



Citation: *AP v Minister of Employment and Social Development*, 2023 SST 917

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: A. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 27, 2022 (issued by
Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: Teleconference

Hearing date: June 28, 2023

Hearing participant: Appellant

Decision date: July 7, 2023

File number: GP-22-1744

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. P., isn't eligible for an Old Age Security (OAS) Pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is 72. He was born in Iraq. He moved to Bahrain in 1975 and started a business there in 1979. He was never a permanent resident or citizen of Bahrain.

[4] The Appellant came to Canada as a permanent resident in December 1993. He says he came to Canada to be with his family who all lived here. He registered and operated a Canadian company to promote Canadian products, including his inventions and modifications he made to his father's inventions. He became a citizen of Canada although I am not sure when.

[5] The Appellant says he has resided in Canada since he first came in 1993. He says his absences since then didn't interrupt his residence because he was employed by a Canadian company, had a permanent place of abode to which he intended to return, and returned to Canada within six months of the end of his employment.

[6] The Minister says that the Appellant only began residing in Canada on June 28, 2020, when his business in Bahrain was finally liquidated by court order and he returned to Canada to live here full-time.

What the Appellant must prove

[7] To receive a **full** OAS pension, the Appellant has to prove he resided in Canada for at least 40 years after he turned 18.¹ This rule has some exceptions. But the exceptions don't apply to the Appellant.²

[8] 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.

[9] 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 Canada the day before her application might have been approved, he has to prove he already has at least 20 years of residence.³

[10] Absences may be deemed not interrupt residence under certain circumstances. I will explain later why the Appellant's absences don't fit any of these circumstances.

[11] The Appellant has to prove 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.⁴

The test for residence

[12] 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.

¹ 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.

² See section 3(1)(b) of the OAS Act.

³ See section 3(2) of the OAS Act.

⁴ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

[13] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.⁵

[14] A person is **present** in Canada when they are physically present in any part of Canada.⁶

[15] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:⁷

- 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

[16] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.⁸

⁵ See section 21(1)(a) of the OAS Regulations.

⁶ See section 21(1)(b) of the OAS Regulations.

⁷ 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.

⁸ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

Reasons for my decision

[17] I find that the Appellant isn't eligible for an OAS pension. He didn't reside in Canada for at least 10 years after he turned 18.

[18] I considered the Appellant's eligibility from December 22, 1993, up to and including the date of the hearing which was June 28, 2023. I chose the first date because this is when the Appellant came to Canada as a permanent resident. I chose the second date because I had reliable evidence up to that date.

[19] Here are the reasons for my decision.

When the Appellant resided in Canada

[20] The Appellant **didn't reside** in Canada from December 22, 1993, until June 27, 2020.

[21] The Appellant **resided** in Canada from June 28, 2020, until June 28, 2023.

[22] For each period, I will explain why I have decided that the Appellant did or didn't reside in Canada.

– **The Appellant didn't reside in Canada from December 22, 1993, until June 27, 2020.**

[23] The Appellant came to Canada from Bahrain because:

- he didn't want to live in Iraq with its political and social problems
- he didn't have permanent residence status in Bahrain, only temporary status while he had a business there
- he wanted to make Canada his home
- he wanted to be where his mother and siblings, his only close family, lived

[24] The Appellant only brought personal possessions with him. He wanted to bring his car with him, but it didn't meet the requirements for import into Canada.⁹ Because he

⁹ See GD2-77 and GD2-78.

didn't have a wife or children, he moved in with his family rather than live alone. But the Appellant didn't sever his ties to Bahrain when he came to Canada. He still owned part of a business there. In his first five to six years in Canada he went back to Bahrain regularly for the business. He kept a rented apartment there. After that, he went to Bahrain less frequently but still went there regularly until 2020.

[25] The Appellant also established connections to Canada. In 1990 he registered a patent here, and in 1998 he registered a company and another patent.¹⁰ He established other links to Canada when he first arrived here in 1993. He opened a Canadian bank account, got provincial health insurance (interrupted in 2010) and had a family doctor.¹¹ He didn't provide proof of all these links **from 1993**, but he did provide some proof for later periods.¹² I believe what the Appellant says about the connections he made to Canada when he first came. The Appellant has been forthright throughout this process. He may not remember all the details, but I wouldn't expect him to.

[26] The Appellant says that the Minister doesn't understand the challenges faced by immigrants. He said he chose to live in Canada, not somewhere else. He said he tried to establish himself in Canada. But he couldn't generate any income **in** Canada. This is why he didn't file Canadian income tax returns until 2020. This is also why he made the decision to travel back and forth to Bahrain to promote the products and inventions of Canadian companies, including his own.

[27] The Appellant explained why he didn't rent his own place in Canada when he went back and forth to Bahrain. He said because he didn't have a wife or children, he preferred to live with his family when he was here. He also said he didn't want to be liable for a home that was unoccupied for periods of the year.

[28] I have sympathy for the Appellant and do believe that his intention was to become Canadian as he puts it. I also understand his decision to live with his family. But his intentions are only one factor. Although he had some connections to Canada, like

¹⁰ See GD1-24 and GD2-12 to GD2-19.

¹¹ See GD2-5 to GD2-8 and GD2-55 to GD2-57.

¹² See GD2-11 and GD1-15 to GD1-23.

his family, immigration status and other ties, he didn't ordinarily live or make his home in Canada during this period.

[29] The Appellant couldn't achieve the success he wanted in Canada. So, he made a choice. Between 1993 and 2010 he travelled to Bahrain frequently to operate his business there. Between 2010 and 2020 he continued to travel to Bahrain to deal with legal proceedings about his Bahraini business and to promote his Canadian business. He provided proof of his attempts to get funding and other support for his Canadian business.¹³ I believe what the Appellant says about the goals of his Canadian company.

[30] The Appellant says I should consider that the goal of his Canadian company was to promote Canadian products and support the Canadian economy.¹⁴ He says good economic policy would support these goals. I don't agree or disagree with what he says about economic policy. But I cannot base my decision on policy. I must consider whether the Appellant ordinarily lived and made his home in Canada.

[31] When I look at the whole picture of this period, what I see is that the Appellant's connections to Bahrain were stronger than to Canada.

– **The rules about deemed residence or presence don't apply in this period**

[32] I don't agree with the Appellant that his absences from Canada during this period didn't interrupt his residence here. First, as I have said, he didn't reside in Canada when he left to go to Bahrain.

[33] I accept that he was a representative of a Canadian corporation **from** 1998. But even then, he didn't have "a permanent place of abode" or "[maintain] in Canada a self-contained domestic establishment."¹⁵ During this period he never rented an apartment in Canada. He lived with one of his siblings, depending on who had space for him during his times in Canada.

¹³ See GD3-7.

¹⁴ See GD3 and GD8.

¹⁵ See section 21(4) and 21(5) of the *Old Age Security Regulations*.

– **The Appellant resided in Canada from June 28, 2020**

[34] The Minister agrees that the Appellant has resided in Canada since June 28, 2020. I agree with the Minister.

[35] By this point, the Appellant's Canadian business proved unsuccessful and a court in Bahrain made the final order liquidating his company there. He came back to Canada and rented an apartment of his own.

The Appellant isn't eligible for an OAS pension

[36] The Appellant isn't eligible for an OAS pension because he didn't reside in Canada long enough. As of June 28, 2023, the Appellant had resided in Canada for three years and one day after he turned 18.

[37] The Appellant didn't reside in Canada for at least 10 full years. This means he isn't eligible for an OAS pension.

Conclusion

[38] I find that the Appellant isn't eligible for an OAS pension.

[39] This means the appeal is dismissed.

Wayne van der Meide
Member, General Division – Income Security Section