



Citation: *KC v Minister of Employment and Social Development*, 2022 SST 849

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

## Decision

**Appellant:** K. C.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 8, 2021 (issued by  
Service Canada)

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**Tribunal member:** Brenda Hollingsworth

**Type of hearing:** Videoconference

**Hearing date:** June 29, 2022

**Hearing participants:** Appellant  
Respondent

**Decision date:** August 29, 2022

**File number:** GP-21-1979

## Decision

[1] The appeal is allowed.

[2] The Appellant, K. C., is eligible for an Old Age Security (OAS) pension.

[3] The Appellant needs to have resided in Canada for at least 20 years after age 18 to be eligible to receive an OAS pension while living outside Canada. As of his application date, September 14, 2016, he had resided in Canada for 20 years and 110 days.

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

## Overview

[5] The Appellant was born in Lebanon on November X, 1951. He arrived in Thunder Bay in 1975. His brother already lived there. He became a Canadian citizen. He married a Canadian and raised a family in Canada.

[6] In July 1995, he returned to Lebanon. Since then, he has spent time in the United Arab Emirates, Australia, and Canada.

[7] The Appellant applied for an OAS pension on September 14, 2016, two months before he turned 65. He said he wanted his pension to start as soon as he qualified.

[8] The Minister of Employment and Social Development (Minister) refused the Appellant's application.<sup>1</sup> The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[9] The Appellant says he arrived in Canada in April 1975, not October 1975. He also says he resided in Canada intermittently between 2000 and 2016. The Appellant

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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. See the reconsideration decision at GD1-9.

says he should surpass the 20 years of residence in Canada which would allow him to receive his OAS while living abroad.

[10] The Minister says that the Appellant didn't reside in Canada when he applied for an OAS pension in September 2016. The Minister also says there is no evidence that the Appellant was present in Canada during these periods:

- before October 1975
- between 2000 and 2001
- in 2003
- in 2004

[11] The Minister admits that the Appellant was in Canada for part of 2006. But it denies that the Appellant had strong enough ties to Canada in 2006 for it to count as residence.

## **What the Appellant must prove**

[12] To receive a **full** OAS pension, the Appellant has to prove he resided in Canada for at least 40 years after he turned 18.<sup>2</sup> This rule has some exceptions. But the exceptions don't apply to the Appellant.<sup>3</sup>

[13] If the Appellant doesn't qualify for a full OAS pension, he might qualify for a **partial** pension. A partial pension is based on the number of years (out of 40) that a person resided in Canada after they turned 18. For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount.

[14] To receive a partial OAS pension, the Appellant has to prove he resided in Canada for at least 10 years after he turned 18. But, if the Appellant didn't reside in

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<sup>2</sup> See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant also has to be at least 65 years old and a Canadian citizen or legal resident of Canada. And he must have applied for the pension. The Appellant has met these requirements.

<sup>3</sup> See section 3(1)(b) of the OAS Act.

Canada the day before his application was approved, he has to prove he already has 20 years of residence.<sup>4</sup>

[15] The Appellant has to prove when he resided in Canada. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he resided in Canada during the relevant periods.<sup>5</sup>

### **Matter I have to consider first**

[16] Toward the end of the hearing, the Appellant said that he would provide a copy of his Lebanese and Canadian passports for the years 2003 and 2004. I agreed that he could have 15 days to submit the passport copies. The Appellant couldn't locate the passports. Instead, he provided documents relating to his children's schooling in Canada in 2000 and 2001. I forwarded those documents to the Minister. I agree with the Minister's response that these documents have no bearing on the outcome of the appeal.

[17] On August 2, 2022, the Appellant sent an additional email, which I haven't considered in my decision. The email didn't provide any new evidence or information.

### **Reasons for my decision**

[18] I find that the Appellant is eligible for an OAS pension while he is living outside Canada.

[19] He resided in Canada for at least 20 years before applying and turning 65.

[20] Here are the reasons for my decision.

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<sup>4</sup> See section 3(2) of the OAS Act.

<sup>5</sup> See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

## The test for residence

[21] 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.

[22] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.<sup>6</sup>

[23] A person is **present** in Canada when they are physically present in any part of Canada.<sup>7</sup>

[24] When I'm deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:<sup>8</sup>

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

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<sup>6</sup> See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

<sup>7</sup> See section 21(1)(b) of the OAS Regulations.

<sup>8</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.

[25] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.<sup>9</sup>

### **When the Appellant resided in Canada**

[26] The Appellant and the Minister agree that the Appellant **resided in Canada** from October 15, 1975, to July 5, 1995. This amounts to 19 years and 274 days.<sup>10</sup>

[27] The Appellant said that, in addition to the 19 years and 274 days, he also resided in Canada in the following periods:

- from an unknown date in April 1975 to October 15, 1975
- from November 14, 2003, to November 12, 2004
- from July 26, 2006, to an unknown date in January 2007<sup>11</sup>
- from September 10, 2016, to November 28, 2016

[28] In his post-hearing letter dated July 15, 2022, the Appellant added an additional period in 2000-2001. He didn't provide the specific dates he entered or left Canada during those years.

[29] During the hearing, the Appellant admitted that he "didn't know any dates." He said at the hearing that he put dates he resided in Canada on his application off the top of his head. As a result, I haven't relied on anything the Appellant said about dates. I have relied solely on the documents provided.

[30] I will now discuss each of the periods that are in dispute, starting with the earliest. For each period, I will explain why I have decided that the Appellant did or didn't reside in Canada.

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<sup>9</sup> See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

<sup>10</sup> For this period, the Appellant provided many documents to prove his employment, use of health and dental services, housing, and business ownership. The Appellant also provided copies of his Canadian and Lebanese passports for this period.

<sup>11</sup> The Appellant acknowledged that he was only in Canada for two weeks in September 2016 when he submitted his application for an OAS pension. He didn't argue that he resided in Canada during that short stay despite the fact that he renewed his driver's licence and health card during that stay. See GD2-135.

- **The Appellant didn't reside in Canada from April 1975 to October 1975**
  - **There is no evidence the Appellant was present in Canada before October 1975**

[31] The Appellant didn't reside in Canada from April 1975 to October 14, 1975. There isn't even any evidence that he was present in Canada then.

[32] On his OAS pension application, the Appellant wrote that he first came to Canada on October 5, 1975. This arrival date is close to the date stamp in his passport and the date on his visa to enter Canada—October 15, 1975.<sup>12</sup>

[33] The Appellant now says that he was mistaken about the date he entered Canada. He says he entered Canada in April 1975, not October 1975.<sup>13</sup> The Appellant's belief that he entered Canada in April 1975 comes from his memory that he was in the process of leaving Lebanon during the Beirut bus massacre. While I accept that the war and the Appellant's departure for Canada are linked in his memory, the documents don't support an arrival in Canada in April 1975.

[34] The Appellant's Lebanese passport renewal shows that he was in Beirut in May 1975.<sup>14</sup> The Appellant said he could not remember that. Other times when the Appellant renewed his Lebanese passport while he was in Canada, the passports specifically say they were renewed in Canada.<sup>15</sup>

- **The Appellant didn't reside in Canada in 2000 and 2001**
  - **There is no evidence the Appellant was present in Canada during this period**

[35] The Appellant didn't reside in Canada in 2000 and 2001. In fact, the Appellant didn't provide any evidence that he was even present in Canada in 2000 or 2001. For example, he didn't provide his passports or any other proof of travel. The records from

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<sup>12</sup> See GD02-38-43.

<sup>13</sup> The Appellant explained that, when he completed his OAS pension application, he simply wrote in "rough" dates off the top of his head, without taking the time to reflect. He didn't look at any documents. He also said he was confused.

<sup>14</sup> See GD2-38.

<sup>15</sup> See GD2-39.

the Canadian Border Service Agency don't show the Appellant entering Canada in either of those two years.<sup>16</sup>

- **The Appellant's family ties to Canada don't prove he resided in Canada**

[36] The Appellant provided records that some of his children were in Canada during 2000 and 2001.<sup>17</sup> The Appellant said that his wife was with the children in British Columbia. He also said his wife was with her father in Alberta.

[37] There is no reference to the Appellant in these documents.

[38] The Appellant explained during the hearing that he often lived apart from his wife and some of his children. He explained that one of his sons had moved with him from Montréal to Lebanon and that his own father lived in Lebanon.

[39] In this situation, the children's school records don't prove the Appellant's presence or residence in Canada.

- **The Appellant's other ties**

[40] The Appellant did provide records of a real estate association membership during this period. However, there wasn't anything to show he was an active member, attended meetings, or undertook any work for the association.

[41] The Appellant didn't provide any financial records such as tax records or Canada Pension Plan contribution records for this period. His Québec Pension Plan contributions ended in 1994.<sup>18</sup>

[42] In addition, in response to questions that the Minister asked him in writing, the Appellant wrote that he resided in Lebanon from September 16, 2000, to November 14, 2003.<sup>19</sup>

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<sup>16</sup> See GD2-205-206.

<sup>17</sup> See the documents in GD06.

<sup>18</sup> See GD2-56.

<sup>19</sup> See GD2-33.



– **The Appellant didn't reside in Canada from November 2003 to November 2004**

[43] The Appellant didn't reside in Canada between November 14, 2003, and November 12, 2004.<sup>20</sup>

○ **The Appellant wasn't present in Canada during this period**

[44] There are no documents showing that the Appellant was present in Canada at all during this period. The Canadian Border Services Agency records don't show that the Appellant entered Canada then.<sup>21</sup>

[45] The Appellant was unable to provide his passports for this period.

[46] The Appellant could not tell me how often he was in Canada. He could not even provide an estimate when I asked him whether it was every month, every three months, or every six months.

○ **The Appellant had family ties to Canada, Lebanon, and elsewhere**

[47] I find that the Appellant's family ties to Canada weren't strong.

[48] The Appellant explained that, during this period, two of his children were at university in Canada. He also had a child in school in the United States and another in Lebanon. The Appellant said that his wife was in British Columbia in a rental apartment owned by one of his friends. The Appellant's father was in Lebanon.

○ **The Appellant's economic ties were mostly to Lebanon**

[49] The Appellant was a licensed realtor in British Columbia during this period.<sup>22</sup> However, he didn't have any evidence of any sales or other work he completed in Canada. He could not remember getting any listings. He said that he "struggled to work" in Canada. He said that "it wasn't a good time for him professionally in Canada."

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<sup>20</sup> These were the dates listed in the Appellant's OAS pension application. See GD2-4 and 29. However, at the hearing, the Appellant said, "Don't quote me on the dates." He didn't know why the specific dates were selected.

<sup>21</sup> See GD2-206.

<sup>22</sup> See GD2-11.

[50] At the hearing, he acknowledged that he did have a job in Lebanon as a manager or director of sales during this period.

- **The Appellant's property ties were to Lebanon**

[51] The Appellant's property ties were to Lebanon. The Appellant didn't own any property in Canada during this period. He did own a place of his own in Lebanon. He didn't have a vehicle or other property in Canada, apart from some tools he had left in Thunder Bay.

- **The Appellant's other ties**

[52] The Appellant explained that there were no records of medical appointments because, fortunately, he never got sick. He could not remember any specific utility accounts like hydro.

- **The Appellant did reside in Canada from July 2006 to January 2007**

[53] The Appellant did reside in Canada from July 26, 2006, to an unknown date in January 2007. That was when the Government of Canada repatriated the Appellant and his wife when war broke out in Lebanon.

- **The Appellant's living arrangements in Canada during this period**

[54] The Appellant said that initially he lived in a dorm room at a university near Montréal. I understood this to be where the government settled people it had repatriated. He and his wife then moved in with a friend in Montréal.

[55] In their submissions, the Minister noted that the Appellant and his wife weren't living in a separate apartment at the friend's house. I didn't find that argument compelling. It was clear that this was a temporary living arrangement given that the Appellant was receiving social assistance and didn't yet have a job.

- **The Appellant had family ties to Canada during this period**

[56] The Appellant testified that his son who had been living in Lebanon also came to Canada during the repatriation. At least two of his other children were in Canada. His

wife was in Canada. He also testified that his brothers were in Canada, with at least one near him in Montréal.

○ **The Appellant had economic and social ties to Canada during this period**

[57] The Appellant received social assistance between September 1, 2006, and January 31, 2008.<sup>23</sup>

[58] The Appellant had a Quebec drivers' licence in 2006 and 2007.<sup>24</sup>

[59] The Appellant had Quebec health insurance coverage in 2006 and 2007.<sup>25</sup>

[60] In terms of work, the Appellant testified that he went with a friend to car auctions, although this wasn't a paid position. The Appellant also said that he looked into getting his real estate licence transferred from British Columbia to Quebec, but there were too many steps involved.

[61] While he was in Montréal in 2006, another friend approached the Appellant about setting up an American real estate brokerage in Canada. The Appellant looked into it but advised his friend that he didn't think it would be a good idea because real estate practices in the United States were so different. As a result, the Appellant and his friend didn't pursue that opportunity.

[62] Instead, the same friend learned about a different real estate opportunity in the United Arab Emirates and invited the Appellant to join him. Needing work, the Appellant left for Abu Dhabi after he received the offer. The Appellant's passport renewal form states that he left Canada in January 2007.<sup>26</sup>

[63] The Minister argued that the Appellant's decision to leave in 2007 shows that he never resided in Canada during the repatriation. I disagree. The Appellant described his

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<sup>23</sup> See GD2-209. The Minister noted that the Appellant likely received the social assistance for about a year after he had left Canada. However, even if true, it is irrelevant to whether the Appellant resided in Canada during this period.

<sup>24</sup> See GD2-215.

<sup>25</sup> See GD2-59.

<sup>26</sup> See GD2-183. The notation is for month and year only. There is no specific date provided. I have therefore assumed it was January 1, 2007.

efforts to establish himself in business in Canada before deciding to leave for an unexpected opportunity.

○ **The Appellant's ties to Lebanon during this period**

[64] The Appellant didn't return to Lebanon when he left Canada. This also supports the position that he was no longer resident in Lebanon when he was living in Canada.

– **The Appellant didn't reside in Canada from September 2016 to November 2016**

[65] The Appellant didn't reside in Canada from September 10, 2016, to November 28, 2016.

[66] On September 11, 2016, the Appellant arrived in Canada for the first time in almost 10 years. Over the next two weeks, he renewed his driver's licence and health card and he applied for an OAS pension.<sup>27</sup>

[67] However, when he travelled to Canada on September 11, 2016, he already had a return ticket to the United Arab Emirates, scheduled to depart two weeks later.<sup>28</sup> During the hearing, I asked him about the return plane ticket. He admitted that, if the ticket said he left Canada on September 24, 2016, that must be when he left. This two-week trip wasn't enough re-establish residence.

**The Appellant is eligible for an OAS pension**

[68] The Appellant is eligible for an OAS pension because he resided in Canada long enough to receive his pension while living abroad.

[69] The Appellant doesn't reside in Canada now. This means he needed to have resided in Canada for 20 years before January 1, 2007, which is when he last resided in Canada.

[70] As of January 1, 2007, the Appellant had resided in Canada for 20 years and 110 days after he turned 18:

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<sup>27</sup> See GD2-3.

<sup>28</sup> See GD2-135.

- From October 15, 1975, to July 5, 1995, he resided in Canada for 19 years and 274 days.
- From July 26, 2006, to January 1, 2007, he resided in Canada for 160 days.

[71] This means he is eligible for a partial OAS pension of 20/40.

## **When payments start**

[72] The Appellant's pension starts in December 2016.

[73] OAS pension payments start the first month after the pension is approved.<sup>29</sup> The Appellant's pension was approved in November 2016, the month he turned 65.<sup>30</sup>

## **Conclusion**

[74] The Appellant is eligible for a partial OAS pension of 20/40.

[75] This means the appeal is allowed.

Brenda Hollingsworth  
Member, General Division – Income Security Section

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<sup>29</sup> See section 8(1) of the OAS Act.

<sup>30</sup> The law sets out several possible dates for approval of an OAS pension. The approval takes place on the latest of those dates. In the Appellant's case, the latest date was when he turned 65 in November 2016. See section 8 of the OAS Act and section 5 of the OAS Regulations.