is only responsible for her cell phone[34] and the internet. When she was on X Street, it was a room in the S. family's apartment. Since she has been in Longueuil, it has been a studio that is independent from the S. family's apartment. The Tribunal asked the Appellant to explain why—if she had an apartment independent from the S. family, with a rental agreement and a formal lease—the renovations in the S. family's living area would have impacted her rental unit, given that she had rights. She said that the S. family were long-time friends and that she wanted to help them. This gives the Tribunal the impression that this rental agreement with the S. family is very flexible and not as formal as normal leases would be between tenants and property owners. The Tribunal can only conclude that these weren't formal leases giving rights and obligations to the parties. The Tribunal will give very little weight to those agreements in its analysis.

[66] The Appellant testified that she had been registered with the Société d'habitation de Montréal [Montreal housing corporation] since about 2014 or 2015. She testified that she had an interview and was later offered a studio. But, because she wanted a larger

[34] GD1-71.

apartment, like a one-bedroom apartment, she refused the offer, which she now regrets. She has to renew her application every year.

[67] The Appellant testified that her cell phone had been with Videotron since around 2014 or 2015. She doesn't remember the names of her providers from 2011 until the start of her contract with Videotron. She pays for her cell phone account year-round because of her plan, even when she returns to Argentina. When asked by the Tribunal why she didn't submit her credit card or bank statement statements to show she had been paying her bills, she said she hadn't thought about it. She testified that she has a similar account in Argentina for her cell phone with Claro, for which she pays the minimum flat rate. She has had this package since the time she returned to Argentina between 1998 and 2011.

[68] Regarding her address in X, Argentina, the Appellant testified that the municipality offered her the opportunity to get land from it because she worked there as a teacher. She testified that rents are very expensive in that city and that it was a great opportunity. So, she built a house there and started living there while it was being built as soon as it was habitable. This was around 2004 or 2005. She testified that since she returned to Canada on June 29, 2011, her daughter has assumed all utilities and expenses of the house, although all official documents related to it are still in her name.

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

– **June 29, 2011, to July 5, 2022**

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

[70] The Tribunal is aware that the Appellant does have ties to Canada, but she also has similar ties to Argentina.

[71] For example, she has Canadian and Argentine citizenship. She receives a pension in Canada from the QPP for the years she contributed to the system that is deposited in her Canadian bank account. At the same time, she receives a pension in

Argentina for the years she contributed to the system that is deposited in her Argentine bank account. She is covered by the Quebec Health Insurance Plan when she is in Canada, and when she is in Argentina, she is covered by Argentine universal health care. She has had a cell phone account in Canada since the date she claims she returned, June 29, 2011, and she still has a cell phone account in Argentina.

[72] As for ties in the form of personal property, the Appellant testified that she gave her furniture and personal property in Argentina to her daughter when she moved back to Canada. She also has her own furniture and personal property in Canada. The Tribunal can only consider this link as equivalent in both countries because the Appellant spends a lot of time in Argentina and uses the furniture and personal property when there, even though—according to her testimony—she gave it to her daughter.

[73] Canadian citizenship gives the Appellant the right to enter and leave Canada freely, as many times as she wishes, and for as long as she wishes. A person may be present in Canada without being a resident of Canada, even if they have Canadian citizenship.

[74] By analyzing when the Appellant left and returned between the date she says she re-established her Canadian residence, June 29, 2011, and the day before her last entry into Canada, September 28, 2021, the Tribunal finds that the Appellant spent a total of 1,767 days in Canada and 1,978 days in Argentina. Although she spent a little more time in Argentina, the Tribunal considers these periods to be equivalent. She last entered Canada on September 29, 2021, which is 280 days ago. So, the regularity and length of stays in Canada in relation to the frequency and duration of absences from Canada isn't significant in the Tribunal's analysis, which considers them, once again, to be equivalent.

[75] The Tribunal finds that using addresses in Canada during this period for invoices, medical appointments, her OAS application, her lease, or membership in organizations, associations, or the public library, doesn't help support ties that are strong enough to establish, on a balance of probabilities, a Canadian residence, despite the Appellant's explanations at the hearing.

[76] The factors that led to deciding that the Appellant was an Argentine resident rather than a Canadian one during the period from June 29, 2011, to July 5, 2022, are the ownership of a house in her name in Argentina that is a much stronger tie than renting a room with friends or an apartment with those same friends, especially since the transactions were made in cash with agreements and/or leases that put their authenticity in doubt.

[77] As for social ties, the fact that the Appellant's daughter and grandson reside in Argentina even though they are also Canadian citizens carries a lot of weight. The Appellant's mother-daughter, grandmother-grandson relationship also carries much more weight in the Tribunal's eyes than the friendship with the Appellant's [translation] "chosen family" living in Canada.

[78] Another factor that shows the Tribunal that the Appellant's mode of living is more rooted in Argentina than in Canada is that her round-trip plane tickets were purchased in Argentina rather than in Canada and had return dates, telling the Tribunal that trips to Canada were only temporary.

[79] The burden of proof remains on the Appellant. For these reasons, the Tribunal finds that, on a balance of probabilities, the Appellant wasn't a resident of Canada under the OAS Act from June 29, 2011, to July 5, 2022.

Conclusion

[80] The Appellant wasn't a resident of Canada under the OAS Act, on a balance of probabilities, from June 29, 2011, to July 5, 2022.

[81] This means she doesn't qualify for the GIS for the period from June 2011 to June 2022.

[82] This means that the appeal is dismissed.

François Guérin
Member, General Division – Income Security Section