



Citation: *AP v Minister of Employment and Social Development*, 2024 SST 333

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: A. P.

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

Decision under appeal: General Division decision dated July 7, 2023
(GP-22-1744)

Tribunal member: Pierre Vanderhout

Type of hearing: Teleconference

Hearing date: February 21, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: April 4, 2024

File number: AD-23-908

Decision

[1] The appeal is dismissed. The Claimant was resident in Canada from March 24, 2012, to March 23, 2013. He was also resident in Canada from June 28, 2020, to at least February 21, 2024. This is not enough to be eligible for payment of an Old Age Security (OAS) pension. However, these periods of residency may be combined with future periods of residency to qualify the Claimant for an OAS pension later.

Overview

[2] The Claimant was born in Iraq in 1951. In 1975, he moved to Bahrain but remained an Iraqi citizen. He started a company in Bahrain (I will call this the Bahrain company) and it appeared to be doing very well. On December 22, 1993, the Claimant first entered Canada. He had permanent resident status. He incorporated a company called X in British Columbia on February 19, 1998. He became a Canadian citizen in 2000.¹

[3] Despite his legal status in Canada, the Claimant continued to spend considerable time in Bahrain. He remained a partner in the Bahrain Company. X did not generate any revenue. He said he was resident in both Bahrain and Canada for almost the entire period between December 1993 to June 2020. The exception was the period between March 24, 2012, and March 23, 2013. He said he resided only in Canada that year. He also says he has resided solely in Canada since June 28, 2020.²

[4] The Claimant applied for an OAS pension in July 2021.³ The Minister of Employment and Social Development (Minister) denied the application. The Minister found that the Claimant had only been resident in Canada since June 28, 2020. This was not enough residency to be eligible for an OAS pension. On reconsideration, the Minister upheld that decision.

¹ See GD2-43, GD2-70, GD2-71, GD2-76, and GD2-77.

² See GD2-71 and AD8-12.

³ See GD2-68.

[5] The Claimant appealed the Minister's decision to the General Division of the Social Security Tribunal (Tribunal). In July 2023, the General Division agreed that the Claimant had only been resident in Canada since June 28, 2020. The Claimant then appealed the General Division decision to the Tribunal's Appeal Division.

[6] The Claimant maintained that he has been resident in Canada since December 22, 1993. He pointed to his status as a permanent resident first and then as a Canadian citizen. He said he spent a substantial portion of each year in Canada. He also said his presence in Bahrain was at the request of X. As X is a Canadian company, he said his time in Bahrain ought to count as Canadian residency. He relied primarily on sections 21(4)(c) and 21(5)(a) of the *Old Age Security Regulations* (OAS Regulations). I will call these provisions the "Canadian Company Rule."

[7] The Minister said the Claimant's residency must be assessed using the factors set out in Federal Court decisions such as *Ding*.⁴ When these factors are applied to the Claimant, the Minister said the Claimant only began residing in Canada in June 2020. Before that, he resided in Bahrain. The Minister said the Claimant had no real employment ties to X. The Minister added that the Claimant cannot rely on the Canadian Company Rule because the Claimant did not establish Canadian residency before 2020.

[8] I must first decide whether the Claimant has established Canadian residency for any periods without reference to the Canadian Company Rule. I can then decide whether the Canadian Company Rule gives him any additional periods of Canadian residency. Once I have done that, I can determine whether he is eligible for an OAS pension.

[9] I have decided that the Claimant was resident in Canada from March 24, 2012, to March 23, 2013. He was also resident in Canada from June 28, 2020, to at least February 21, 2024. This is not enough to qualify for an OAS pension. While he was

⁴ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

physically present in Canada at other times, I cannot consider his presence at those times to be Canadian residence. I will now explain how I came to this conclusion.

Preliminary matters

[10] A few days before the hearing, the Claimant filed a letter outlining various procedural concerns. Some of these are related to the Canadian Senate and have no connection to this appeal.⁵

[11] The Claimant also submitted that it was improper for Department of Justice counsel to represent the Minister. The Claimant said he ought to have a representative from that department as well. More generally, he thought the proceedings would be unfair because he said the Tribunal was part of that department. Finally, he questioned the submissions of the Minister's representative, since he felt they did not address all aspects of this appeal.⁶

[12] I briefly addressed these concerns at the start of the hearing, and indicated I would also address them in this decision.

[13] Firstly, the parties are free to retain a representative of their choice. The Minister chose to do so. The Claimant did not. That is not unusual, since many parties represent themselves at the Tribunal. The Tribunal has no duty to arrange for a representative. In fact, doing so might bring the Tribunal's neutrality into question.

[14] Secondly, the Tribunal is an independent body. It is not part of the Department of Justice. Its members do not report to the Department of Justice. It is not unfair for the Tribunal to conduct a hearing and issue a decision.

[15] Thirdly, it does not matter whether the Minister's representative addressed a particular issue. A representative's role is to advocate for their client, and the representative must decide which arguments they wish to address. If they do not address a key issue, that is at their own risk.

⁵ See AD9.

⁶ See AD9-2.

[16] Finally, since the Claimant's submission suggested that he was unsure of each hearing participant's role, I asked him whether he objected to my handling of the appeal. He said he was not alleging any bias.

[17] Since the Claimant made no allegation of bias, and his preliminary concerns needed no further response, the hearing went ahead. The parties did not object to proceeding.

Issues

[18] The issues in this appeal are the following:

- a) When was the Claimant resident in Canada?
- b) Can the Claimant be deemed resident in Canada for any other periods under the Canadian Company Rule?
- c) Based on his periods of Canadian residence, is the Claimant entitled to an OAS pension?

Analysis

[19] The law says that being present in Canada is not the same as residing in Canada. "Residence" and "presence" each have their own definition. I must use these definitions in making my decision.

[20] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.⁷

[21] A person is **present** in Canada when they are physically present in any part of Canada.⁸

⁷ See paragraph 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

⁸ See paragraph 21(1)(b) of the OAS Regulations.

[22] When I am deciding whether the Claimant resided in Canada, I must look at the overall picture and the factors set out in *Ding*. The *Ding* factors include:⁹

- 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
- his lifestyle in Canada
- his intentions

[23] This is not a complete list. Other factors may be important to consider. I must look at **all** the Claimant's circumstances.

When was the Claimant resident in Canada?

[24] The Claimant does not claim to have been a Canadian resident before December 22, 1993. For that reason, I will only make findings on his residency from that date forward.

[25] I find that the Claimant was resident in Canada from March 24, 2012, to March 23, 2013. I also find that he has been resident in Canada from June 28, 2020, to at least the date of the hearing. I find that he did not reside in Canada at any time before

⁹ 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.

June 28, 2020. I will now discuss each of the relevant periods described by the Claimant in his original application.¹⁰

– **The Claimant did not reside in Canada from December 22, 1993, to March 23, 2012**

[26] The Claimant said he resided in both Canada and Bahrain during this period. To help assess this claim, I must mention some of the background leading up to this period.

[27] In May 1979, the Claimant set up the Bahrain Company. He was the founding partner. The company's technical expertise was based on his father's inventions, which the Claimant modified to suit the local conditions. However, due to local laws, he could only own 49 percent of the company. The other 51 percent had to be in the control of Bahrainis.¹¹

[28] At the hearing, the Claimant said companies in Bahrain could only do the work they were registered to do. The Bahrain Company was registered as a construction company (contractor). This means the Bahrain Company could only do construction work.

[29] The Claimant enjoyed considerable success with the Bahrain Company. In 1983, it had earnings of a million dollars. Thirty percent of that was net profit. Earnings would go up and down in the years that followed. He said the Bahrain Company had between 8 and 15 employees, depending on the conditions at the time. Although Bahrain itself was a small market, he saw lots of growth potential in the Gulf region. The Bahrain Company continued operating even after the Claimant first entered Canada in 1993. Around 2007, an Italian plant was doing work specifically for the Bahrain Company.¹²

[30] I will now look at one of the most important *Ding* factors: the Claimant's physical presence in Canada.

¹⁰ I have based these periods on the Claimant's chart at GD2-71. At the time he applied, he claimed a different country (or countries) of residency for each of these periods.

¹¹ See GD2-5.

¹² See the hearing recording at 1:13:25 to 1:14:10.

- **The Claimant's presence in Canada up to March 23, 2012**

[31] The Claimant clearly entered Canada on December 22, 1993.¹³ However, I see little objective evidence of where he physically was for the rest of this period.

[32] The Claimant himself could provide very few details. When he applied for the OAS pension, he said he was in Canada for “at least 2 months every year for Christmas and New Year celebrations from 1993 onwards.”¹⁴ At the hearing, I asked whether he was in Canada at any other times. He said he was also in Canada at other times. Between 1993 and 2012, he said it could have been 6-8 months each year. But he also admitted that he was not keeping track. He said some dates were 30 years ago and he does not remember them now.¹⁵

[33] Before the hearing, the Claimant said he started a Canadian company after he arrived in 1993 but could not get any contracts. Since he was still owed money from the Bahrain Company, he decided to go back and forth between Canada and Bahrain after about 4 or 5 years. He said he was “more in Canada the first 5-6 years and intermittent thereafter.”¹⁶

[34] Although the Claimant says he started a Canadian company after his arrival, I note that X was not incorporated until February 1998.¹⁷ This was more than four years after he arrived in Canada. When I asked how often he was in Canada during those four years, he said, “I don’t recall, it’s a long time ago.” However, he said he needed to spend a certain amount of time in Canada to get citizenship.

¹³ See GD2-77.

¹⁴ See GD2-71.

¹⁵ See GD2-6.

¹⁶ See GD2-6 and GD2-55.

¹⁷ See GD2-43.

[35] The Claimant said he had trouble remembering details of that time, did not track it himself, and did not incorporate X until he had been in Canada for four years. As a result, I prefer to rely on objective evidence of his presence in Canada between 1993 and 2012. I find that he was likely in Canada when the following events occurred:

- January 8, 1997 Driver's licence was issued in British Columbia¹⁸
- January 22, 1997 Prescription issued¹⁹
- August 13, 1997 Prescription issued²⁰
- August 30, 1997 Prescription issued²¹
- December 23, 1997 Prescriptions issued²²
- January 5, 1998 Prescription issued²³
- January 16, 1998 Prescription issued²⁴
- February 19, 1998 X incorporated in British Columbia²⁵
- September 25, 1998 Prescription issued²⁶
- October 7, 1998 Prescription issued²⁷
- Unknown date in 2000 Canadian citizenship obtained²⁸
- January 14, 2002 Prescription issued²⁹
- February 11, 2002 Prescription issued³⁰
- January 9, 2003 Prescription issued³¹
- January 20, 2003 Prescription issued³²
- January 27, 2004 Prescription issued³³

¹⁸ See GD2-11.

¹⁹ See GD1-23.

²⁰ See GD1-23.

²¹ See GD1-23.

²² See GD1-23.

²³ See GD1-23.

²⁴ See GD1-23.

²⁵ See GD2-43.

²⁶ See GD1-23.

²⁷ See GD1-23.

²⁸ See GD2-76.

²⁹ See GD1-23.

³⁰ See GD1-23.

³¹ See GD1-23.

³² See GD1-22.

³³ See GD1-22.

- February 8, 2004 Prescription issued³⁴
- February 13, 2004 Prescription issued³⁵

[36] Other than when the Claimant got Canadian citizenship in 2000, his dates in Canada are very clustered. I typically see between two and four events in a very short time, followed by nothing for an extended period. I also see nothing for more than eight years after a second prescription (in only five days) on February 13, 2004. Most of the dates are in the Christmas holiday period or shortly after, with midyear appearances in 1997 and 1998 only.

[37] I find that while the Claimant did spend some time in Canada, he has not shown that this was for the majority of any particular year. Even in 1997 and 1998, when he was present in the late summer or early fall, his actual stay may only have been a few weeks long. I see no objective evidence of his presence in Canada in 1994, 1995, 1996, 1999, or 2001. I also see no objective evidence of his presence in Canada from February 13, 2004, to April 3, 2012.

[38] I will now look at the other *Ding* factors.

○ **The other *Ding* factors up to March 23, 2012**

[39] The Claimant's physical property appears to have been primarily in Bahrain during this period. Although he planned to bring a Mercedes-Benz car and goods valued at \$67,250 to Canada in 1993, he said those items did not actually arrive.³⁶ In 2021, he said he did not bring personal property such as furniture to Canada in 1993 because he was living with his brother.³⁷ In 2023, he said this property remained in Bahrain as it was too expensive to ship to Canada. He said the furniture was eventually sold to cover expenses, while the car did not comply with Canadian regulations.³⁸ He said he finally brought some furniture to Canada in 2020.³⁹

³⁴ See GD1-22.

³⁵ See GD1-22.

³⁶ See GD2-77.

³⁷ See GD2-55.

³⁸ See GD8-6 and GD8-9.

³⁹ See GD8-15.

[40] The Claimant said he had bank accounts in both countries. He said he set up a Royal Bank of Canada (RBC) bank account after he arrived in Canada and continues to have that account today. However, he did not provide any documents relating to this account. He also had an account in Bahrain; he said it was closed when the Bahrain Company was placed under a court-appointed administrator in 2010.⁴⁰ However, at the hearing, he said income from property sales and an inheritance went into the Bahrain account in 2013.

[41] The Claimant had business interests in both countries, although the extent of their activity was very different. The Bahrain Company started in May 1979. It was finally liquidated in 2020, although the Claimant said control was lost to an administrator in 2010. Despite this, the Bahrain Company was far more active and lucrative than X. The Claimant also reinvested his money into the Bahrain Company. He said the Bahrain Company had office space from 1979 until 2020.

[42] As noted, the Bahrain Company already had sales of \$1 million in 1983. The Claimant said sales went up and down in the years that followed. This depended partly on local conditions such as war and politics. The Claimant had plans to expand into other Gulf locations, such as Dubai, and brought in a new Bahraini partner around 2005 for this purpose. At the hearing, he said the Bahrain Company had a lot of growth potential in the Gulf region. The Italian plant was part of these plans.

[43] The Claimant admitted that X never generated any income.⁴¹ At the hearing, the Claimant said X never had any employees, directors, or officers other than himself. He did everything himself. X did not have a physical office. I note that he used a Bahrain email address and phone number in his 1998 correspondence on behalf of X.⁴² At the hearing, he said he went to Bahrain as soon as X was set up.

[44] The Claimant had relatively few social ties. He said he never found the right person to marry. His three siblings were in Canada. While he said he had no family in

⁴⁰ See GD2-6.

⁴¹ See GD2-7, GD2-55, GD8-6, and AD8-14. The Claimant also confirmed this at the hearing.

⁴² See GD1-25, GD2-41, and GD2-42.

Bahrain, he did belong to a yacht club there. He said this was for good for business and socializing. He would also go water-skiing whenever he could. He said this ended by 2013. He did not belong to any clubs in Canada: He said it was too cold for water-skiing.

[45] The Claimant's new 2005 partner in the Bahrain Company was a member of Bahrain's royal family. The purpose of this change was to try and grow the Bahrain Company, since the new partner had been involved in huge projects before.⁴³ The Claimant said the Bahrain Company had done some work on the king's palaces.

[46] These ties reinforce that the Claimant's main focus was on business. At the hearing, he admitted that he never really took vacations. The number of patents he registered in various countries also points to a business-driven lifestyle.

[47] Although the Claimant did not provide a Canadian health card from this period, he did provide a list of Canadian prescriptions from January 1997 forward.⁴⁴ He also said he has had a family doctor since 1993 and has had a gastrointestinal specialist since at least 2014. I find that he likely had health coverage during most of the period in question. He admitted to a brief interruption around 2010. He said he did not have medical coverage or a family doctor in Bahrain.⁴⁵

[48] The Claimant has had a driver's licence in Canada since at least January 1997. He was not sure whether he had one before that. He first obtained a Bahrain driver's licence in 1978 and had one until 2020.⁴⁶ He became a Canadian citizen in 2000 and said he has had a Canadian passport since then.

[49] The Claimant admitted that he had no rental agreements or mortgages in Canada until renting his current apartment in 2020. When he was in Canada, he would stay with one of his siblings. In Bahrain, he lived in a rented apartment. The Bahrain Company rented one for him from at least 1998 to 2013.⁴⁷ He said he could not get a

⁴³ This was the Claimant's evidence at the Appeal Division hearing.

⁴⁴ See GD1-15 to GD1-23.

⁴⁵ See GD2-6 and GD2-7.

⁴⁶ See GD2-7 and GD2-11. He was also asked about the Canadian driver's licence at the Appeal Division hearing.

⁴⁷ See GD2-5 and GD2-56.

Bahrain visa without an address there. The Claimant described himself as “the brains behind the operation” when discussing his role in the Bahrain Company.⁴⁸

[50] The Claimant did not file a tax return in Canada until the 2020 tax year. He said he never had any Canadian income. He never filed a tax return in Bahrain. He said, “Bahrain doesn’t have a tax system.”⁴⁹

[51] The Claimant’s lifestyle in Canada appeared to focus on spending time with his family. To some degree, he also pursued business interests. However, as noted, X did not start until 1998. It never generated any income. He did not earn any other income in Canada either. I also note that the Claimant’s lifestyle in Canada was quite unsettled. Whenever he was here, he lived with one of his siblings. He lived with different siblings at different times. The business address for X was his lawyer’s address. He did not use an address of his own.⁵⁰

[52] As for the Claimant’s intentions, he said he originally wanted to start a new life in Canada. However, since he was unable to earn any income, he decided to go back and forth between Canada and Bahrain. He said the purpose was to promote Canadian products and to get the outstanding funds from the Bahrain Company.⁵¹ At another time, he said **all** his business activities since 1998 were as an employee of a Canadian corporation (X), regardless of where those activities occurred.⁵²

[53] I do not place too much weight on his stated intentions. At the hearing, he spoke about the Bahrain Company’s expansion plans in 2005. He also spoke about the Italian plant’s role in those plans. Clearly, his post-1998 activities were not all on behalf of X. He also spoke frequently of the difficulties in maintaining his own Canadian residence when he would be away so often.⁵³

⁴⁸ This was the Claimant’s evidence at the Appeal Division hearing.

⁴⁹ See GD2-7 and GD2-8.

⁵⁰ See GD2-41, GD2-42, GD2-43, and GD2-55. He also affirmed this at the Appeal Division hearing.

⁵¹ See GD2-55.

⁵² See GD2-32.

⁵³ See, for example, GD1-9 and GD8-6. He also said this at the Appeal Division hearing.

○ **Conclusion regarding this period**

[54] I find that the *Ding* factors favour residency in Bahrain for the period from December 22, 1993, to March 23, 2012. The evidence points to a lifestyle focused on business activities. In this regard, the Claimant was far more active in Bahrain. He was planning for the international expansion of the Bahrain Company in 2005, by taking on a partner from Bahrain's royal family. Even when the Bahrain Company was under an administrator at the end of this period, he remained in Bahrain to deal with it.

[55] While the Claimant had some brief periods of physical presence in Canada, it was mostly confined to certain periods of the year. It was never enough to set up his own residence. His other ties in Canada were not enough to overcome the strong connection to Bahrain during this period. Although he did not have any permanent legal right to reside in Bahrain, he made his home and ordinarily lived there throughout this period. He did not do this in Canada.

– **The Claimant resided in Canada from March 24, 2012, to March 23, 2013**

[56] The Claimant said he resided solely in Canada during this year. The Minister's submissions did not distinguish this period from the period up to March 23, 2012.

[57] The evidence confirms that the Claimant had some notable changes in both his activities and his presence during this period.

[58] In April 2012, the Claimant's driver's licence was issued in British Columbia.⁵⁴ In May 2012, and every month from August 2012 to December 2012, he got prescriptions in British Columbia. He also got several prescriptions in February 2013 and March 2013.⁵⁵ Since these events were scattered throughout the year, I accept that he had a much greater presence in Canada during this year. He was likely in Canada for most, if not all, of it.

[59] At the hearing, the Claimant said "there was nothing" for him in Bahrain during this period. The administrator had taken over the Bahrain Company and the Claimant

⁵⁴ See GD1-14.

⁵⁵ See GD1-21 and GD1-22.

said it was not working. The Claimant said he was briefly jailed in 2010 due to an alleged non-sufficient funds (NSF) cheque in Bahrain. He was banned from travel out of Bahrain because of his legal challenges. He said a yacht club membership was no longer useful by this time. He said he was only involved with X, as opposed to the Bahrain Company.

[60] The Claimant said he only returned to Bahrain in 2013 when it was necessary for a court case involving the Bahrain Company. He said he also began to promote alternative energy and housing in Bahrain around this time.

[61] I accept that the Claimant's business activities in Bahrain or on behalf of the Bahrain Company had likely decreased during this time. It is less clear that he engaged in any business activity in Canada. However, when his lack of Bahrain business activity is combined with his greatly increased presence in Canada, I find that he likely resided in Canada from March 24, 2012, to March 23, 2013. His legal issues in Bahrain contribute to this finding.

– **The Claimant did not reside in Canada from March 24, 2013, to June 27, 2020**

[62] The Claimant originally said he resided only in Bahrain during this period.⁵⁶ However, he later said he resided in both Canada and Bahrain.⁵⁷

[63] In my view, two main changes took place in this period. Firstly, his presence in Canada had decreased. Secondly, his focus shifted back to his Bahrain business interests. After considering and weighing the *Ding* factors, these changes are sufficient to end his Canadian residence as of March 24, 2013.

[64] As noted above, the Claimant returned to Bahrain in 2013 to deal with a court case involving the Bahrain Company. He said he also started promoting alternative energy and housing in Bahrain. However, I see no objective evidence of this until

⁵⁶ See GD2-71.

⁵⁷ See AD8-12.

several years later. Given the previous value and potential of the Bahrain Company, I find it likely that the primary purpose of his return was the Bahrain Company.

[65] The Claimant had some periods of presence in Canada, although they were not continuous like they were from March 2012 to March 2013. Based on his prescription records, I find it likely he was in Canada at the following times up to June 27, 2020:⁵⁸

- December 12, 2013, to January 14, 2014
- January 28, 2015, to March 12, 2015
- October 16, 2015, to November 3, 2015
- April 25, 2016,⁵⁹ to –
- December 18, 2016, to January 12, 2017
- April 25, 2017, to –
- June 20, 2017, to –
- December 15, 2017, to January 10, 2018
- December 20, 2018, to January 21, 2019

[66] Like before, most of the Claimant's prescriptions were issued in clusters. These clusters tended to be around the Christmas holiday period. I saw some exceptions in the spring of 2016 and 2017. The Claimant mentioned surgery in 2017. I find it most likely that he was spending a couple of months each year in Canada, with the remainder of his time in Bahrain. This is a significant increase from the 2004-2012 period, where I see little evidence of any Canadian presence. But his Canadian presence had also greatly decreased from the 2012-2013 period.

[67] At the hearing, the Claimant spoke at length about his struggles with the Bahrain Company. These struggles continued until his 2020 departure from Bahrain. He said the court-appointed administrators did not know what they were doing. He said they ran the company into the ground. He had many concerns about the liquidation process. He also

⁵⁸ See GD1-18 to GD1-21.

⁵⁹ I could not provide a range for this presence or for April 25, 2017, and June 20, 2017. These dates were too far from other dates to find that the Claimant was continuously in Canada.

thought the Bahrain court disregarded the applicable law. He added that he was “owed millions by thugs and murderers.” This suggests a large business enterprise in Bahrain.

[68] The Claimant reached age 65 in 2016. He said he did not apply for his OAS pension at age 65 for a reason. He would not have needed the OAS pension if he received everything he should have from his Bahrain business. He said he spent approximately \$20,000 per year trying to recover what was his.

[69] The Claimant also said he would not have had an apartment in Bahrain if he knew he would not get his money from the Bahrain Company. He would have bought an apartment in Canada instead. The court process finally ended in December 2019 or early 2020.⁶⁰

[70] I find that the Claimant’s focus during this time was to do whatever he could to regain control of the Bahrain Company. Or, he wanted to salvage whatever wealth he could from that company. This is understandable, since a lot of money was at stake.

[71] The Claimant said he was trying to promote Canadian business interests in the Gulf region during this period. However, he also said he would not have stayed in Bahrain during this period if he knew he was not going to get the money related to the Bahrain Company out of that country.

[72] The Claimant was bitter about his treatment by Bahrain’s institutions during this period. He probably felt little or no sense of loyalty or belonging to that country by this time. However, he was still spending most of his time and energy there, pursuing his financial objectives. He stayed in an apartment there. As unhappy as aspects of this period may have been, he was still making his home and ordinarily living in Bahrain. His ties to Canada were not enough to overcome this.

[73] The Claimant suggested that his time in Bahrain was actually at the insistence of X, so it should count as Canadian residency under the Canadian Company Rule. I will examine this in more detail in the next section of this decision, since his argument

⁶⁰ See GD2-5 and GD2-56, where the Claimant provides different dates for the final liquidation.

involves all periods since 1993. However, I will briefly address the issue of his Bahrain apartment here, since he describes an important change in 2013.

[74] The Claimant said X rented his apartment in Bahrain from 2013. He suggested that this helped establish Canadian residency. In support of this, he provided the first page of a lease for an apartment in Bahrain.⁶¹

[75] The lease has no dates. It is impossible to tell whether it dates from 2013 or not. In addition, the Claimant's name appears first as a leaseholder. X's name appears only after his passport number. I see no lease period. While I see an initial on the document, I see no signature page containing dates or the precise identity of the true leaseholder(s). I cannot give this partial document much weight.⁶²

[76] In June 2022, the Claimant said he could not fit all the lease pages into an envelope.⁶³ However, it is his responsibility to provide complete copies of any evidence that supports his position. He has had nearly two years to provide the additional pages. I note that he has provided other documents with multiple pages.

[77] Finally, the Claimant suggested that he wanted to permanently return to Canada before June 27, 2020. At the hearing, he cited a new travel ban that he received in 2019 and the COVID-19 pandemic.⁶⁴ He said the travel ban existed because the company liquidator claimed he stole a million dollars from the Bahrain Company. When the ban was lifted in 2020, he said he left before the authorities could change their minds.

[78] I do not find these arguments convincing. Any travel ban flowed from the Claimant's activities involving the Bahrain Company. The company's proceedings appeared to continue until December 2019 or early 2020. I find that his focus at this time remained on his Bahrain business interests and assets. As for the pandemic, I find that this would only be relevant if he had established Canadian residency immediately

⁶¹ See GD2-20.

⁶² See GD2-20.

⁶³ See GD2-5.

⁶⁴ Earlier, in August 2021, he only referred to COVID-19 as the reason for not returning until June 2020. See GD2-56 and GD2-57.

before the pandemic. However, he had not been resident in Canada for about seven years when the pandemic started.

[79] As with the period from 1993 to 2012, the *Ding* factors favour residency in Bahrain during this period. The Claimant's misfortunes during this time ultimately do not change the fact that his ties to Bahrain were stronger than his ties to Canada. He did not make his home and ordinarily live in Canada.

– **The Claimant resided in Canada from June 28, 2020, to at least February 21, 2024**

[80] The Claimant said he resided solely in Canada during this period. The evidence confirms that he resided in Canada then. I accept that a Bahrain travel ban on him would dissuade him from returning to Bahrain. So would the final liquidation of the Bahrain Company.

[81] Besides the Claimant's physical presence in Canada, the nature of his presence has changed. He now rents an apartment in his name.⁶⁵ At the hearing, he said he rented an apartment because he had cut his ties with Bahrain and had no reason to travel back and forth. He said he is no longer living with his brother or sister in Canada "because it is permanent now." This supports residing in Canada now, but it also supports that he was **not** residing in Canada before his 2020 return.

[82] While the Claimant still pursues business interests, the focus is different. For example, he corresponded with a Canadian ministry in 2022 about renewable energy. He had a similar exchange with the European Commission. I see no specific link to the Bahrain region in either case.⁶⁶ He has also started to file Canadian tax returns.

[83] As the Claimant's presence now appears to be exclusively in Canada, and his focus is no longer on his Bahrain business interests, the *Ding* factors favour residency in Canada from June 28, 2020, until the date of the hearing. I cannot make findings

⁶⁵ See GD2-10.

⁶⁶ See GD1-34 and GD1-35.

about residence for the period after the hearing. I note that the Minister agrees with a finding of Canadian residency as of June 28, 2020.

Can the Claimant be deemed resident in Canada for any other periods under the Canadian Company Rule?

[84] After considering the Canadian Company Rule, I find that the Claimant cannot be deemed resident in Canada for any other periods.

[85] Here are the key parts of the Canadian Company Rule, which is in section 21 of the OAS Regulations:

(4) Any interval of absence from Canada of a person resident in Canada that is

- (a)** of a temporary nature and does not exceed one year;
- (b)** for the purpose of attending a school or university, or
- (c)** specified in subsection (5),

shall be deemed not to have interrupted that person's residence or presence in Canada.

(5) The absences from Canada referred to in paragraph 4(c) of a person residing in Canada are absences under the following circumstances:

(a) while that person was employed out of Canada
[...]

(vi) by a Canadian firm or corporation as a representative or member thereof

if during his employment out of Canada he

(vii) had in Canada a permanent place of abode to which he intended to return, or

(viii) maintained in Canada a self-contained domestic establishment,

and he returned to Canada within six months after the end of his employment out of Canada or he attained, while employed out of Canada, an age at which he was eligible to be paid a pension under the Act.

[86] A key part of the Canadian Company Rule is that section 21(4) of the OAS Regulations requires a person to be resident in Canada before the rule can even apply.

[87] In this case, I have already found that the Claimant was not resident in Canada until March 24, 2012. This means that the Canadian Company Rule cannot assist him for the period before March 24, 2012. However, it could potentially help him for the period between March 24, 2013, and June 27, 2020. I will now decide whether the rule assists him for that period.

[88] X was incorporated in February 1998 in British Columbia.⁶⁷ I accept that X is a Canadian firm or corporation.⁶⁸ X still appears to be incorporated today.

[89] So, to benefit from the Canadian Company Rule starting in 2013, the Claimant must meet the following requirements from the OAS Regulations:⁶⁹

- (1) He must have been employed by X as a representative or member.
- (2) During his employment out of Canada with X, he (a) had in Canada a permanent place of abode to which he intended to return, or (b) maintained in Canada a self-contained domestic establishment.
- (3) He (a) returned to Canada within six months after the end of his X employment out of Canada or, (b) attained age 65 while employed by X out of Canada.

[90] I will focus on the second requirement. If the Claimant does meet the second requirement, it does not matter whether he meets the others. In turn, my analysis of the second requirement will focus on the terms “permanent place of abode” and “self-contained domestic establishment.” I will start with “permanent place of abode.”

⁶⁷ See GD2-44.

⁶⁸ See, for example, *A.D. v Minister of Employment and Social Development*, 2018 SST 1044, at paragraph 28. While I am not bound by other Tribunal decisions, the reasoning in *A.D.* is persuasive.

⁶⁹ See section 21(5) of the OAS Regulations.

– **Analysis of “permanent place of abode”**

[91] The Claimant suggested that any “permanent place of abode” owned by his siblings would meet the second requirement. He said his siblings permanently resided in Canada and he could live with any of them whenever he was in Canada. He said an “abode” did not need to be a specific location because his siblings could move to different locations from time to time. He suggested that he had more than one “permanent place of abode” because he had more than one sibling in Canada.⁷⁰

[92] The Claimant also suggested that he met the “permanent” requirement because any abode owned by his siblings was “permanently available” to him. He also said there was technically no such thing as a “permanent abode” anymore, since any abode could be sold or lost due to rising interest rates. He said, “Everything is relative and transient.”⁷¹

[93] At the hearing, the Claimant confirmed that he would not always stay with the same sibling or at the same address. He did not give any evidence about which specific “permanent place of abode” he considered his.

[94] The term “permanent place of abode” is not defined in either the OAS Regulations or the *Old Age Security Act* (OAS Act). The parties did not direct me to any pertinent and binding definition of this term. However, Black’s Law Dictionary equates “permanent abode” with the primary definition of “domicile.”⁷²

[95] The primary definition of “domicile” in Black’s Law Dictionary is as follows:⁷³

The place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.

⁷⁰ See AD1-11.

⁷¹ See GD8-16.

⁷² Black’s Law Dictionary, 11th Edition, 2019, Bryan A. Garner (Editor in Chief). Retrieved online March 25, 2024.

⁷³ Black’s Law Dictionary, 11th Edition, 2019, Bryan A. Garner (Editor in Chief). Retrieved online March 25, 2024.

[96] A person's "domicile" must be both fixed and a place where that person has been physically present. Similarly, by using the word "principal," this definition says that a person can only have one "domicile."

[97] As a "permanent abode" and a "domicile" are equivalent, a person can only have one "permanent abode." A "permanent abode" must also be a specific location and a place where that person has been physically present.

[98] The key term in the OAS Regulations is "permanent place of abode," rather than "permanent abode." However, I do not see any meaningful distinction between these terms. As a "permanent abode" must be a specific location, it is by definition also a "place." Thus, a "permanent abode" is the same thing as a "permanent place of abode."

[99] The OAS Regulations require the Claimant to have a "permanent place of abode" to which he intended to return. This means he must have a single fixed place that he regards as home, at which he has been physically present, and to which he intends to continuously return. The fixed place cannot be subject to change.

[100] I find that, when the Claimant was in Bahrain, he did not have a "permanent place of abode" in Canada to which he intended to return.⁷⁴ He did not identify a specific place where he usually lived and had been physically present. Nor did he identify a specific place that was permanent or to which he continuously intended to return. He would stay with different siblings during different stays. By only staying with whichever sibling was best able to host him at a given time, he did not meet the requirements in the OAS Regulations.

[101] It was only when the Claimant returned to Canada in June 2020 that he sought a permanent place to live. He then rented an apartment on Central Avenue in Surrey, British Columbia. He had no connection to the Central Avenue apartment when he was

⁷⁴ This can be distinguished from decisions such as *A.D. v Minister of Employment and Social Development*, 2018 SST 1044, at paragraph 32. While I am not bound by other Tribunal decisions, the reasoning in *A.D.* is persuasive. The appellant in that case paid monthly rent to the owner of a Canadian home and rooms were held specifically for his exclusive use whenever he was in Canada.

in Bahrain. The apartment could be considered a “permanent place of abode,” but only after he was physically present in it. That would have been after June 27, 2020.

[102] I will now look at the meaning of “self-contained domestic establishment.”

– **Analysis of “self-contained domestic establishment”**

[103] “Self-contained domestic establishment” is not defined in either the OAS Regulations or the OAS Act. Black’s Law Dictionary does not define it either. The parties did not direct me to any pertinent and binding definition of this term. The Claimant only said the OAS Regulations distinguished this term from “permanent place of abode.”⁷⁵

[104] However, “self-contained domestic establishment” is defined in The Canadian Law Dictionary. This definition, which refers to the *Income Tax Act*, says: “A dwelling house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats.”⁷⁶

[105] While this definition is relatively broad, I must consider how it is used in the OAS Regulations. The OAS Regulations require that a person “maintain” a “self-contained domestic establishment” while that person is outside Canada.

[106] Even if the Claimant did have a “self-contained domestic establishment” in Canada, I find that he did nothing to “maintain” it. Once again, I turn to Black’s Law Dictionary. It provides many definitions for the word “maintain”:⁷⁷

1. To continue (something).
2. To continue in possession of (property, etc.).
3. To assert (a position or opinion); to uphold (a position or opinion) in argument.
4. To care for (property) for purposes of operational productivity or appearance; to engage in general repair and upkeep.
5. To support (someone) financially; esp. to pay alimony to.
6. (Of a third party to a lawsuit) to assist a

⁷⁵ See GD8-12.

⁷⁶ The Dictionary of Canadian Law, 5th edition, Nancy McCormack (2020). This definition also appears in section 248 (1) of the *Income Tax Act*.

⁷⁷ Black’s Law Dictionary, 11th Edition, 2019, Bryan A. Garner (Editor in Chief). Retrieved online March 25, 2024.

litigant in prosecuting or defending a lawsuit; to meddle in someone else's litigation.

[107] Of these various definitions, the second and fourth definitions are the most relevant because they explicitly refer to property.

[108] The second definition requires a person to “continue” possessing the property in question. This means that the property must be fixed and specific. Similarly, the fourth definition requires active care of a property to preserve its productivity or appearance. Or, the care may be in the form of general repair and upkeep. In either case, however, the property must also be fixed and specific.

[109] Given these definitions, I cannot find that the Claimant “maintained” any “self-contained domestic establishment” in Canada while he was in Bahrain. He did not give the particulars of any such “establishment.” He did not stay in the same home, or even with the same sibling, in his various stays in Canada. In my view, a rotating location cannot be an “establishment.”

[110] In addition, the Claimant did not engage in the active care of any specific property. In fact, he repeatedly described the many responsibilities involved in maintaining a Canadian house or apartment when he was spending so much time out of the country. He was not willing to accept those responsibilities.⁷⁸ This is not consistent with maintaining any such establishment.

– **Conclusion about the Canadian Company Rule**

[111] The Claimant did not meet the second requirement of the Canadian Company Rule. This means he cannot be deemed resident in Canada for any other periods. I do not need to consider the first and third requirements of the Canadian Company Rule.

[112] Previous Tribunal decisions do not appear to have analyzed either a “permanent place of abode” or a “self-contained domestic establishment” at this level of detail. However, a recent General Division decision and the related Appeal Division decision

⁷⁸ See GD1-9 and his oral evidence at the Appeal Division hearing.

also suggest that staying at different family-owned properties does not constitute having a “permanent place of abode” or a “self-contained domestic establishment.”⁷⁹

Based on his periods of Canadian residence, is the Claimant entitled to an OAS pension?

[113] The Claimant is not entitled to an OAS pension because he does not yet have enough Canadian residency.

[114] The Claimant resided in Canada from March 24, 2012, to March 23, 2013. He also resided in Canada from June 28, 2020, to February 21, 2024. This means that, as of the hearing date, he had nearly four years and eight months of Canadian residency. The problem is that a resident of Canada needs at least 10 years of Canadian residency to be eligible for an OAS pension.⁸⁰

[115] The Claimant may be eligible for an OAS pension in the future if he continues to reside in Canada. He may apply again later.

Conclusion

[116] While the Claimant has established two periods of Canadian residency, his total Canadian residency is less than 10 years. This means that he is not yet eligible for an OAS pension.

Decision

[117] The appeal is dismissed. The Claimant does not have enough Canadian residency to be eligible for an OAS pension.

Pierre Vanderhout
Member, Appeal Division

⁷⁹ See *RG v Minister of Employment and Social Development*, 2020 SST 636, at paragraph 45, and the Appeal Division decision that came after in *RG v Minister of Employment and Social Development*, 2020 SST 635, at paragraph 26. While I am not bound by other Tribunal decisions, they can be persuasive.

⁸⁰ See section 3(2) of the *Old Age Security Act*.