



Citation: *AN v Minister of Employment and Social Development*, 2024 SST 307

Social Security Tribunal of Canada Appeal Division

Decision

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| Appellant: | A. N. |
| Representative: | F. A. |
| Respondent: | Minister of Employment and Social Development |
| Representative: | Viola Herbert |

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| Decision under appeal: | General Division decision dated August 4, 2023 (GP-22-441) |
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| Tribunal member: | Neil Nawaz |
| Type of hearing: | Videoconference |
| Hearing date: | March 5, 2024 |
| Hearing participants: | Appellant Appellant's representative Respondent's representative |
| Decision date: | March 24, 2024 |
| File number: | AD-23-892 |

Decision

[1] I am allowing this appeal in part. The Appellant is entitled to a partial OAS pension as of December 2020.

Overview

[2] The Appellant was born in Iran in July 1945. She came to Canada as a permanent resident on February 15, 2005. Since then, she has divided her time between Canada and her country of origin.

[3] the Appellant applied for an OAS pension in January 2018. She said that she wanted her pension to start as soon as she qualified.¹

[4] The Minister of Employment and Social Development refused the application after finding that the Appellant was not eligible for an OAS pension because she had not resided in Canada for at least 10 years.²

[5] The Appellant appealed the Minister's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and allowed the appeal in part. It found that the Appellant was a resident of Canada between the following dates:

- December 3, 2006 to August 25, 2009
- May 26, 2015 to July 6, 2023 (the hearing date)

[6] According to the General Division, this meant the Appellant reached 10 years of Canadian residence on September 2, 2022, entitling her to a partial OAS pension of 10/40^{ths} of the full amount.

¹ See Appellant's OAS application dated October 15, 2018, GD2-495. The Appellant had previously applied for the OAS pension on December 4, 2009 and on February 15, 2015. Both applications were refused by the Minister. The Appellant attempted to appeal the second refusal to the General Division but was unsuccessful because she missed the filing deadline.

² See Minister's letter dated May 3, 2019, GD2-526.

[7] The Appellant has appealed the General Division's decision to the Appeal Division. She points to medical records that she says prove she was living in Canada for longer than the periods listed above.

[8] Last September, the Appeal Division granted the Appellant permission to appeal after finding that she had presented new evidence. Earlier this month, I held a hearing to discuss the Appellant's claim in full.

Issue

[9] As mentioned, the Minister has revised the position that he took at the General Division. There, he argued that the Appellant has never established residence in Canada. Now, he is conceding that the Appellant has at least 10 years of Canadian residence in Canada, specifically during the following periods:

- December 3, 2006 to August 25, 2009
- May 26, 2015 and September 2, 2016
- September 14, 2017 to present

[10] According to the Minister, this meant the Appellant reached 10 years of Canadian residence on September 14, 2023.

[11] There is now significant overlap between the parties' positions. They agree that the Appellant is entitled to an OAS pension of at least 10/40^{ths} of the maximum amount, although they disagree on when her entitlement began. However, I don't have to defer to any of the parties' common understandings now that this matter is in my hands. The Appeal Division has jurisdiction to decide all matters of fact and law that were the subject of the original appeal to this Tribunal. For that reason, I made my own determination of when or if the Appellant was resident in Canada and when or if she was entitled to the OAS pension.

Analysis

[12] I have applied the law to the available evidence and concluded that the Appellant was a resident of Canada between

- December 3, 2006 and September 6, 2010
- April 1, 2013 and December 30, 2013
- May 26, 2015 and March 5, 2024 (the hearing date)

[13] This gives the Appellant nearly 13½ years of Canadian residence as of the hearing date, which means that she attained the required 10 years of Canadian residence in November 2020.

[14] I come to these conclusions for the following reasons:

The Appellant's life is split between two countries

[15] The Appellant's memory and English-language skills are poor but, with the help of an interpreter, I was able to get a picture of her life and her activities over the past two decades. She also received help from her daughter, an immigration consultant who used to live in Canada but is now based in California.

[16] The Appellant testified that she immigrated to Canada from Iran in 2005 but has shuttled back and forth between the two countries since then. Before that, she spent several years in the United Arab Emirates, where her daughter had an office.

[17] The Appellant has four daughters, three of whom were living in Canada at the time. A fourth is paralyzed and still lives in Iran, although she managed to get a visitor's visa three years ago. The Appellant is divorced, and her former husband is now deceased. She does not own any property in Iran.

[18] When the Appellant first arrived in Canada, she rented an apartment in X, where her daughters were living with their families at the time. She has changed apartments several times since but has always maintained her own Canadian residence. She has worked in a nursing home owned by her daughter and earned money as a paid caregiver for her grandchildren.

[19] She has her own Canadian bank accounts and credit cards. She has a lot of medical problems and receives care in both Iran and Canada, although most of it comes

from Ontario's public healthcare system. She maintains utilities in her own name and generally pays them through her own accounts.

[20] She became a Canadian citizen in 2013, although she has never renounced her Iranian citizenship.

Residence depends on many factors

[21] To receive a full OAS pension, a claimant must prove that they resided in Canada for at least 40 years after they turned 18.³ To receive a partial OAS pension, a claimant must prove that they resided in Canada for at least 10 years after they turned 18. If the claimant wasn't residing in Canada when their application was approved, they must prove they had 20 years of residence.⁴

[22] OAS claimants must prove they resided in Canada on a balance of probabilities. That means that they must show that, more likely than not, they resided in Canada during the relevant periods.⁵ Being present in Canada isn't the same as residing in Canada.

[23] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture. A case called *Ding* says that I have to take into account factors such as:

- Family — where her close relatives live and how often she sees them;
- Property — where she has property, such as real estate, furniture, cars, and business interests and whether she has entered into rental or mortgage agreements;
- Financial — where she does her banking and whether she maintains accounts for services telephone, internet, utilities and insurance;

³ See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant must also have applied for the pension and be at least 65 years old and a Canadian citizen or legal resident of Canada.

⁴ See section 3(2)(b) of the OAS Act.

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

- Social — where she has social ties, such as friends and membership in religious groups, clubs, or professional organizations;
- Taxes — where she files her income taxes;
- Medical — where she receives medical care and where her doctors are located;
- Intent — where she intends to live; and
- Time — where she spends most of her time, specifically how often she comes to Canada and how long she spends here.⁶

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

The Appellant's ties to Canada and Iran are equally strong

[25] The Appellant has divided her time between Canada and Iran for many years. Much of the available evidence suggests that her ties to each country are equally strong:

- Family — The Appellant is divorced and has four adult daughters. Three of them immigrated to Canada and settled in X with their families⁷; the fourth daughter, who is disabled, remained in Iran. She also has three sisters and a brother still in Iran, although all their children have found their way to Canada.
- Property — The Appellant has owned a series of apartments in the Greater Toronto Area (GTA). She has never owned property in Iran. When she visits her country of origin, she stays with her siblings.
- Financial — The Appellant has a Canadian bank account and credit card in her name and her name only. One of her daughters has access to both and pays her bills through them. She does not have any such accounts in Iran.

⁶ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *De Bustamante v Canada (Attorney General)*, 2008 FC 1111; and *Duncan v Canada (Attorney General)*, 2013 FC 319.

⁷ One daughter, the Appellant's representative in this case, moved to California in 2017.

- Social — The Appellant has friends and relatives in both Iran and GTA, where there is a large Persian community.
- Taxes — The Appellant has worked in Iran, Dubai, and Canada. Since 2005, she has reported income and filed income tax returns in Canada and no other country.
- Medical — The Appellant has a valid OHIP card and, thanks to her late father's position in the military, she is also covered by an Iranian medical plan. She accesses most of her healthcare needs through the Canadian system. She receives dental care in Iran, where it is significantly cheaper.

[26] It is clear that the Appellant has allowed her daughters to manage many aspects of her life in Canada:

- The Appellant has reported Canadian employment income, but she was employed by a business owned and operated by one of her daughters, and it is not clear how much work, if any was required of her.⁸
- The Appellant has reported many years Canadian business and self employment income, but it appears that this income was largely, if not exclusively, earned minding her grandchildren.⁹
- The Appellant has owned several Canadian properties in her name, but it appears that they were purchased and sold at the instigation of one of her daughters.
- The Appellant has testified that her daughter has been responsible for preparing and filing all of her income tax returns with the Canada Revenue Agency.

⁸ A record of employment indicates that the Appellant was paid \$9,154 for working as an aid for X in X, ON between April and October and 2007 — see GD2-133. See also CRA income tax assessment for 2007 and 2008 disclosing employment income of \$7,454, (GD2-571) and \$13,500 (GD2-575) respectively.

⁹ From 2009 to 2013, The Appellant reported gross business and self -employment income between \$12,000 and \$29,000 annually, with net earnings between \$4,500 and \$29,000 in the same periods. See GD2-207, 210, 213, 216, 220, 227, 567, 583,

- The Appellant maintains a cell phone account with Rogers, but her statements show that the phone was used to make calls from Canada at times when she admitted she was abroad.

[27] Although the Appellant's tax returns suggest that she has earned various forms of Canadian income since arriving in Canada, they do not go very far in proving that she was a Canadian resident. First, it is possible to earn business income, even employment income, without being physically present on Canadian soil. Second, the Appellant was unable to answer questions about exactly what she did to earn her Canadian business and self-employment income, venturing a guess that it either had something to do with providing childcare for her grandchildren or with managing her rental properties.

[28] It is possible, even likely, that the Appellant has never had a real job in Canada and that the income she reported on her tax returns represented an attempt by her daughter to distribute income among family members. It is equally likely that much of the activity recorded in the Appellant's bank statements did not actually represent transactions that the Appellant herself carried out while in Canada. For these reasons, I was not inclined to place a great deal of weight on much the documentary evidence, which included income tax returns, bank statements, utility and telephone bills, and real estate purchase and sale agreements.

[29] In my view, most of the *Ding* factors don't favour one country over the other. For that reason, I think it is appropriate in this case to pay special attention to the time that the Appellant had spent in Canada versus Iran over the years.

The length of the Appellant's stays in Canada decide this matter

[30] The Appellant has provided a voluminous amount of evidence intended to demonstrate her ties to Canada. As noted, that evidence is mixed, but one thing is certain: the Appellant likes to travel.

[31] The file contains passports and border records that document the Appellant's movements over the years. The problem is, these records are incomplete. Until

recently, Canada did not electronically record every departure from and arrival to its soil. Canadian customs agents did not always stamp passports on entry. Other countries do stamp passports as a matter of course, but those stamps are sometimes faint or smudged or in another language. As a result, it was difficult to trace the Appellant's comings and goings.

[32] Nevertheless, I was able to piece together what I believe is a fairly accurate picture of when the Appellant was in Canada and when she was not. I started with the Appellant's own accounts of her time spent in Canada and abroad. The Appellant herself admitted that those accounts were imperfect because they were partly drawn from memory, so I turned to records from Canada Border Services Agency (CBSA) to corroborate or supplement her dates. I also relied on the Appellant's Canadian and Iranian passports, which contained hundreds of stamps and visas documenting her many trips, not just in and out of Canada, but between other countries such as Iran, the United Arab Emirates, and the United States of America.

[33] The Appellant's entries into Canada were generally better documented than her exits. For that reason, I was careful to cross reference the Appellant's purported periods in Canada with objective evidence documenting foreign travel to ensure that she was not abroad at times when she said she was in Canada. I did something similar, only in reverse, using billing records from the Ontario Health Insurance Plan, to ensure that none of the Appellant's periods counted as outside Canada coincided with dates on which she accessed medical care inside Canada.¹⁰

[34] The end result of these examinations and analyses was this table:

| Periods Inside Canada | Days | Periods Outside Canada | Days |
|--|------|------------------------------------|------|
| February 15, 2005 ^{AE} to May 4, 2005 | 47 | May 4, 2005 to July 9, 2005 | 66 |
| July 9, 2005 ^E to July 31, 2005 | 22 | July 31, 2005 to November 27, 2005 | 119 |
| November 27, 2005 ^{AE} to May 6, 2006 | 160 | May 6, 2006 to May 29, 2006 | 26 |
| May 29, 2006 ^{AE} to June 6, 2006 | 8 | June 6, 2006 to December 3, 2006 | 180 |

¹⁰ See Ontario Health Insurance Plan (OHIP) Personal Claims History from April 1, 2012 to October 22, 2019, GD2-813. See also letters by (i) Dr. Bijan Pardis dated August 23, 2023 (AD1-9); (ii) Saeed Kalantari dated August 19, 2023 (AD1-15); and (iii) Dr. Alireza Oliaei dated August 26, 2023 (AD1-16). I am aware that it is possible for a healthcare provider to bill OHIP for remote consultations (that is, the doctor might be in Canada while the patient is in another country). However, such consultations did not become common until onset of the COVID-19 pandemic in April 2020.

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| December 3, 2006 ^A to March 9 2007 | 96 | March 9 2007 to March 16, 2007 | 7 |
| March 16, 2007 to August 3, 2007 | 140 | August 3, 2007 to August 22, 2007 | 19 |
| August 22, 2007 ^{AE} to November 1, 2007 | 71 | November 1, 2007 to November 22, 2007 | 21 |
| November 22, 2007 ^A to December 30, 2007 | 38 | December 30, 2007 to January 7, 2008 | 7 |
| January 7, 2008 ^{AE} to April 14, 2008 | 98 | April 14, 2008 to May 7, 2008 | 23 |
| May 7, 2008 ^E to June 28, 2008 ^G | 52 | June 28, 2008 to July 28, 2008 | 30 |
| July 28, 2008 ^{AE} to December 2, 2008 | 127 | December 2, 2008 to January 2, 2009 | 31 |
| January 2, 2009 ^A to July 6, 2009 ^D | 185 | July 6, 2009 to July 29, 2009 | 23 |
| July 29, 2009 ^A to August 25, 2009 | 27 | August 25, 2009 to October 2, 2009 | 38 |
| October 2, 2009 ^A to October 16, 2009 | 14 | October 16, 2009 to January 26, 2010 | 102 |
| January 26, 2010 ^A to May 5, 2010 | 99 | May 5, 2010 to August 9, 2010 | 96 |
| August 9, 2010 to September 6, 2010 | 28 | September 6, 2010 to April 29, 2011 | 235 |
| April 29, 2011 ^{AD} to July 24, 2011 | 86 | July 24, 2011 to December 31, 2011 | 160 |
| December 31, 2011 ^{AD} to January 12, 2012 ^{AD} | 12 | January 12, 2012 to June 2, 2012 | 141 |
| June 2, 2012 ^{AD} to July 21, 2012 | 19 | July 21, 2012 to October 5, 2012 | 76 |
| October 5, 2012 ^A to October 30, 2012 ^D | 25 | October 30, 2012 to April 1, 2013 | 152 |
| April 1, 2013 ^{AC} to December 30, 2013 | 273 | December 30, 2013 to June 11, 2014 | 163 |
| June 11, 2014 ^{AC} to June 21, 2014 | 10 | June 21, 2014 to May 26, 2015 | 340 |
| May 26, 2015 ^{AC} to October 7, 2015 ^C | 134 | October 7, 2015 to December 2, 2015 | 56 |
| December 2, 2015 ^{AC} to December 23, 2015 | 21 | December 23, 2015 to December 30, 2015 | 7 |
| December 30, 2015 ^A to June 14, 2016 ^C | 166 | June 14, 2016 August 20, 2016 | 67 |
| August 20, 2016 ^{AC} to August 27, 2016 | 7 | August 27, 2016 to September 3, 2016 | 7 |
| September 3, 2016 ^A to July 6, 2017 ^C | 306 | July 6, 2017 to September 13, 2017 | 69 |
| September 13, 2017 ^{AC} to September 16, 2017 | 3 | September 16, 2017 to October 16, 2017 | 30 |
| October 16, 2017 ^A to December 17, 2017 | 62 | December 17, 2017 to February 17, 2018 | 62 |
| February 17, 2018 to March 6, 2018 | 17 | March 6, 2018 to March 31, 2018 | 25 |
| March 31, 2018 ^A to October 30, 2018 | 213 | October 30, 2018 to December 12, 2018 | 43 |
| December 12, 2018 to January 14, 2019 ^A | 33 | January 14, 2019 to April 20, 2019 | 96 |
| April 20, 2019 ^A to October 23, 2019 ^F | 186 | October 23, 2019 to December 28, 2019 | 66 |
| December 28, 2019 ^A to December 16, 2020 ^B | 354 | December 16, 2020 to June 20, 2021 | 186 |
| June 20, 2021 to September 24, 2021 | 96 | September 24, 2021 to September 30, 2021 | 6 |
| September 30, 2021 to March 5, 2022 ^C | 156 | March 5, 2022 | |
| Total | 3,391 | Total | 2,623 |

Legend:

- A See CBSA Traveller History and Passage Report dated May 11, 2021, GD2-563.
- B See Appellant's Canadian passport: December 18, 2013 to December 18, 2023, GD2-18-35 and GD2-535-54.
- C See Appellant's Iranian Passport: June 2, 2013 to June 2, 2018, GD2-36-56 and GD2-679-82, with a certified translation from Farsi at AD5-26-27. (Note: Iran allows Iranian nationals entry using an expired passport.)
- D See Appellant's Iranian Passport: April 20, 2009 to April 20, 2014, GD2-58-78 and GD2-662-678, with a certified translation from Farsi at AD5-17-20.
- E See Appellant's Iranian Passport: September 25, 2001 to September 25, 2011, GD2-79-98; GD2-254 60; and GD2-643-61. No translation provided.
- F See letter dated August 26, 2023 by Dr. Alireza Oliaei, general practitioner, detailing the Appellant's office visits (AD1-15), supplemented by email dated January 12, 2024 (AD5). In the absence of a border record or passport stamp confirming the Appellant's date of departure in 2019, I have assumed that she left shortly after her last reported appointment with Dr. Oliaei on October 23, 2019.
- G See copy of Appellant's Iranian passport, expiry date September 25, 2011. I note that this copy was notarized in Toronto on June 27, 2008. For the purpose of this reconstruction, I assumed that the Appellant exited Canada shortly after this date.

[35] The above table shows that, on the whole, the Appellant has spent the majority of her time in Canada over the period in question.

[36] However, that is not the end of the story. Although there is no minimum requirement for presence in Canada within a calendar year, I find it useful, for the purpose of analysis, to reorganize the above information accordingly:

| Year | Days in Canada | Percentage of year |
|-------------------------|----------------|--------------------|
| 2005 (from February 15) | 106 | 33 |
| 2006 | 161 | 44 |
| 2007 | 249 | 68 |
| 2008 | 277 | 76 |
| 2009 | 226 | 62 |
| 2010 | 127 | 35 |
| 2011 | 86 | 23 |
| 2012 | 56 | 15 |
| 2013 | 273 | 75 |
| 2014 | 10 | 3 |
| 2015 | 156 | 43 |
| 2016 | 291 | 80 |
| 2017 | 252 | 69 |
| 2018 | 249 | 66 |
| 2019 | 202 | 55 |
| 2020 | 351 | 96 |
| 2021 | 188 | 52 |
| 2022 (to March 5) | 64 | 100 |

[37] Breaking it down this way shows that the Appellant spent most of her time outside Canada during the two years after she landed here in early 2005. From December 2006 on, she was in Canada far more than not, a pattern that persisted until late 2010. At that point, the frequency and duration of her trips to Canada dropped off dramatically. For the next five years, except for one lengthy stay here in 2013, the Appellant was usually abroad. However, May 2016 marked a turning point, and she has spent most of her time in Canada since then.

[38] All else being equal, I find that the Appellant's presence in Canada is a prime indicator of her residence in this country. During the 17 years that are the focus of this appeal, the Appellant was not a continuous resident of Canada, but her time spent on this country's soil, combined with her existing family ties here, were sufficient to establish three distinct periods of residence.

Conclusion

[39] I have decided that the Appellant resided in Canada during the following periods:

- December 3, 2006 to September 6, 2010, or three years and 299 days

- April 1, 2013 to December 30, 2013, or 273 days
- May 26, 2015 to March 5, 2024, or eight years and 283 days¹¹

[40] That gives the Appellant a total of 13 years and 125 days of Canadian residence up to the hearing date. It means that she achieved the required minimum 10 years of Canadian residence on or around November 20, 2020. As of the month following that date, December 2020, the Appellant became entitled a partial OAS pension at 10/40^{ths} of the full amount.¹²

[41] The Appellant's appeal is allowed in part.



Member, Appeal Division

¹¹ The Appellant's years of residence are calculated up to and including the month in which she became eligible for the OAS pension — in this case, the month she turned 65 years of age. See section 8 of the OAS Act.

¹² Under the section 3(4) of the OAS Act, entitlement to the OAS pension is based on the number of years of Canadian residence — rounded down to the nearest whole number.