



[TRANSLATION]

Citation: *VB v Minister of Employment and Social Development*, 2023 SST 1966

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: V. B.
Representative: R. B.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 19, 2022 (issued
by Service Canada)

Tribunal member: Antoinette Cardillo
Type of hearing: In writing
Decision date: November 9, 2023
File number: GP-22-377



Decision

[1] The appeal is dismissed.

[2] The Appellant, V. B., isn't eligible for the Old Age Security (OAS) pension and Guaranteed Income Supplement (GIS) benefits. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was born in Haiti on September 26, 1935. He applied for the OAS pension and GIS benefits on July 31, 2020.¹ His application (completed by his authorized representative) says that he arrived in Canada on July 21, 2010, as a permanent resident. He was married in Haiti on February 15, 2014, and his wife lives there.

[4] The Appellant says that he has lived in Canada since his initial entry, specifying that he goes to Haiti to visit his country and that he was only twice absent from Canada for more than six months.

[5] According to the Minister, the Appellant wasn't eligible for the OAS pension and GIS benefits because he hadn't provided the necessary information for his OAS and GIS applications to be considered. The Appellant then provided additional information.

[6] But the Minister upheld its initial decision because the additional evidence didn't support a finding that the Appellant had met the requirements for an OAS pension and GIS benefits under the *Old Age Security Act* (OAS Act) and its regulations.

[7] The Minister was of the view that, since his arrival in Canada on July 21, 2010, the Appellant hadn't maintained a centralized lifestyle in Canada. His continuous round trips between his daughter's residence in Canada and his residence in Haiti, where his wife

¹ See application at GD2-3.

lived, were characteristic of a long-term visitor. His main ties of residence were in Haiti and not in Canada.

What the Appellant must prove

[8] For the Appellant to succeed, he has to prove that he has resided in Canada since arriving on July 21, 2010.

Old Age Security pension

[9] A full OAS pension is payable to persons who have resided in Canada for at least 40 years after they turned 18.² But the law does provide for the possibility of a partial pension for those who haven't resided in Canada for at least 40 years. To be eligible for a partial pension, a person must have resided in Canada for at least 10 years.³

[10] If a person stops living in Canada and wants an OAS pension while living in another country, they must have resided in Canada for at least 20 years after they turned 18.⁴

Residence

[11] The *Old Age Security Regulations* (OAS Regulations) govern whether a person resides in Canada or is only present in Canada. A person resides in Canada if they make their home and ordinarily live in any part of Canada. A person is present in Canada when they are physically present in any part of Canada.⁵

[12] The Federal Court considered the issue of residence in Canada. It noted the following:

It is trite law that residency is a factual issue that requires an examination of the whole context of the individual under scrutiny

² Section 3(1) of the *Old Age Security Act* (OAS Act).

³ Section 3(2) of the OAS Act.

⁴ Sections 3(2)(b) and 9(4) of the OAS Act.

⁵ Section 21 of the *Old Age Security Regulations* (OAS Regulations).

[...]. Intent does not equate to residence for the purpose of the [OAS Act].⁶

[13] The wording of the OAS Regulations further clarifies the factual component of the definition of residence in the OAS Act.⁷ By linking the concept of residence to a person's home and using the words "ordinarily lives," there is no doubt that a person will have to establish that Canada is the place where they are actually rooted for the period the law sets out.

[14] Also, the Federal Court has 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
- 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 stay in Canada, and the frequency and length of absences from Canada
- f. the person's mode of living, or whether the person living in Canada is significantly deep rooted and settled

Guaranteed Income Supplement

[15] The GIS is a monthly benefit based on income and marital status that is paid to OAS pension recipients who reside in Canada. If the GIS recipient leaves Canada, they can only receive the GIS for six months after the month they left Canada. This is the case regardless of how many years a person has resided in Canada.⁸

⁶ *Singh v Canada (AG)*, 2013 FC 437; and *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

⁷ Section 21(1)(a) of the OAS Regulations.

⁸ Section 11(7) of the OAS Act.

Reasons for my decision

[16] The Appellant hasn't been a resident of Canada under the OAS Act and OAS Regulations since arriving in Canada on July 21, 2010.

[17] According to a questionnaire dated October 7, 2020, the Appellant first entered Canada on October 7, 2009, as a visitor.⁹ He returned to live there on July 21, 2010. He was a permanent resident. He filed his income tax returns every year as a resident. He visits his wife once or twice a year. She still lives in Haiti. He intended to live with her in Canada. He will apply for sponsorship when he has the means and energy to do so.

[18] The Appellant provided a marriage certificate indicating that he was married in Haiti on February 15, 2014.¹⁰ According to this document, he lived in X, communal section of X, in Haiti.

[19] In another questionnaire dated January 25, 2021, the Appellant indicated that he has children in Canada.¹¹ He lives with his daughter, son-in-law, and grandchildren. He has no furniture or personal property, and no invoices in his name, but he does have a bank account. In Haiti, he owns a family home that is under construction and land. He lives with his wife, whom he visits every year. He also has children in Haiti. The Appellant considers Canada to be the country where he lives permanently, and he leaves Canada only to visit his country. He indicated that he was in Canada from July 2010 to March 2011, from June 2011 to January 2012, and from May 2012 to November 2013. He also noted that, between 2010 and 2021, his absences from Canada were less than six months.

[20] According to a questionnaire dated May 25, 2021, the Appellant was in Haiti from June 2, 2019, to August 25, 2019. He could not leave due to insecurity in Port-au-Prince. He was also in Haiti from October 14, 2020, to May 25, 2021, because of the pandemic. There was no return flight to Canada.¹²

⁹ See questionnaire at GD2-19.

¹⁰ See marriage certificate at GD2-11.

¹¹ See questionnaire at GD2-28.

¹² See questionnaire at GD2-42.

[21] According to a report from the Régie de l'assurance maladie du Québec [Quebec's health insurance board], the Appellant had the following medical visits between December 1, 2010, and December 28, 2020:¹³

- one visit in January 2012
- one visit in April 2016
- one visit in June 2018
- three visits between October and December 2019
- two visits in January 2020, one in March 2020, one in August 2020, and one in September 2020

[22] According to a letter dated July 20, 2021, the Appellant first left his country on October 7, 2009, to visit his children and grandchildren in Canada. He returned to Haiti on January 5, 2010.¹⁴ On July 21, 2010, he arrived in Canada as a permanent resident and has since returned to Haiti for periods no longer than six months, except for the following two periods: from February 6, 2019, to August 25, 2019 (six months and 19 days because of the political situation and insecurity in the Haitian capital) and from October 14, 2020, because of the pandemic.

[23] According to another letter dated July 27, 2021, the Appellant's Canadian residence history is as follows:¹⁵

- July 21, 2010, to March 9, 2011 (almost eight months in Canada)
- June 8, 2011, to January 24, 2012 (approximately seven months)
- May 7, 2012, to November 27, 2013 (approximately 18 months)
- May 13, 2014, to November 25, 2014 (approximately six months)

¹³ See report at GD2-36.

¹⁴ See letter to GD7-1.

¹⁵ See letter to GD2-103.

- May 19, 2015, to September 29, 2015 (approximately four months)
- March 8, 2016, to November 16, 2016 (approximately eight months)
- May 10, 2017, to November 22, 2017 (approximately six months)
- May 16, 2018, to November 14, 2018 (approximately five months)
- January 23, 2019, to February 6, 2019 (approximately one month)
- August 25, 2019, to October 14, 2020 (approximately 14 months).

[24] The stamps in the Appellant's Haitian passport, valid from September 24, 2007, to September 23, 2012,¹⁶ show the following entries and exits:

Entrances – Haiti	Exits – Haiti
	October 7, 2009, and entered Canada the same day
January 5, 2010	July 21, 2010
March 9, 2011	June 8, 2011, and entered Canada the same day
January 24, 2012	May 7, 2012

[25] The stamps in the Appellant's Haitian passport, valid from October 10, 2013, to October 9, 2018,¹⁷ show the following entries and exits:

Entrances – Haiti	Exits – Haiti
November 27, 2013	May 13, 2014, and entered Canada the same day

¹⁶ See passport at GD2-60.

¹⁷ See passport at GD2-85.

November 25, 2014	entered Canada on May 19, 2015
September 29, 2015	March 8, 2016, and entered Canada the same day
November 16, 2016	May 10, 2017, and entered Canada the same day
November 22, 2017	May 16, 2018

[26] The stamps in the Appellant's Haitian passport, valid from September 28, 2018, to September 27, 2023,¹⁸ show the following entries and exits:

Entrances – Haiti	Exits – Haiti
November 14, 2018	January 23, 2019
February 6, 2019	August 25, 2019
October 14, 2020	

[27] According to a stamp on the Appellant's visa card, he returned to Canada on April 17, 2022.¹⁹

[28] As stated, the Appellant argues that he has resided in Canada since his initial entry, that he goes to Haiti only to visit his country, and that he was only twice absent from Canada for more than six months.

¹⁸ See passport at GD2-44.

¹⁹ See GD9-52.

[29] However, the length of time an appellant stays outside Canada is only one of the factors to be considered when determining whether the appellant is a resident of Canada or only present there. An appellant must maintain a centralized lifestyle in Canada. They must not have established residence in another country. And they must have maintained close ties to Canada during their absence and demonstrated their intention to return to Canada within a reasonable period.

[30] Although the Appellant wasn't absent for long periods from Canada between his initial entry in July 2010 and November 2013, as of 2014, his absences from Canada were frequent and long. The Appellant explained that there were two periods when he could not return from Haiti because of the political situation and insecurity in the Haitian capital and the pandemic. However, in addition to these two periods of absence, the evidence shows that the Appellant didn't have a deep-rooted or centralized lifestyle in Canada between 2010 and 2022.

[31] In Canada, the Appellant has several family members. He has a room at his daughter's house, he doesn't pay rent or other expenses. He doesn't own any furniture or personal property. He has a bank account and has received sporadic health care in Canada.

[32] In Haiti, he has children, brothers, and his wife, whom he married on February 15, 2014. He has a family home and land. When he returns to Haiti, he returns to live in his house with his wife.

[33] His frequent trips back and forth between Canada, where he has a room at his daughter's house, and Haiti, where his wife resides, and where he has a house and land, show that his main ties of residence are in Haiti.

[34] Based on the facts, the Appellant hasn't ordinarily lived in Canada since July 2010. So, I can't determine that the Appellant has been a resident of Canada since his initial arrival.

Conclusion

[35] I find that the Appellant isn't eligible for the OAS pension and GIS benefits.

[36] This means that the appeal is dismissed.

Antoinette Cardillo

Member, General Division – Income Security Section