



Citation: *NE v Minister of Employment and Social Development*, 2025 SST 355

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: N. E.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 1, 2024 (issued by
Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: In person

Hearing date: April 8, 2025

Hearing participant: Appellant

Decision date: April 10, 2025

File number: GP-24-1896

Decision

[1] The appeal is dismissed.

[2] The Appellant, N. E., isn't eligible for Old Age Security (OAS) because he hasn't resided in Canada for 10 years. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant, his wife and children moved to Canada from Gaza, Palestine, on July 16, 2001. The Appellant worked in Canada until August 16, 2008, when he quit his Canadian job and started working abroad either as an employee or freelance. He retired in 2021 but didn't return to Canada until February 6, 2023, when he came here with his second wife. The Appellant's first wife and the mother of his children died in July 2017 in Palestine.

[4] The Appellant says that since moving to Canada in July 2001, Canada has been his home even if he worked abroad. He says he and his extensive family are all Canadian. Despite working abroad for many years, he says he maintained a house, supported his family, filed income tax, maintained bank accounts and spent as much time as he could in Canada. He says he is Canadian.

[5] The Minister says that from August 16, 2008, to February 5, 2023, the Appellant didn't reside in Canada, he was only present here for periods of time.

What the Appellant must prove

[6] For the Appellant to succeed, he has to prove that he has resided in Canada for at least 10 years.

[7] The Appellant has to prove this on a balance of probabilities. This means he has to show it is more likely than not that he resided in Canada during the relevant period.¹

¹ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

Reasons for my decision

[8] The Minister agrees that the Appellant resided in Canada:

- from July 16, 2001, to August 16, 2008
- from February 6, 2023, to August 28, 2023 (the date of the Minister's decision)

[9] I focussed my analysis on the period in dispute, which is from August 16, 2008, to February 5, 2023. I also considered where the Appellant resided since the Minister's decision.

[10] I find that the Appellant didn't reside in Canada between August 16, 2008, to February 5, 2023. He has resided in Canada since February 6, 2023.

The test for residence

[11] The law says that being present in Canada isn't the same as residing in Canada.

[12] "Residence" and "presence" each have their own definition. I must use these definitions in making my decision.

[13] A person resides in Canada if they make their home and ordinarily live in any part of Canada.²

[14] A person is present in Canada when they are physically present in any part of Canada.³

[15] When I am deciding whether the Appellant resided in Canada, I must look at the overall picture and factors such as:⁴

- where he had property, like furniture, bank accounts, and business interests

² See section 21(1)(a) of the OAS Regulations.

³ See section 21(1)(b) of the OAS Regulations.

⁴ 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.

- where he had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where he had other ties, like medical coverage, rental agreements, mortgages, or loans
- where he filed income tax returns
- what ties he had to another country
- how much time he spent in Canada
- how often he was outside Canada, where he went, and how much time he spent there
- what his lifestyle was like in Canada
- what his intentions were

[16] This isn't a complete list. Other factors may be important to consider. I must look at all the Appellant's circumstances.⁵

The Appellant didn't reside in Canada from August 16, 2008 to February 5, 2023

[17] I find that the Appellant didn't reside in Canada from August 16, 2008, to February 5, 2023.

[18] For this period, I looked at when the Appellant was present in Canada. Presence isn't the only thing to consider in deciding residence. But it is a factor especially if a person had ties to more than one country, which I find that the Appellant did.

[19] The Appellant was present in Canada during this period as follows:

Date of Arrival	Date of Departure	Country	Length of Stay
August 16, 2008	June 1, 2009	United Arab Emirates	9 months, 16 days
June 2, 2009	September 16, 2009	Canada	3 months, 14 days
September 17, 2009	June 13, 2010	United Arab Emirates	8 months, 27 days
June 13, 2010	September 1, 2010	Canada	2 months, 19 days
September 2, 2010	June 11, 2011	United Arab Emirates	9 months, 10 days
June 12, 2011	September 12, 2011	Canada	3 months, 1 day
September 13, 2011	June 19, 2012	Palestine	9 months, 7 days
June 20, 2012	September 13, 2012	Canada	2 months, 25 days

⁵ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

September 14, 2012	June 11, 2013	Palestine	8 months, 29 days
June 12, 2013	September 23, 2013	Canada	3 months, 12 days
September 24, 2013	August 21, 2014	Palestine	10 months, 29 days
August 22, 2014	September 14, 2014	Canada	24 days
September 15, 2014	September 18, 2015	Palestine	1 year, 1 month, 4 days
September 19, 2015	October 15, 2015	Canada	1 month, 27 days
October 16, 2015	June 27, 2016	Palestine	8 months, 12 days
June 28, 2016	September 2, 2016	Canada	2 months, 6 days
September 3, 2016	December 16, 2017	Palestine	1 year, 3 months, 14 days
December 17, 2017	January 16, 2018	Canada	1 month, 1 day
January 17, 2018	March 7, 2018	Turkey	1 month, 19 days
March 8, 2018	July 3, 2018	Canada	3 months, 26 days
July 4, 2018	July 30, 2018	Turkey	27 days
July 31, 2018	December 1, 2018	Canada	4 months, 1 day
December 2, 2018	June 2, 2019	Palestine	6 months, 1 day
June 3, 2019	July 19, 2019	Canada	1 month, 17 days
July 20, 2019	December 13, 2019	Palestine	4 months, 24 days
December 14, 2019	January 16, 2020	Canada	1 month, 3 days
January 17, 2020	June 3, 2020	Palestine	4 months, 18 days
June 4, 2020	September 29, 2020	Canada	3 months, 26 days
September 30, 2020	September 24, 2021	Palestine	11 months, 26 days
September 25, 2021	October 23, 2021	Canada	29 days
October 24, 2021	February 5, 2023	Palestine	1 year, 3 months, 13 days

[20] The Appellant's lengthy absences from Canada, with significantly shorter stays in Canada, is compelling evidence that he didn't reside in Canada. But there is more that tells me the Appellant didn't reside in Canada during this time.

[21] In a completed questionnaire, the Appellant said his job in Canada didn't give him "the flexibility of moving and traveling to visit my relatives abroad. Therefore, [he] decided to work as a freelance consultant as [he] was doing before coming to Canada."⁶ This tells me that he had important family connections outside of Canada, as well as in Canada.

[22] The Appellant says he always had a home in Canada. This is true but he also owns property with his family in Gaza, Palestine. And during this period, he wasn't living in hotels but lived in rented homes and with family. He had furniture. In other words, he maintained residences in and outside of Canada.

⁶ See GD2-47.

[23] The Appellant says that he always filed Canada income taxes. This is true but his business operations and income during this period were outside Canada.

[24] The Appellant says he intended to return to Canada in 2018, but the death of his wife in Palestine in 2017 had a significant impact on him. He was then further delayed waiting for his second wife (from Palestine) to get her Canadian permanent residence.

[25] I have considered his intentions and tragedies. They don't tell me that he resided in Canada after 2018. He continued to work in Gaza, Palestine, until he retired in 2021. After that, he was living with his wife in Gaza, Palestine, until she got permanent residence status in Canada and moved here with him in February 2023.

[26] The Appellant says his family are Canadian, and that Canada was always their home even if he worked abroad. He supported them in Canada. They went to school here and lived here. This appeal is not about where his family resided. It is about where the Appellant resided.

[27] I find that the Appellant didn't reside in Canada during this period. He made his home and ordinarily lived outside of Canada for this period. The time he spent in Canada visiting with his family was presence only, not residence.

The Appellant reestablished residence in Canada on February 6, 2023

[28] The Appellant reestablished residence in Canada on February 6, 2023. This is when he re-entered Canada with his second wife. The Minister doesn't dispute this.

[29] At the hearing, the Appellant told me he has taken trips outside of Canada since February 6, 2023, but his trips abroad were brief. I believe him.

The Appellant has resided in Canada for less than 10 years

[30] I find that the Appellant resided in Canada as follows:

- from July 16, 2001, to August 16, 2008, which is 7 years, 1 month, and 1 day
- from February 6, 2023, to April 8, 2025, which is 2 years, 2 months, and 3 days

[31] This is less than 10 years.

Conclusion

[32] The Appellant hasn't resided in Canada for 10 years.

[33] This means the appeal is dismissed.

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