



Citation: *VS v Minister of Employment and Social Development*, 2025 SST 341

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: V. S.

Respondent: Minister of Employment and Social Development
Representative: Viola Herbert

Decision under appeal: General Division decision dated November 4, 2024
(GP-24-1615)

Tribunal member: Pierre Vanderhout

Type of hearing: Videoconference

Hearing date: April 2, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: April 9, 2025

File number: AD-24-774

Decision

[1] The appeal is dismissed. The Appellant is not entitled to additional periods of Canadian residency. As a result, his Old Age Security (OAS) pension amount and start date remain the same.

Overview

[2] I will refer to the Appellant, V. S., as the “Claimant” in this decision. I will refer to the Respondent, the Minister of Employment and Social Development, as the “Minister.”

[3] The Claimant will be 80 years old in May 2025. He has lived in many countries around the world, including Canada. He appeared to retire permanently to Canada in 2017.

[4] The Claimant first applied for an OAS pension in 2018. The Minister denied the application, finding that the Claimant did not yet have enough Canadian residency to qualify. The Claimant did not request a reconsideration.

[5] The Claimant applied again for an OAS pension in February 2022.¹ The Minister approved the application in March 2023. The Minister concluded that, as of March 4, 2023, the Claimant had ten years of Canadian residency. This consisted of the periods from July 2, 1995, to August 25, 1999, and from April 29, 2017, to March 4, 2023. As a result, he was entitled to a 10/40th OAS pension starting in April 2023.²

[6] The Claimant asked the Minister to reconsider that decision. The Claimant thought he might have two additional periods of Canadian residency. If accepted, either of those additional periods could improve his OAS pension.

[7] The first potential period of Canadian residency was from March 22, 2001, to August 19, 2003 (the India Period). The Claimant lived and worked in India during the India Period. He did not suggest that he resided in Canada then. However, he submitted that the *Agreement on Social Security Between Canada and the Republic of India* (the

¹ See GD2-19.

² See GD2-72 and GD2-73.

India Agreement)³ might allow the India Period to count towards Canadian residency for OAS pension purposes.

[8] The second potential period of Canadian residency was from September 26, 2014, to April 28, 2017 (the Malaysia Period). The Claimant mostly lived and worked in Malaysia during the Malaysia Period. However, he also owned an apartment in X, where he stayed from time to time. He said this ownership, and other factors, might allow the Malaysia Period to count towards Canadian residency for OAS pension purposes.

[9] The Minister upheld its initial decision on reconsideration. The Claimant then appealed to the Social Security Tribunal (Tribunal). The Tribunal's General Division did not look at the underlying merits of his case, finding that the Claimant took too long to appeal to the Tribunal. The General Division refused to grant a time extension.

[10] The Claimant appealed further to the Tribunal's Appeal Division. At a case conference in December 2024, the parties agreed that the Claimant should get an extension for his late appeal to the Tribunal's General Division. The parties also agreed that the Appeal Division should address the underlying merits of his appeal.⁴

[11] This means that I must decide whether the Claimant has any additional periods of residence in Canada, for OAS pension purposes. Specifically, I must decide whether the India Period or the Malaysia Period should count as residence in Canada.

[12] For the reasons set out below, I find that the Claimant has not established Canadian residency during the India Period or the Malaysia Period.

Issues

[13] The issues in this appeal are:

³ The *Agreement on Social Security Between Canada and the Republic of India* (the India Agreement) only came into force on November 6, 2012. However, Article 26 of the India Agreement states that it applies to any creditable period completed before the India Agreement came into force.

⁴ See AD4-1.

- a) Does the India Agreement enable an additional period of Canadian residency during the India Period?
- b) Is the Claimant entitled to an additional period of Canadian residency during the Malaysia Period?
- c) What is the impact of the above findings on the Claimant's OAS pension?

Analysis

[14] The law says that being present in Canada is different from residing in Canada. "Residence" and "presence" have specific definitions.

[15] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.⁵ A person is **present** in Canada when they are physically present in any part of Canada.⁶

Does the India Agreement enable an additional period of Canadian residency during the India Period?

[16] For the reasons set out below, the India Agreement does not enable an additional period of Canadian residency during the India Period.

[17] The facts relevant to this issue are not in dispute. The Claimant said he lived and worked in India during the India Period.⁷ I accept this evidence.

[18] While the Claimant worked in India during the India Period, neither he nor his employer contributed to the Employees' Provident Fund Organization. However, he said he paid income taxes on his employment income during the India Period.⁸

⁵ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

⁶ See section 21(1)(b) of the OAS Regulations.

⁷ See GD2-10 and GD2-22.

⁸ See GD2-39.

[19] Articles 11 and 12 of the India Agreement could potentially improve an OAS pension for someone who lived in India. I looked at each of these articles to see if they helped the Claimant.

– **Article 11 of the India Agreement**

[20] The relevant parts of Article 11 of the India Agreement are as follows:

1. For the purpose of calculating the amount of benefits under the *Old Age Security Act*:
 - a. if a person is subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during any period of presence or residence in India, that period shall be considered as a period of residence in Canada for that person...
2. In the application of paragraph 1: ...
 - b. a person shall be considered to be subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during a period of presence or residence in India only if that person makes contributions pursuant to the plan concerned during that period by reason of employment or self-employment.

[21] Article 11(1) of the India Agreement allows certain periods of presence or residence in India to count as periods of residence in Canada. This could increase the OAS pension amount. For presence or residence in India to count as residence in Canada, that person need to be subject to the *Canada Pension Plan* at the same time.

[22] However, Article 11(2) of the India Agreement limits Article 11(1). Article 11(2) says that a person is subject to the *Canada Pension Plan* while resident or present in India **only** if he also makes contributions to the *Canada Pension Plan* at the time.

[23] This is where the Claimant fails to meet the requirements of Article 11. I accept that he resided in India during the India Period. However, he did not contribute to the *Canada Pension Plan* at any point during the India Period. In fact, 1999 was his only year of contributions to that plan.⁹

– **Article 12 of the India Agreement**

[24] The relevant parts of Article 12 of the India Agreement are as follows:

⁹ See AD5-71.

1. If a person is not eligible for a benefit because he or she has not accumulated sufficient creditable periods under the legislation of a Contracting State, the eligibility of that person for that benefit shall be determined by totalizing these periods and those specified in paragraphs 2 through 4, provided that the periods do not overlap...
4.
 - a. For purposes of determining eligibility for a benefit under the *Old Age Security Act* of Canada, a creditable period under the legislation of India shall be considered as a period of residence in Canada;
 - b. For purposes of determining eligibility for a benefit under the *Canada Pension Plan*, a calendar year including at least three months which are creditable under the legislation of India shall be considered as a year which is creditable under the *Canada Pension Plan*.

[25] Article 12 of the India Agreement does not create additional years of contributions. In that sense, it cannot increase the OAS pension amount. However, it can help a person qualify for the OAS pension earlier. That means it could increase the number of payments made to a recipient.

[26] Article 12(1) of the India Agreement prevents “double counting.” However, as the Claimant does not otherwise have Canadian residency during the India Period, he could still benefit from Article 12(4).

[27] Article 12(4) of the India Agreement requires the Claimant to have a “creditable period” under the legislation of India. A creditable period in India is, “any period of contributions or insurance recognized as such in the legislation under which that period was completed, as well as any period recognized as equivalent to a period of contribution or insurance under that legislation.”¹⁰ However, only creditable periods relating to pension programmes apply.¹¹

[28] As noted, the Claimant said he did not contribute to the Employees’ Provident Fund Organization during the India Period.¹² Nor do I see any other evidence that he contributed to a pension programme in India. Paying income tax is not the same as contributing to a pension programme. This means the Claimant did not have any

¹⁰ See Article 1(1) of the India Agreement.

¹¹ See Article 2(2) of the India Agreement.

¹² The Employees’ Provident Fund Organization is the “competent institution” in India. See Article 1(1) of the India Agreement.

creditable periods under the legislation of India. As a result, Article 12 of the India Agreement cannot help him to qualify for an earlier OAS pension.

Is the Claimant entitled to an additional period of Canadian residency during the Malaysia Period?

[29] The Claimant is not entitled to an additional period of Canadian residency during the Malaysia Period. I will now explain why.

[30] When I decide whether the Claimant resided in Canada, I must look at both the overall picture and the factors set out in Federal Court decisions such as *Ding*.¹³ I will call these the Ding Factors. The Ding Factors include:¹⁴

- 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, driver's license, 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.

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

¹³ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

¹⁴ 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.

– **Property**

[32] This factor slightly favours residency in Malaysia during the Malaysia Period, due to the Claimant's business interests there.

[33] The Claimant owned residences in both Canada and Malaysia during this period. With his wife, he purchased an apartment unit on X in X, B.C. (the X Apartment), on September 26, 2014.¹⁵ However, he has also owned a condominium in Ampang, Malaysia (the Malaysian Condo), since 2004. He continues to own the Malaysian Condo now. He uses it for a month or two at a time, for vacations. He does not rent it out when he is not there.

[34] The Claimant said both the X Apartment and the Malaysian Condo were furnished during the Malaysia Period.¹⁶

[35] The Claimant ran a consultancy in Malaysia and Singapore during the Malaysia Period.¹⁷ He said he was winding this business down during this time. He did not have any business interests in Canada during the Malaysia Period.

[36] The Claimant had a bank account at RBC throughout the Malaysia Period, eventually adding other accounts and investments (such as deposit certificates and mutual funds) during that time. While the Claimant did not give evidence about Malaysian bank accounts specifically, he likely had at least one. This is because he ran a consultancy and spent most of his time in Malaysia during this period. He denied having investments in Malaysia.¹⁸

[37] In 2022, the Claimant said he had about \$19,000.00 of income annually from investments in another unspecified country.¹⁹ In 2018, he also said he had investment

¹⁵ See GD2-83 and GD2-85 to GD2-86.

¹⁶ See AD8-3. See also his evidence at the Appeal Division hearing.

¹⁷ See GD2-52.

¹⁸ See GD2-81 to GD2-84 and AD8-3. See also his evidence at the Appeal Division hearing.

¹⁹ See GD2-23.

income from another country in 2017.²⁰ However, I cannot say whether this other country was Malaysia.

– **Social ties**

[38] This factor slightly favours residency in Malaysia during the Malaysia Period.

[39] The Claimant said he had friends in both Malaysia and Canada during the Malaysia Period. His friends in Canada were through his business contacts. However, other than his wife, he did not have any other family members in either location.²¹ Given the extended duration of his Malaysian business activities, both before and during the Malaysia Period, he likely had at least as many friends in Malaysia as he did in Canada.

[40] The Claimant has been a long-time member of the Nautical Institute. This is an international professional organization with chapters in **both** Malaysia and Canada. He said he eventually attended meetings in Canada too. Other than the Nautical Institute, his only other membership was at a golf club in Malaysia. He did not belong to a golf club in Canada.²² This helps tip the scales in favour of Malaysian residence.

[41] The Claimant said he did not belong to other clubs or any religious organizations.

– **Other ties**

[42] This factor slightly favours residency in Canada, although maybe not for the entire Malaysia Period. This is mainly because the Claimant eventually had Canadian medical coverage but did not have similar coverage elsewhere.

[43] At the hearing, the Claimant said he had a medical service plan from the B.C. provincial government but could not remember the dates. He previously said that his medical coverage started on June 30, 2016.²³ He said he did not have any medical coverage in Malaysia.

²⁰ See GD2-11.

²¹ See AD8-3. See also his evidence at the Appeal Division hearing.

²² See AD8-3. See also his evidence at the Appeal Division hearing.

²³ See GD2-69.

[44] The Claimant said he did not have any mortgages or loans in either Canada or Malaysia. I saw no evidence of leases in either place. However, as he owned both the X Apartment and the Malaysian Condo throughout the Malaysia Period, having a lease at this time is not very relevant.

[45] The Claimant said he obtained a Canadian driver's license around 2016. He bought a car at the same time. He said he left the car at the X Apartment when he was in Malaysia²⁴. I did not see any evidence about whether he had a driver's license or a car in Malaysia.

[46] The Claimant said he had a Telus mobile phone in Canada starting in either 2014 or 2015. However, he also had a phone in Malaysia.²⁵

– **Tax returns**

[47] This factor is either neutral or slightly favours residency in Malaysia during the Malaysia Period.

[48] The Claimant filed tax returns in Malaysia (and Singapore) during the Malaysia Period. He filed non-resident tax returns in Canada from 2014 to 2016. He filed a regular tax return in Canada for the 2017 tax year. At the hearing, he said he lacked knowledge about the meaning of "resident" when he filed those returns. He also said that the definition of "resident" is different for tax purposes. He said his Canadian income consisted of bank interest and rent from the X Apartment.²⁶

[49] I cannot say this factor favours residency in Canada. The Claimant's "non-resident" tax status in Canada might weakly favour Malaysian residency, but I also accept that the OAS definition of "resident" may not exactly match the meaning of "resident" for tax purposes.

[50] Similarly, the nature of the Claimant's income in Canada might point away from Canadian residency, as he was actively earning employment income in Malaysia and

²⁴ See AD8-3. See also his evidence at the Appeal Division hearing.

²⁵ See AD8-3. See also his evidence at the Appeal Division hearing.

²⁶ See GD2-10 and AD8-3. See also his evidence at the Appeal Division hearing.

elsewhere. His Canadian income was passive, through rent and interest. But this aspect is weak too, and I place no real weight on it.

– **Time spent in Canada and in other countries**

[51] This factor strongly favours residency in Malaysia during the Malaysia Period.

[52] The Claimant could not provide specifics of how much time he spent in Canada. He estimated that he left Canada 2-4 weeks after he bought the X Apartment in September 2014. After that, he would visit Canada twice a year or “sometimes more.” These visits usually lasted for a week or two. However, he said he was once in Canada for nearly six months. He thought this might have been in 2016, but he was not sure. He said his work project in Malaysia was not busy at that time.²⁷

[53] During the Malaysia Period, the Claimant spent most of his time in Malaysia.²⁸ He was based in the Malaysian Condo. He did some work in Singapore, but would stay in a hotel there. He spent a week in China and a few weeks in India. This means his time in Malaysia far outweighs the time spent in any other country, including Canada.

– **Lifestyle in Canada**

[54] During the Malaysia Period, the Claimant’s lifestyle in Canada does not support residence here.

[55] The Claimant said he would stay in the X Apartment whenever he was in Canada during the Malaysia Period. He said he bought the X Apartment to get used to living in Canada. It is not clear how he managed to rent out the X Apartment when he would take possession of it at least twice per year. He also said earlier that the X Apartment was bought to rent it out.²⁹ In any case, all but one of his visits to Canada were very brief. They lasted only 1-2 weeks.

²⁷ See AD8-3. See also his evidence at the Appeal Division hearing.

²⁸ See GD2-71 and GD2-78. See also his evidence at the Appeal Division hearing.

²⁹ See GD2-10.

[56] For the longer X stay of nearly six months that might have taken place in 2016, the Claimant said he was exploring business opportunities and deciding where he might prefer to live. Ultimately, around October 2017, the Claimant sold the X Apartment and purchased a unit in nearby Y (the Y Townhouse).

[57] Other than perhaps that one extended stay, I find the Claimant's lifestyle in Canada to be very transient. While he may have had a place to stay, he rarely was in Canada long enough to develop any type of lifestyle here. He spent much more time in Malaysia, with such time sufficient to run and wind down his business interests there. He previously referred to his October 2017 purchase of the Y Townhouse as his "final settling down."³⁰ He did not say this about the X Apartment.

– **The Claimant's intentions**

[58] This factor is either neutral or slightly favours residency in Malaysia during the Malaysia Period.

[59] The Claimant said he decided, in 2014, to establish his residence in X.³¹ While he then bought the X Apartment, he never got rid of the Malaysian Condo. He still owns it to this day. As noted above, he did not "settle down" until buying the Y Townhouse in October 2017.

[60] When the Claimant applied for the OAS pension in 2018, he said he did not reside in Canada until 2018. In his 2022 application, he said he did not reside in Canada until April 2017. These previous statements do not support his later claim that he started residing in Canada in 2014. While he said he was not fully aware of what "residence" meant, the definition was on each of those application forms. It was part of the instructions for the question asking about his residence over the years.³²

[61] Similarly, shortly before the hearing, the Claimant said he did not purchase the X Apartment for the purposes of renting it out. He said he rented it out for short-term

³⁰ See GD2-70.

³¹ See GD2-78 and AD8-3.

³² See GD2-10 and GD2-22.

rentals when he wasn't using it himself.³³ However, in 2018, he said he bought the X Apartment to rent it out.³⁴

[62] These statements suggest that the Claimant's intention to live in Canada was more directed to the long term than to the Malaysia Period itself. I also note that statements made later are rarely more accurate than statements made earlier.

– **Conclusions about the Ding Factors**

[63] The Ding Factors ultimately point to the Claimant being resident in Malaysia throughout the Malaysia Period.

[64] The Claimant's "other ties" slightly favour residency in Canada for at least part of the Malaysia Period. This is mostly due to the medical coverage he had in Canada. However, I find that the other Ding Factors are neutral or favour residency in Malaysia throughout the Malaysia Period.

[65] The Claimant's social ties and property interests favour residency in Malaysia. His intentions and tax returns are either neutral or slightly favour residency in Malaysia. His transient lifestyle in Canada also suggests that he was resident elsewhere.

[66] Finally, the Claimant's time spent in Malaysia strongly points to residency there. Even if few of the other Ding Factors point strongly to residence in Malaysia, the time spent in Malaysia removes any doubt. I cannot say that he made his home and ordinarily lived in Canada. For the Malaysia Period, he made his home and ordinarily lived in Malaysia.

[67] This conclusion matches the picture formed by the evidence. The Claimant's long-term plan was to reside in Canada, and he eventually did. However, during the Malaysia Period, his connections to Canada were much less developed. His significant connections to Malaysia reinforce this.

³³ See AD8-3.

³⁴ See GD2-10.

– **Other issues relating to residency**

[68] At the Appeal Division hearing, the Claimant referred to a provision in section 21 of the *Old Age Security Regulations*. The provision says absences of a temporary nature lasting a year or less do not interrupt a person's residence in Canada.³⁵ The Claimant said he was in Canada at least twice a year during the Malaysia Period. As a result, he said he was never absent from Canada for more than a year during that period. He believes this supports Canadian residence during the Malaysia Period.

[69] Unfortunately for the Claimant, that provision does not assist him. It only applies if he were already residing in Canada at the start of the period in question.³⁶ However, he was not a resident of Canada at the start of the Malaysia Period. Nor did he establish residence again until the Malaysia Period ended.

What is the impact of my findings on the Claimant's OAS pension?

[70] The Claimant does not have any additional periods of Canadian residency. This means that the basis of the Minister's original decision is unchanged. He had accumulated 10 years of Canadian residency by March 4, 2023. When combined with his application date of February 2022, this means he is entitled to a 10/40th OAS pension as of April 2023.³⁷

Conclusion

[71] The appeal is dismissed. The Claimant does not have any additional periods of Canadian residency. He remains entitled to a 10/40th OAS pension, starting in April 2023.

Pierre Vanderhout
Member, Appeal Division

³⁵ See section 21(4) of the *Old Age Security Regulations*.

³⁶ See section 21(4) of the *Old Age Security Regulations*.

³⁷ See sections 3(2), 3(3), 5(1), 8(1), and 8(2) of the *Old Age Security Act*. See also section 5(2) of the *Old Age Security Regulations*.