[TRANSLATION]

Citation: *FB v Minister of Employment and Social Development*, 2025 SST 731

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	F. B.
Respondent:	Minister of Employment and Social Development
Representative:	Lucky Ingabire

Decision under appeal:	General Division decision dated July 4, 2024 (GP-23-1610)

Tribunal member:	Jean Lazure
Type of hearing:	In writing
Decision date:	July 15, 2025
File number:	AD-24-564

Decision

[1] The appeal is allowed in part.

[2] The Appellant has 19 years and 312 days of residence in Canada. This means that he isn't eligible for an Old Age Security (OAS) pension.

Overview

[3] The Appellant was born in Tunisia on October 26, 1956. He arrived in Canada on June 19, 1979, when he was 22, on a visitor's visa. He became a permanent resident of Canada on December 3, 1982.[1]

[4] The Appellant also left Canada on December 2, 1999.

[5] The Appellant applied for an OAS pension on September 27, 2021.[2] The Minister of Employment and Social Development (Minister) refused his application.[3] The Appellant appealed the Minister's decision to the Tribunal's General Division.[4]

[6] On July 4, 2024, the General Division dismissed the appeal and found that the Appellant had resided in Canada for only 17 years[5] after turning 18—that is, between December 3, 1982, and December 2, 1999.[6]

[7] The Appellant appealed this decision to the Tribunal's Appeal Division.[7] On November 4, 2024, the Appeal Division gave him permission to appeal.

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[1] See GD2-20.
[2] See GD2-3.
[3] See Minister's initial decision dated July 20, 2022, at GD2-23. See also Reconsideration Decision Letter dated August 22, 2023, at GD2-29.
[4] This was on September 16, 2023. See GD1-1.
[5] The Appellant, who wasn't a resident of Canada the day before his application was approved, has to have resided in Canada for at least 20 years to be eligible for a partial pension, under section 3(2)(b) of the *Old Age Security Act* (OAS Act), R.S.C., 1985, c. O-9.
[6] See General Division decision at para 34.
[7] This was on August 28, 2024. See AD1-1.

Type of hearing

[8] In his application, the Appellant said that he preferred the hearing to be held in writing. My colleague who gave permission to appeal addressed this preference in the decision.[8]

[9] In addition, I shared my colleague's concerns. I called the parties to a case conference to be held by teleconference on March 5, 2025, to discuss the next steps in the appeal, the Appellant's preference for the type of hearing, and, if applicable, possible hearing dates.[9]

[10] The Appellant wrote to the Tribunal on February 19, 2025. He said that he wasn't able to participate in a teleconference for three reasons. First, he did [translation] "not have the technical means." Second, he had "nothing to add to the file: [He had] written everything as a defence[,] and [he had] provided everything as documentary evidence." Third, he had "chosen to argue in writing."[10]

[11] Given the above, I cancelled the case conference and decided that the appeal hearing would be held in writing—in accordance with the preference that the Appellant clearly and repeatedly expressed.

Issues

[12] To receive a **full** OAS pension, the Appellant has to prove he resided in Canada for at least 40 years after he turned 18.[11] This rule has some exceptions. But the exceptions don't apply to the Appellant.[12]

[13] If the Appellant doesn't qualify for a full OAS pension, he might qualify for a **partial** pension. A partial pension is based on the number of years (out of 40) that a

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[8] See permission to appeal decision at para 11.
[9] See AD0-1.
[10] See Appellant's correspondence at AD13-1.
[11] See section 3(1)(c) of the OAS Act. The Appellant also has to be at least 65 years old and a Canadian citizen or legal resident of Canada. He also has to have applied for the pension. He has met these requirements.
[12] See section 3(1)(b) of the OAS Act.

person resided in Canada after they turned 18. For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount.

[14] To receive a partial OAS pension, the Appellant has to prove he resided in Canada for at least 10 years after he turned 18. But, if he didn't reside in Canada the day before his application might have been approved, he has to prove he already has at least 20 years of residence.[13]

[15] So, for the Appellant to succeed, he has to prove to me that he resided in Canada for a period of at least 20 years after he turned 18. In addition, he first arrived in Canada on June 19, 1979, and he left permanently on December 2, 1999.[14]

[16] So, the issues are the following:

a) Between the time the Appellant arrived in Canada on June 19, 1979, and the time he left on December 2, 1999, did he have 20 years of residence in Canada?

b) If not, could the November 2022 agreement between Canada and Tunisia make up for what the Appellant needs to reach the minimum of 20 years, even if that agreement isn't yet in force?

Analysis

[17] I have found that the Appellant isn't eligible for an OAS pension. I will now explain why.

[13] See section 3(2) of the OAS Act.
[14] The parties didn't argue or dispute this fact.

Parties' positions on possible periods of residence

– Period from December 3, 1982, to December 2, 1999

[18] This period has been recognized since the Minister's initial decision.[15] The Minister hasn't disputed it.[16] It started when the Appellant became a permanent resident and ended when he left Canada permanently.

[19] So, it is established that the Appellant had 17 years of residence in Canada during that period.

– Period from June 19 to September 30, 1979

[20] For this period, the Minister's position is that it [translation] "was temporary and should not be included in the calculation of his residence, since the Appellant wasn't yet established in Canada under the *Old Age Security Act*. He first came as a visitor and started making efforts to study in Canada."[17] The Minister also notes [translation] "the short duration of his stay, approximately 104 days, and […] the absence of tangible evidence of his mode of living, social ties, or property in Canada."[18]

[21] The Appellant claims that he intended to [translation] "reside in Canada to study"[19] as soon as he arrived on June 19, 1979. During this period, he didn't "take part in activities that would be typical for someone holding a tourist visa."[20] He goes on to say the following: [translation] "I devoted that time exclusively not to tourism, but rather to knocking on almost every door trying to get a student visa that would allow me to stay in Canada and study there."[21]

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[15] This was on July 20, 2022. See GD2-23.
[16] See AD10-4.
[17] See AD10-9.
[18] See AD10-10.
[19] See AD1-10.
[20] See AD7-3.
[21] See AD7-3.

– **Period from January 26, 1980, to December 3, 1982**

[22] For this period, the Minister's position is that [translation] "being a student isn't enough to establish usual residence in Canada." The Minister also points out that the Appellant hasn't provided evidence [translation] "that he maintained a mode of living centred on Canada throughout this entire period...."[22]

[23] The Appellant claims that he was a student in Canada[23] throughout this entire period, and that other documents[24] attest to the fact that he [translation] "maintained a mode of living centred on Canada during [this] period...." The fact that he became a permanent resident on December 3, 1982, after having his visa extended a few times, would, in his view, confirm this period of residence: [translation] "...after I had made tedious efforts while staying in Canada."[25]

What the Appellant has to prove

[24] The factors that I have to consider in determining whether the Appellant has any periods of residence in Canada were set out by the Federal Court in *Canada (Minister of Human Resources Development) v Ding:*[26]

- ties in the form of personal property
- social ties in Canada
- other ties in Canada (medical coverage, driver's license, rental lease, tax records, etc.)
- ties in another country

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[22] See AD10-10.
[23] See AD12-2.
[24] See letter from the Minister of Cultural Communities and Immigration of Quebec dated May 17, 1982, at AD11-3.
[25] See AD7-4 and AD7-5.
[26] See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

- regularity and length of stay in Canada, and the frequency and length of absences from Canada

- the person's mode of living, or whether the person living in Canada is sufficiently deep-rooted and settled

[25] The Appellant has the burden of proving the periods of residence in Canada.[27] He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he resided in Canada for a total of 20 years after turning 18.[28]

The Appellant didn't have 20 years of residence in Canada between June 19, 1979, and December 2, 1999

[26] I find that the Appellant had only 19 years and 312 days of residence between June 19, 1979, and December 2, 1999. I will now explain why.

– Period from June 19 to September 30, 1979

[27] For this period, I have to accept the Minister's arguments: This period doesn't constitute residence. It totals 104 days, and that is, in fact, rather short. It is barely more than three months.

[28] It is known that the Appellant came to Canada as a visitor, and that he intended to study there but didn't yet have a student visa. As I said above, we know that the Appellant says he didn't take part in typical tourist activities, but rather he spent his time making efforts to get a student visa to study in Canada.

[29] Some of the Appellant's efforts are known. This includes the fact that he left Canada in September 1979, and went to Boston for a few days to apply for a student visa at the Consulate General of Canada in Boston.[29] He says that he got an

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[27] Periods of residence have to be proven on a balance of probabilities, as set out in *De Carolis v Canada (Attorney General)*, 2013 FC 366.
[28] See *De Carolis v Canada (Attorney General)*, 2013 FC 366.
[29] See AD7-4.

Acceptance Certificate for a student visa from the Government of Quebec[30] to try to get this visa—something he wasn't able to do.

[30] But, on September 30, 1979, since he didn't yet have a student visa, the Appellant had to leave Canada for Iraq.[31] Iraq wasn't his country of origin, but it was the country he had left to come to Canada on June 19, 1979. About four months later, on January 26, 1980, the Appellant was back in Canada.

[31] The Appellant says that he intended[32] to reside in Canada as of June 19, 1979. First, regarding the intention, the evidence could be described as ambiguous: If the Appellant gave some details above about "typical tourist activities," it was because he had written the word [translation] "[t]ourism" next to that period in Canada, in Section B5 of his OAS pension application.[33]

[32] But I note that the Appellant never really explained why his application included the word [translation] "[t]ourism." He might have intended to try to get a student visa in Boston using the Acceptance Certificate, but he wasn't able to do so.

[33] But, in any event, the Appellant's intention isn't enough. Residence isn't a matter of intention, but rather of fact. Apart from what is noted above, little else is known about the *Ding* criteria for this period:

- There is no evidence of any personal property the Appellant might have had in Canada or elsewhere.
- There is no evidence that the Appellant has social ties in Canada.
- There is no evidence of where the Appellant might have lived—for example, a rental lease.

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[30] See AD4-2.
[31] See AD7-4.
[32] See AD1-10, AD11-4 and AD11-5.
[33] See GD2-6. The Appellant surely understood from the General Division decision, at para 25, that he had to address this reference.

- There is no evidence of the Appellant's mode of living that would suggest he is sufficiently deep-rooted and settled in Canada.

[34] I have three comments regarding there being no evidence. First, given how short the period was and how it was the Appellant's first period in Canada, it might have been difficult for him to prove that he had truly become deep-rooted and settled in Canada in that short a time.

[35] Second, it could possibly be said that there is little evidence that the Appellant resided anywhere other than Canada. But it is the Appellant who has the burden of proof. It isn't up to the Minister to prove that he resided elsewhere. I simply don't have any evidence that points to him residing in Canada during that period. The only evidence is that he was in Canada and what his intention was. That isn't enough to find that he was a resident.

[36] Third, the Appellant had the opportunity to submit evidence. But the General Division, in referring to the period from January 26 to December 3, 1982—addressed below—told him that he hadn't presented any evidence and that he had been given the opportunity to do so.[34] It also told him about the *Ding* criteria.[35] The Appeal Division, in giving permission to appeal, also reminded him that it was important to submit evidence.[36]

[37] But with so little—if any—evidence that the Appellant was deep-rooted and settled in Canada, I can't accept his argument that he became a resident of Canada as soon as he arrived, based on his intention to study in the country at some point.

[38] Finally, as for the Appellant's argument that the fact he was absent from Canada[37] between September 30, 1979, and January 26, 1980, doesn't interrupt his period of residence—and should even be considered a period of residence in itself—

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[34] See General Division decision at para 27.
[35] See General Division decision at para 21.
[36] See permission to appeal decision at para 11, although this was in the context of the type of hearing.
[37] See AD11-4.

section 21(4) of the *Old Age Security Regulations* (OAS Regulations)[38] refers to a "person resident in Canada." Since I have found that the Appellant wasn't residing in Canada before September 30, 1979, that section can't apply, and this period is also not a period of residence.

– **Period from January 26, 1980, to December 3, 1982**

[39] In my view, the Appellant was a resident of Canada during that period.

[40] The Minister says that, in its opinion, [translation] "being a student isn't enough to establish usual residence in Canada." It relies on section 21(4)(b) of the OAS Regulations to support this claim. The Minister didn't present any case law in support of this.

[41] I am of the view that student status, on its own, doesn't prevent you from being considered a resident. Section 22(1)(a) of the OAS Regulations says that, for the purposes of applying the eligibility criteria for the OAS pension, legal residence means a person who "is or was lawfully in Canada pursuant to the immigration laws of Canada in force on that day."

[42] Since the Appellant received a study permit for that period, he fully meets that condition. But there is also the fact that the proof of school attendance he submitted for these periods says his status was [translation] "part-time."[39]

[43] But I am of the view that it would be quite likely that a full-time student would be resident of Canada while studying, subject to an analysis of the remaining evidence. In fact, I believe that a full-time student is likely to have personal property and social ties in Canada. Also, a full-time student is likely to actually live where they study—that is, in Canada.[40] So, they are likely to have a mode of living that is settled and deep-rooted in Canada.

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[38] See *Old Age Security Regulations*, C.R.C., c. 1246.
[39] See AD12-2.
[40] Studying online or virtually wasn't an option in 1980 and 1981.

[44] But, if being a full-time student would create a presumption of residence,[41] the issue of that presumption is more tenuous for part-time students. There is little known about the Appellant's school attendance other than what is said in the proof of school attendance: He attended CEGEP François Xavier-Garneau, a general and vocational college, from the winter of 1980 to the summer of 1981—but apparently on a part-time basis.

[45] But I am reminded that the Appellant's burden of proof is that of a balance of probabilities. It has to be more likely than not that he was a resident of Canada during that period. The burden is no more demanding than that.

[46] There is simply nothing to contradict the evidence of the Appellant's student status—even part-time—during that period. The Minister relies on no real evidence to the contrary; it seems to suggest only that if you have a student status, it means you are not a resident. I don't agree with the Minister's position, as noted above.

[47] This is the difference between the first period and the second period under review in this decision—the Appellant's student status in Canada. Given that there is no evidence from either side, I find that this status makes all the difference, and that he was a resident of Canada during that period.

The November 2022 agreement between Canada and Tunisia is of no help to the Appellant since it isn't in force

[48] The Convention on Social Security between Canada and the Republic of Tunisia was signed on November 18, 2022. The Appellant relies on it to make up for anything lacking when it comes to his residence in Canada.

[49] But the Convention isn't yet in force.[42]

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[41] Subject to the analysis of the remaining evidence in each file, this is on a case-by-case basis.
[42] See https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-international/tunisia.html. I visited this Internet page on July 13, 2025.

[50] I understand the Appellant's arguments on this point.[43] Also, under Canadian law, a statute or an international convention becomes binding only once it has come into force. It is impossible to apply a statute if its specific provisions haven't yet been set out.

[51] Because of this, since the Convention on Social Security between Canada and the Republic of Tunisia isn't yet in force, it is of no help to the Appellant.

[52] Finally, I am well aware that my findings above leave the Appellant 53 days short of the 20 years he needs for a partial OAS pension. But, in good conscience, I have to give a decision in accordance with the law. I find nothing in the evidence for the first period—unlike his student status in the second period, even as part-time—that would allow that period to be counted as residence in Canada.

[53] I sympathize completely with the Appellant, but I have no equitable jurisdiction. This means that I can't ignore the law and decide in his favour because of the sympathy I have for him.

Conclusion

[54] The Appellant has 19 years and 312 days of residence in Canada. So, he isn't eligible for an OAS pension.

[55] This means the appeal is allowed in part.

Jean Lazure
Member, Appeal Division

[43] See AD1C-1, AD7-5, and AD11-6.