Citation: *CP v Minister of Employment and Social Development*, 2025 SST 751

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	C. P.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated April 10, 2025 (GP-24-1738)

Tribunal member:	Kate Sellar
Decision date:	**July 22, 2025**
File number:	AD-25-461

Decision

[1] I'm refusing to give the Claimant, C. P., permission to appeal. The appeal will not go ahead. That means the Claimant is still eligible for a partial Old Age Security (OAS) pension in the amount of 12/40 effective May 2021. These are the reasons for my decision.

Overview

[2] The Claimant was born outside Canada on April 8, 1956. She came to Canada on November 19, 1994.

[3] The Claimant applied for an Old Age Security (OAS) pension on August 3, 2021. She said she wanted her pension to start as soon as she qualified.

[4] The Minister of Employment and Social Development (Minister) allowed the Claimant's application. She applied from outside Canada and so she needed at least 20 years of residency in order to qualify for an OAS pension.[1] Consistent with the agreement with the US on social security, those 20 years of residency to qualify for any OAS pension can contain both years of residency in Canada, and years contributing to the US social security system.[2]

[5] However, the Claimant was to receive a partial OAS pension in the amount of 12/40 starting in May 2021, based only on her years of residence in Canada.

[6] The Claimant asked the Minister to reconsider, and the Minister maintained its decision in a reconsideration letter. The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal. The General Division found that the Claimant was entitled to a partial pension of 12/40 based on residence in Canada from November 19, 1994 up to and including June 18, 2007.

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[1] See section 3(2)(b) of the *Old Age Security Act* (OAS Act).
[2] In this decision when I say, "the agreement," I'm referring to *The Agreement Between the Government of Canada and the Government of the United States of America with Respect to Social Security* (the second supplementary agreement has been in place since 1997). The agreement is made under section 40 of the OAS Act.

Issues

[7] The issues in this appeal are:

a) Is there an arguable case that the General Division made an error of law in its calculating the amount of the Claimant's partial OAS pension?

b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[8] I can give the Claimant permission to appeal if the application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error applying the law to the facts.[3]

[9] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.[4]

[10] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

[3] See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).
[4] See section 58.1(c) in the Act.

There's no arguable case for an error of law in way the General Division calculating the amount of the Claimant's partial OAS pension.

[11] The Claimant argues that the General Division made an error of law by granting her a partial OAS pension of only 12/40.

[12] The Claimant's time contributing to the US social security system assisted her to meet the 20 years of contributions she needed to **qualify** for an OAS pension.

[13] However, she argues that her time contributing to the US social security system should have also counted towards the **amount** of the partial OAS pension she received. She says she's entitled to a partial OAS pension of 26/40: the General Division misunderstood the law.[5]

– **The General Division applied the OAS Act and the agreement to decide that the Claimant qualified for a partial OAS pension of 12/40.**

[14] The General Division found that the Claimant was resident in Canada from November 19,1994 to June 18, 2007.[6] This entitles the Claimant to a partial OAS pension in the amount of 12/40.[7]

[15] The General Division acknowledged that the Claimant worked in the US and contributed to social security there from 2000 to 2021.[8] The General Division explained that the period from January 2000 to June 2007 can't be used to calculate the Claimant's partial OAS pension because she was a resident of Canada during that time, and the agreement "doesn't permit quarters of coverage to be used for totalization purposes if they overlap with periods of residence in Canada."[9]

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[5] The Claimant's arguments are at AD1-3 and AD1-9.
[6] See paragraph 21 in the General Division decision.
[7] At the General Division, the Claimant said she resided in Canada until December 31, 2007. The General Division found that although the Claimant had ties to both countries in 2007, she didn't prove a reasonable explanation for the inconsistencies in her evidence about when she left for the US, so her residence in Canada ended on June 18, 2007.
[8] See paragraph 37 in the General Division decision.
[9] See paragraph 38 in the General Division decision, citing Article XIII 3(a) of the agreement.

[16] With respect to the years after 2007 until 2021 when she turned 65, the General Division explained that these years cannot be used to increase the amount of the Claimant's partial OAS pension: International agreements cannot be used to increase the amount of the [Claimant's] OAS partial pension."[10]

[17] In other words, the General Division confirmed that it considered the years the Claimant lived and worked in the US after 2007 to ensure that the Claimant had the 20 years of contributions necessary to **qualify** for an OAS pension, but they cannot be used to calculate the **amount** of the partial OAS pension.

– **The Claimant hasn't raised an arguable case for an error of law.**

[18] To understand whether there's an arguable case for an error in the way the General Division understood the law, I need to consider the Claimant's arguments about what the General Division may have got wrong. To decide if a law is understood properly, we consider the text, context, and purpose of the law in question.[11]

[19] The Claimant provided arguments about the text of the agreement, but they don't amount of an arguable case for an error of law.

[20] The Claimant seems to concede that Article IX(1) of the agreement says that it's only the years of residence in Canada that will count towards calculating the amount of an OAS partial pension. However, she seems to argue that Article IX(3.a) trumps Article IX(1) by saying that notwithstanding any other part of the agreement, a person who is outside Canada shall be paid the OAS pension based on the years of residence in both Canada and US added together (totalized).

[21] However, Article IX(3.a) actually says:

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[10] See paragraph 41 in the General Division decision.
[11] See paragraph 21 in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC). The Supreme Court of Canada recently confirmed this approach to statutory interpretation in *Canada (Minister of Citizenship and Immigration)* v *Vavilov*, 2019 SCC 65.

> 3. Notwithstanding any other provision of this Agreement:
>
> a. an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, totalized as provided in Article VIII, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for entitlement to the payment of a pension outside Canada;

[22] The minimum period of residence in Canada required by the OAS Act for entitlement to the payment of a pension outside Canada is 20 years.[12] So in other words, Article IX(3.a) says that when a person who benefits from the agreement is outside Canada when they apply, they are **eligible** for an OAS pension only if their years of contributing in each country adds up to 20 (as required by the OAS Act).

[23] Contrary to the Claimant's analysis, Article IX (3.a) says **nothing** about whether time contributing to the US system should count towards residence in Canada for the purpose of calculating the **amount** of a partial OAS pension in Canada.

[24] The Claimant didn't provide any arguments about the context or purpose of the OAS Act and the agreement that would assist in showing that the General Division may have made an error of law.

[25] However, I must note that the General Division's reading of law is consistent with a Federal Court decision that we are required to follow at the Tribunal, and the Appeal Division has followed that decision in another case as well.[13]

[26] The Claimant's reading of the wording of the agreement doesn't give rise to an arguable case for an error by the General Division. I've considered whether there might be an arguable case based on the context or purpose of the legislation. However, I know only of a binding authority from the Federal Court on this issue consistent with the General Division's approach.

[27] The Claimant hasn't raised an arguable case for an error of law.

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[12] See section 3(2)(b) of the OAS Act.
[13] See paragraphs 50 to 52 and 59 to 61 in *Gumboc v Canada (Attorney General)*, 2014 FC 185; *Minister of Employment and Social Development v RM*, 2022 SST 207.

There's no new evidence

[28] The Claimant hasn't provided any evidence that wasn't already presented to the General Division. Accordingly, new evidence also cannot form the basis for permission to appeal.

[29] I've reviewed the written record.[14] Although the Claimant focused on the question of an error of law, I'm also I'm satisfied that the General Division didn't overlook or misunderstand any important evidence that could change the outcome for the Claimant.

Conclusion

[30] I'm refusing to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

[14] For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.