



Citation: *Minister of Employment and Social Development v LK*, 2024 SST 62

Social Security Tribunal of Canada Appeal Division

Decision

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

Respondent: L. K.

Decision under appeal: General Division decision dated June 2, 2023
(GP-22-1147)

Tribunal member: Neil Nawaz

Type of hearing: Teleconference

Hearing date: January 11, 2024

Hearing participants: Appellant's representative
Respondent

Decision date: January 19, 2024

File number: AD-23-827

Decision

[1] The appeal is allowed. The Respondent is not entitled to receive a partial Old Age Security (OAS) pension.

Overview

[2] The Respondent was born in the Soviet Union in June 1950. She has lived and worked in many countries, including Latvia, Estonia, Uzbekistan, and Serbia. She immigrated to Canada on September 25, 2007, and stayed in this country until June 6, 2016, when she moved back to Serbia. She still lives in Serbia.

[3] The Respondent applied for an OAS pension in August 2020. The Minister of Employment and Social Development refused the application because the Respondent did not live in Canada. The Minister said that she needed at least 20 years of Canadian residence to receive an OAS pension while living outside the country. The Minister noted that the Respondent only had ten full years of residence, based on when she actually resided in Canada, plus time added through Canada's social security agreement with Estonia.¹

[4] The Respondent appealed the Minister's refusal to the Social Security Tribunal. The Tribunal's General Division conducted a hearing in writing and allowed the appeal, granting the Respondent a partial OAS pension at a rate of 11/40^{ths} of the full amount.

[5] The Minister disagreed with the General Division's decision. It applied for permission to appeal to the Appeal Division, arguing that the General Division had committed an error of law by granting a pension to a non-resident who had lived in Canada for less than 20 years. Last September, one of my colleagues on the Appeal Division granted the Minister permission to appeal. Earlier this month, I held a hearing to discuss its case in full.

¹ See Minister's reconsideration decision letter dated June 2, 2022, GD2-4.

[6] Now that I have considered submissions from both parties, I have concluded that the Respondent was not entitled to receive a partial OAS pension. The evidence shows that the Respondent was not living in Canada when she applied for the pension and did not have the required minimum 20 years of Canadian residence to receive it abroad.

Preliminary Matters

[7] In the months leading up to her hearing, the Respondent submitted dozens of emails and other documents, many of them concerning matters such as her claim for Ontario Disability Support Program benefits, that had nothing to do with the issues in this proceeding. Although, I reviewed all of the Respondent's material, I focused only on information that was relevant to her eligibility for the OAS pension, in particular her periods of residence in Canada and whether she was in a position to benefit from social security agreements with other countries.

[8] After the hearing, the Respondent submitted to the Tribunal additional emails that expanded on arguments she had already made orally and in writing.² I have decided not to consider these arguments because (i) they contain nothing new and (ii) they came after, not just the filing deadline, but the hearing itself.

[9] The emails also repeated the Respondent's allegation, originally made at the hearing, that Mr. Bélanger was not duly authorized to represent the Minister. Against the Respondent's objection, I proceeded with the hearing because I saw nothing to suggest that Mr. Bélanger, who I accept is an employee of the Department of Justice, could not speak on the Minister's behalf in this matter. My ruling on this question was final, and I see no reason to revisit it again.

Analysis

[10] I have applied the law to the available evidence. I am satisfied that the Respondent did not meet the burden of showing that she was entitled to the OAS pension. The Respondent showed that she had nearly nine years of actual residence in Canada and more than two years of creditable periods from Estonia. However, notwithstanding her work for an international charitable organization during the previous

² See Respondent's emails dated January 13, 2024 (AD44) and January 17, 2024 (AD45).

four years, the Respondent was living outside Canada when she applied for the pension. None of these periods added up to the 20 years that she needed to receive an OAS pension while living abroad.

The Respondent had nearly nine years of residence in Canada

[11] A person resides in Canada if they make their home and ordinarily live in any part of Canada.³

[12] The Respondent arrived in Canada as a landed immigrant on September 25, 2007, and settled in Brampton, Ontario. She rented an apartment, opened a bank account, made friends, and received health care and social benefits. She remained in Canada until June 6, 2016, when she moved to Serbia. She does not appear to have maintained any significant ties to Canada since then.

[13] The Respondent and the Minister agree on the above dates. For that reason, I accept that the Respondent actually lived in Canada for eight years and 257 days.

The Respondent had more than two years of creditable periods from Estonia

[14] The Respondent argues that her years of residence in three countries help her qualify for an OAS pension. I agree with her, but only up to a point.

[15] Canada has social security agreements with Estonia, Latvia, and Serbia. The agreements all say that creditable periods under the laws of those countries may be considered as periods of residence in Canada for the purpose of helping a claimant qualify for certain federal benefits.⁴

[16] The Minister requested information from all three countries, but only Estonia affirmed that the Respondent had creditable periods under its agreement with Canada. According to the government of Estonia, the Respondent had creditable periods that added two years and 103 days to her Canadian residence.⁵

³ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

⁴ See Article XII of the Agreement on Social Security Between Canada and the Republic of Estonia, Article 11 of the Agreement on Social Security Between Canada and the Republic of Latvia, and Article 12 of the Agreement on Social Security between Canada and the Republic of Serbia.

⁵ See Agreement on Social Security Between Canada and the Republic of Estonia liaison form dated March 25, 2021, GD2-237.

[17] Similar requests from Latvia or Serbia yielded nothing that helped the Respondent. Neither country recognized creditable periods under their agreements with Canada.⁶

[18] The Respondent insisted that she had creditable periods from Latvia and Serbia and that the government of Canada should have done something to force those countries to disclose them. However, I can only rely on the evidence before me. Although neither country said what the Respondent wanted them to say, I have no reason to believe that they might be concealing information.

The Respondent may have working for an international charitable organization, but she was not a resident of Canada when she applied for the OAS pension

[19] The Respondent has not actually lived in Canada since June 6, 2016. But she claims that she has nevertheless been a Canadian resident since then because she has been working for an international charitable organization for the past eight years.

[20] The law says that a person's absence doesn't interrupt their residence in Canada if they were residing in Canada and they departed under selected circumstances specified in the *Old Age Security Regulations*.⁷ One of those circumstances is:

- where a person is **engaged** outside of Canada as an employee, **member** or officer of an **international charitable organization**, if
 - they returned to Canada within six months of the end of their employment or engagement outside Canada **or**
 - while employed or engaged out of Canada, they **attained** an age at which they were eligible to be paid an OAS pension [emphasis added].⁸

[21] The Respondent co-founded a Latvian non-profit organization called X in September 2000 and has apparently sat on its executive committee ever since.⁹ The

⁶ See Agreement on Social Security Between the Republic of Serbia and Canada liaison form dated March 20, 2021 (GD2-228) and reply form from the State Social Insurance Agency of Latvia dated October 27, 2022 (GD55-3).

⁷ See section 21(4)(c) of the OAS Regulations.

⁸ See section 21(5)(b)(ix) of the OAS Regulations.

⁹ See a public organization registration with the Ministry of Justice of the Republic of Latvia dated September 18, 2000 (translated from Latvian to English), GD45-11.

Respondent said that X operates in Latvia, Uzbekistan, and Serbia raising money to provide food, clothing, and skills to those in need.

[22] The words “engaged,” “member,” and “international charitable organization” are subject to broad interpretation. I am not sure whether X is still active, nor do I know how “engaged” the Respondent is in its activities. However, even if I accept that the Respondent has been and continues to be engaged as a member of an international charitable organization, she still can’t succeed.

[23] That’s because the Respondent didn’t meet all the conditions required to count her absence as a period of residence in Canada. The Respondent was residing in Canada immediately before she left for Serbia, and she has hasn’t returned to Canada since. But I can’t find that she remains a Canadian resident, even though she might have been engaged with X, because she had not **attained** an age at which she was eligible to be paid an OAS pension. When the Respondent left Canada in June 2017, she was already 67 years old, well past the age of 65, when she first “attained” eligibility for the OAS pension.

[24] It is true that, if she had remained in Canada, the Respondent would have been eligible to apply for the pension at any time after her 65th birthday. But the Respondent did not remain in Canada. More to the point, “being” eligible for the OAS pension while living in Canada is not the same thing as “attaining” eligibility for the OAS pension while living outside Canada. The law as worded clearly requires claimants who are working for an international charity outside Canada to, not just **be** eligible, but **become** eligible for the pension **while** they are abroad.

The Respondent did not have the 20 years of Canadian residence necessary to receive the OAS pension while living outside Canada

[25] The Respondent had eight years and 257 days of actual Canadian residence and, as result of the social security agreement with Latvia, two years and 103 days of creditable Canadian residence. That totals ten years and 360 days.

[26] As we have seen, the four years that the Respondent spent working for X between her departure from Canada in June 2016 and her application for OAS benefits in August 2020 cannot be counted as a period of Canadian residence. That's because she neither returned to Canada within six months of disengaging from X nor "attained" the age of 65 while working for X outside Canada.

[27] Under the law, OAS applicants who reside outside Canada at the time of their application must prove that they had previously resided in Canada for at least 20 years.¹⁰ In August 2020, when she applied for the OAS pension, the Respondent was residing outside Canada. At the time, she did not have the 20 years required to get the pension while living abroad.

Conclusion

[28] Although she may have been working for an international charity, the Respondent was not a resident of Canada when she applied for the OAS pension in August 2020. At that time, the Respondent had just under 11 years of Canadian residence — short of the 20 years that she needed to collect a partial OAS pension while living outside Canada.

[29] The Minister's appeal is allowed. The Respondent is not entitled to a partial OAS pension.



Member, Appeal Division

¹⁰ See section 3(2)(b) of the *Old Age Security Act*. Under section 9(2), a person who is already receiving an OAS pension will see their pension suspended six months after they leave Canada unless they can show that they resided in Canada for at least 20 years.