



[TRANSLATION]

Citation: *NK v Minister of Employment and Social Development*, 2023 SST 1197

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: N. K.

Respondent: Minister of Employment and Social Development
Representative: Yanick Bélanger

Decision under appeal: General Division decision dated
April 5, 2023(GP-22-67)

Tribunal member: Jude Samson

Decision date: August 31, 2023
File number: AD-23-582

Decision

[1] I am allowing the appeal of the Applicant, N. K. The Applicant is eligible for a partial Old Age Security (OAS) pension of 14/40 and the Guaranteed Income Supplement (GIS) for the period from August 2017 to January 2020.

Overview

[2] The Minister paid the Applicant an OAS pension and the GIS as of August 2017. But, the Minister later investigated the Applicant's eligibility for these benefits. At the end of that investigation, the Minister determined that he had only six years of Canadian residence.

[3] Since the Applicant needed at least 10 years of Canadian residence to qualify for benefits, the Minister insisted that he pay back the amounts he had already received.

[4] The Applicant appealed the Minister's decision to the Tribunal's General Division. The General Division found that the Applicant had resided in Canada for a longer period. But, he had still not reached the 10-year threshold.

[5] I have already granted the Applicant permission to appeal. As a result, I will treat the appeal as if it were a new matter.

The parties agree on the outcome of the appeal

[6] After reconsideration, the Minister asked the Tribunal to schedule a settlement conference. At that conference, the parties agreed on the following:

- In addition to the period of residence in Canada already recognized by the General Division (from March 20, 1989, to December 31, 1998), the Minister acknowledges that the Applicant also resided in Canada from January 1, 2013, to July 31, 2019.

- This means that the Applicant resided in Canada for more than 14 years before his 65th birthday and is eligible for a partial OAS pension of 14/40 as of August 2017.
- The Applicant is also eligible for the GIS as of the same date.

I accept the parties' agreement

[7] The evidence on file supports the parties' agreement.

[8] The rate of a partial OAS pension is based on the years of residence between the person's 18th and 65th birthday. Here, the parties agree that the Applicant had 14 years of residence in Canada during that period. This means he is eligible for a partial OAS pension of 14/40. That rate will never increase.¹

[9] To receive his pension and the GIS, the Applicant must continue to reside in Canada after his 65th birthday.² Here, the parties agree that the Applicant resided in Canada until July 31, 2019. So, he is entitled to benefits until January 2020.³

[10] To establish eligibility for the OAS pension and GIS after that date, the Applicant must satisfy the Minister that he continued to reside in Canada in the years after July 31, 2019.

[11] The parties agree that the Tribunal should not rule on this issue. So, I encourage the Applicant to respond to the Minister's requests for additional information as best he can. Then, the Minister can make a decision about whether the Applicant resided in Canada after July 31, 2019.

¹ See section 3(5) of the *Old Age Security Act* (OAS Act).

² After 20 years of residence in Canada, the Applicant's eligibility for the Old Age Security pension no longer depends on his continued residence in Canada. It should be noted, however, that his eligibility for the Guaranteed Income Supplement also depends on the Applicant's family income and is assessed on an annual basis.

³ A person may retain their eligibility for these benefits for six months after interrupting their residence in Canada. See sections 9(1), 9(3), 11(7)(b), 11(7)(c), and 11(7)(d) of the OAS Act.

Conclusion

[12] I am allowing the Applicant's appeal and declaring that he resided in Canada from March 20, 1989, to December 31, 1998, and from January 1, 2013, to July 31, 2019. This means that he is eligible for a partial OAS pension of 14/40 and the GIS from August 2017 to January 2020.

[13] To receive benefits after that date, the Applicant will have to satisfy the Minister that he resided in Canada for the past four years.

Jude Samson
Member, Appeal Division