

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210922

Docket: A-379-18

Citation: 2021 FCA 190

**CORAM: RENNIE J.A.
RIVOALEN J.A.
MACTAVISH J.A.**

BETWEEN:

PETER PHILIP POORAN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without the appearance of parties.

Judgment delivered at Ottawa, Ontario, on September 22, 2021.

REASONS FOR JUDGMENT BY:

MACTAVISH J.A.

CONCURRED IN BY:

**RENNIE J.A.
RIVOALEN J.A.**

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REASONS FOR JUDGMENT

MACTAVISH J.A.

[1] Peter Philip Pooran seeks judicial review of the decision of the Appeal Division of the Social Security Tribunal affirming a decision of the Tribunal's General Division that found him ineligible for Old Age Security (OAS) pension benefits. The General Division found that Mr. Pooran did not qualify for OAS benefits because the years that he spent working for the Commonwealth Secretariat in London did not count as residency in Canada, as he had not

returned to Canada within six months of the end of his employment in the United Kingdom. This meant that Mr. Pooran did not have the 20 years of Canadian residency that he needed to qualify for benefits.

I. The Legislative Regime

[2] Eligibility for OAS pension benefits is based upon residency. To qualify for an OAS pension, an applicant must establish that they had resided in Canada for 20 years if they are no longer resident in Canada at the time of their application: *Old Age Security Act*, R.S.C. 1985, c. O-9, subsection 3(2).

[3] The *Old Age Security Regulations*, C.R.C., c. 1246, identify certain types of absences that will not interrupt a person's resident status in Canada. Employment with the Commonwealth Secretariat will not be considered to interrupt a person's residence status in Canada as long as the applicant returns to Canada within six months of the end of their employment. They must also maintain a permanent place of abode in Canada to which they intend to return, or maintain a self-contained domestic establishment in Canada: subsection 21(5).

II. Mr. Pooran's Case

[4] Mr. Pooran was residing in the United Kingdom when he applied for an OAS pension in 2012. Consequently, he had to demonstrate that he had resided in Canada for 20 years to qualify for a pension. There is no dispute that Mr. Pooran had lived in Canada for approximately 17 ½

years. What was in dispute was whether the approximately 18 years that he spent in London while working for the Commonwealth Secretariat should be counted as years resident in Canada.

[5] While the parties agree that Mr. Pooran returned to Canada in November of 2003, they disagree as to when he ceased to be employed by the Commonwealth Secretariat. A letter from the Commonwealth Secretariat stated that Mr. Pooran's last day of employment was October 18, 2000. Mr. Pooran asserted that although his last day of work was in May of 2001, his employment only ended in October of 2003, when the Commonwealth Secretariat fulfilled its contractual obligation to pay for his move back to Canada. As he returned to Canada in November of 2003, Mr. Pooran asserts that his return was well within the requisite six-month period.

III. The General Division's Decision

[6] The General Division found that Mr. Pooran's employment with the Commonwealth Secretariat ended when he stopped being paid for services he was rendering to his employer. While the evidence was unclear as to whether this occurred in October of 2000 or May of 2001, the General Division found that it did not matter which date was accurate, as Mr. Pooran did not return to Canada within six months of either date. The General Division acknowledged Mr. Pooran's explanation for his delay in returning to Canada, but found that the governing legislation made no exception for extenuating circumstances.

[7] Given that Mr. Pooran had not established residency in Canada for at least 20 years, his appeal to the General Division was dismissed, and it was not necessary to determine whether he had maintained a residence in Canada during the time that he was working in the UK.

[8] Leave to appeal to the Appeal Division was granted solely with respect to the question of when Mr. Pooran's employment with the Commonwealth Secretariat ended.

IV. The Appeal Division's Decision

[9] Before the Appeal Division, Mr. Pooran reiterated his argument that the end of his employment did not occur until October of 2003, when the Commonwealth Secretariat paid for his return to Canada, thereby fulfilling the terms of his employment contract.

[10] The Appeal Division rejected Mr. Pooran's argument, finding that the General Division had not erred in concluding that his employment with the Commonwealth Secretariat had ended when he stopped being paid for services he was providing to his employer. Whether this occurred in October of 2000 or May of 2001 made no difference, as Mr. Pooran did not return to Canada within six months of either date.

V. Standard of Review

[11] The standard of review applicable to decisions of the Appeal Division is reasonableness: *Cameron v. Canada (Attorney General)*, 2018 FCA 100, 292 A.C.W.S. (3d) 564 at para. 3.

Consequently, the question for the Court is not whether Mr. Pooran ought to have received OAS pension benefits, but rather whether the Appeal Division's decision as to when his employment with the Commonwealth Secretariat ended was reasonable.

VI. Analysis

[12] Mr. Pooran could only succeed in his application for OAS benefits if he could establish that he returned to Canada within six months of the end of his employment with the Commonwealth Secretariat. It is noteworthy that subparagraph 21(5)(a)(viii) of the Regulation uses the phrase "the end of his employment out of Canada" and not "the end of his employment contract", "upon fulfillment of all of the terms of the employment contract", or words to that effect.

[13] As the Appeal Division noted, in the absence of a statutory definition or jurisprudential consideration of the meaning of the phrase "end of employment", it was reasonable for the General Division to have regard to dictionary definitions of the term "employment". In light of these definitions, it was, moreover, reasonable to find that employment ends when an individual stops being paid by his or her employer in exchange for services being provided to the employer by the individual.

[14] Mr. Pooran completed a Statement of Residency in connection with his application for OAS benefits. He stated in this document that his employment with the Commonwealth Secretariat was terminated prematurely in May of 2001. An arbitration decision relating to the

termination of Mr. Pooran's employment also found that his employment ended in May of 2001. There was thus evidence to support the General Division's finding that Mr. Pooran's employment with the Commonwealth Secretariat had ended by May of 2001, at the latest.

VII. Conclusion

[15] Given that the parties agree that Mr. Pooran did not return to Canada until November of 2003, it was reasonable for the Appeal Division to find that the years he spent working for the Commonwealth Secretariat should not be counted as years that he was resident in Canada. That being the case, Mr. Pooran lacked the requisite 20 years of residency in Canada, and it was reasonable for the Appeal Division to dismiss his appeal. Mr. Pooran's application for judicial review is accordingly dismissed, without costs.

"Anne L. Mactavish"

J.A.

"I agree.

Donald J. Rennie J.A."

"I agree.

Marianne Rivoalen J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-379-18

STYLE OF CAUSE: PETER PHILIP POORAN v. THE
ATTORNEY GENERAL OF
CANADA

**APPLICATION FOR JUDICIAL REVIEW DEALT WITH IN WRITING WITHOUT
APPEARANCE OF PARTIES**

REASONS FOR JUDGMENT BY: MACTAVISH J.A.

CONCURRED IN BY: RENNIE J.A.
RIVOALEN J.A.

DATED: SEPTEMBER 22, 2021

WRITTEN REPRESENTATIONS BY:

Peter Philip Pooran

FOR THE APPLICANT
(SELF-REPRESENTED)

John Unrau

FOR THE RESPONDENT

SOLICITORS OF RECORD:

A. François Daigle
Deputy Attorney General of Canada

FOR THE RESPONDENT