



[TRANSLATION]

Citation: *NK v Minister of Employment and Social Development*, 2023 SST 395

**Social Security Tribunal of Canada**  
**General Division – Income Security Section**

**Decision**

**Appellant:** N. K.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated October 5, 2021 (issued  
by Service Canada)

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**Tribunal member:** François Guérin

**Type of hearing:** Videoconference

**Hearing date:** March 30, 2023

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** April 5, 2023

**File number:** GP-22-67



## Decision

[1] The appeal is allowed in part.

[2] The Appellant, N. K., was a resident of Canada under the *Old Age Security Act* (OAS Act) from March 20, 1989, to December 31, 1998, for a total of 9 years, 9 months, and 12 days.

[3] The Appellant wasn't a resident of Canada under the OAS Act from January 1, 1999, to March 30, 2023.

[4] This decision explains why I am allowing the appeal in part.

## Overview

[5] The Appellant arrived in Canada from the Democratic Republic of the Congo (DRC) as a refugee on March 20, 1989. He applied for an Old Age Security (OAS)<sup>1</sup> pension on May 25, 2017, and asked to be considered for the Guaranteed Income Supplement (GIS).<sup>2</sup> In his application, the Appellant indicated that he hadn't been absent from Canada for more than six consecutive months.<sup>3</sup> His application was approved on June 14, 2017, for a partial pension of 28/40 effective August 2017,<sup>4</sup> and his application for the GIS was approved on March 15, 2018, effective August 2017.<sup>5</sup>

[6] The Respondent (Minister), questioning the Appellant's presence in Canada, submitted a request to Integrity Services to verify his residence status in Canada.<sup>6</sup>

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<sup>1</sup> GD2-3 to GD2-6.

<sup>2</sup> GD2-4, section 11.

<sup>3</sup> GD2-4, section 14.

<sup>4</sup> GD4-4, para 15.

<sup>5</sup> GD2-9 and GD2-10.

<sup>6</sup> GD2-14, GD2-15, and GD2-18.

[7] After investigating, the Minister concluded that the Appellant had resided in Canada only from March 20, 1989, to May 24, 1995, for a total of 6 years and 66 days. It sent him a new decision where it informed him of an OAS and GIS overpayment for a total of \$18,007.70.<sup>7</sup>

[8] The Appellant asked the Minister to reconsider its decision.<sup>8</sup> The Minister upheld this decision on reconsideration.<sup>9</sup> He appealed the reconsideration decision to the Tribunal.<sup>10</sup>

## **What the Appellant has to prove**

[9] For the Appellant to succeed, he has to prove, on a balance of probabilities, that he was a resident of Canada under the OAS Act since March 20, 1989.

## **What is the Minister's position?**

[10] The Minister says that the Appellant was a resident of Canada under the OAS Act from March 30, 1989, to May 24, 1995, for a total of 6 years and 66 days.<sup>11</sup> That means he isn't eligible for the OAS or the GIS because he doesn't have the minimum period required under the OAS Act. The Minister also considers that certain periods claimed by the Appellant as periods of residence in Canada are only periods of presence under the *Old Age Security Regulations*.

## **What is the Appellant's position?**

[11] The Appellant says that he has always been a resident of Canada under the OAS Act from his entry into Canada on March 30, 1989, to the present day, except during his period of absence from 1999 to 2003.<sup>12</sup>

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<sup>7</sup> GD2-577 to GD2-579.

<sup>8</sup> GD2-580.

<sup>9</sup> GD2-682 and GD2-683.

<sup>10</sup> GD1.

<sup>11</sup> GD3-2, para 2.

<sup>12</sup> GD8-9.

## **Matters I have to consider first**

### **The Appellant had to be represented at the hearing**

[12] The Appellant had suggested that he would be represented at the hearing but didn't send the Tribunal a formal notice. The Tribunal noted that the Appellant was alone at the hearing. He said that his representative had an accident and wasn't present. The Tribunal asked the Appellant whether he would prefer the Tribunal to adjourn the hearing to a later date when his representative would be available or when he would be back in Canada. The Appellant is currently in the DRC. He replied that he knew the file well and was ready to proceed. So, the hearing took place.

### **I accepted the documents submitted after the hearing**

[13] At the hearing, the Tribunal asked the Appellant to submit a complete list of the names and dates of birth of his children with his first wife, A., and the dates of their marriage, separation, and divorce. The Tribunal told the Minister that it would accept this submission from the Appellant and that, upon receipt, this document would be shared with it without the right of reply. It agreed with that.

[14] The Appellant submitted that list on March 31, 2023,<sup>13</sup> and it was shared with the Minister on April 3, 2023. Although the Tribunal insisted on it, this list didn't have information about the date of the Appellant's marriage, separation, and divorce with that wife. Also, the list only had the names and dates of birth of six children. In two interviews with the Minister, on April 13, 2018,<sup>14</sup> and September 28, 2018,<sup>15</sup> he spoke of eight children with his first wife, also to four children with his current partner.

### **– Case law and Canadian residence**

[15] **The burden of proof, on a balance of probabilities, is on the Appellant.**<sup>16</sup>

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<sup>13</sup> GD9.

<sup>14</sup> GD2-27.

<sup>15</sup> GD2-23.

<sup>16</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.

[16] For the purposes of the OAS Act, a person resides in Canada if they make their home and ordinarily live in any part of Canada. This concept is distinct from the concept of presence. A person is present in Canada when they are physically present in any part of Canada.<sup>17</sup> A person may be present in Canada without being a resident of Canada.

[17] Residence is a question of fact that must be decided on the particular facts of each case. **A person's intentions aren't decisive.** *Ding*<sup>18</sup> established a non-exhaustive list of factors to be considered in order to guide the Tribunal in deciding the issue of residence:

- a. ties in the form of personal property
- b. social ties in Canada
- c. other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.)
- d. ties in another country
- e. regularity and length of stays in Canada in relation to the frequency and length of absences from Canada
- f. the person's mode of living, or whether the person living in Canada has significant roots there

[18] The Appellant has to prove that it is more likely than not that he was a resident of Canada under the OAS Act since March 20, 1989. **The burden of proof, on a balance of probabilities, is on the Appellant.**<sup>19</sup>

### **The Appellant's credibility**

[19] At the hearing, the Appellant appeared to be a very pleasant person. He was very articulate but was also evasive in some of his answers. He didn't want to answer

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<sup>17</sup> Section 21(1) of the *Old Age Security Regulations*.

<sup>18</sup> *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

<sup>19</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.

some of the Tribunal's questions, for example, about his family situation in the DRC, and was very unclear about the dates of separation and divorce from his wife A. around 2010.

[20] Another example is when the Tribunal asked the Appellant about his trip to Thailand. He simply said that he had been there for private reasons, without any further details. But, he also admitted at times that he could forget things as he aged.

[21] The Appellant was even somewhat defensive. For example, when the Tribunal asked him to clarify about the loss or destruction of his passports, he testified that they were lost after his divorce or in a fire in the DRC without being specific. When the Tribunal asked why he kept his Canadian passports in the DRC, he replied that [translation] "the Tribunal went too far and he had the right to keep them where he wanted to."

[22] The Tribunal asked him whether he had told police or Passport Canada that his passports had been destroyed or lost. He replied that he said [translation] "that he didn't have them anymore." But, if what the Appellant insinuates is true, namely that he kept his Canadian passports in the DRC, it seems to show the Tribunal that his safe home base is in the DRC and not in Canada.

[23] Also regarding his passports, the Tribunal asked him why, in 2012, he asked to renew his passport issued in August 2010, saying that there were no blank pages left in his passport. It also asked him whether this was because he was travelling a lot then.<sup>20</sup> He replied that there is no way he could have travelled so much that he would have completed all the pages of a passport.

[24] When asked by the Tribunal whether he was saying that he had spent all his time in Canada from August 2010 to February 2012, the Appellant answered, [translation] "Yes, that was right and he was saying it [*sic*]." But, this statement at the hearing also

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<sup>20</sup> GD2-229.

contradicts the travel history from the Canada Border Services Agency (CBSA), indicating several entries to Canada during this period.<sup>21</sup>

[25] The Tribunal tried to establish the Appellant's family ties in both the DRC and Canada by reconstructing his life history. He said he was married several times but would not share the information since he felt it was private. But, he admitted that he lived in the DRC with M. M. as a couple, and that he had three children with her. He didn't want to add details by explaining the cultural context of marital and extramarital relationships in his home country. He asked the Tribunal not to ask questions about his family life and his marital and extramarital relationships.

[26] This means that the Tribunal can't assess whether the Appellant's time in Canada is based on presence or residence in terms of family ties in Canada and the DRC. The burden of proof, on a balance of probabilities, is on the Appellant.<sup>22</sup>

[27] But, the Appellant agreed to the Tribunal asking questions about his legal spouse and his current partner. Given the dates of birth of the children he shares with his current partner, the Tribunal asked when the separation and divorce from his legal spouse occurred. The Appellant hesitated and didn't respond. He also didn't provide those dates in the list of dates he sent to the Tribunal, even though it asked for them.<sup>23</sup> He testified that his wife wasn't formally aware of that relationship but that she probably knows given the cultural norms of these circumstances in the DRC.

[28] In his OAS application, he said that he was continuously a resident in Canada since arriving on March 20, 1989, without interruption.<sup>24</sup> He also didn't report any absences from the country lasting longer than six months.<sup>25</sup> When the Tribunal asked him why he didn't report his absence from Canada from 1999 to 2003, he said that he

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<sup>21</sup> GD2-118.

<sup>22</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>23</sup> GD9.

<sup>24</sup> GD2-3 to GD2-6.

<sup>25</sup> GD2-4, section 14.

misread and forgot to mention it. But, he noted to the Tribunal that he admitted that in his March 13, 2023, submission to the Tribunal.<sup>26</sup>

[29] Although he said that he didn't know that he had to report his absences from Canada to the RAMQ or to Quebec's Income Security (last-resort social assistance) authorities, the Appellant admitted that he didn't report his absences when he considered them short-term. He still received welfare when he was travelling. For this reason, the Tribunal will give very little weight to the periods when the Appellant was receiving social assistance to support a Canadian residence.

[30] At the hearing, the Appellant testified that he had a bank account with BMO for some time after arriving in Canada. This account is in his name and consists of only one bank card. But, he testified that he and his partner used this card and that they both know its PIN. For this reason, the Tribunal will give very little weight to bank statements<sup>27</sup> to support a Canadian residence.

[31] On February 21, 2020, the Minister sent the Appellant a letter requesting a complete history of residence from when he arrived in Canada to the date of that letter, along with proof of entry and exit from Canada.<sup>28</sup> He responded that he doesn't have proof of entry and exit.<sup>29</sup> But, the burden of proof, on a balance of probabilities, is on the Appellant.<sup>30</sup>

[32] The Tribunal noted that, in an interview with the Service Canada investigator on April 13, 2018, the Appellant answered that he never went to the United States. But, the Tribunal also noted that in the CBSA's travel history, there were crossings through land ports of entry. There were also transactions in the United States in his bank statements.

[33] When asked by the Tribunal about that situation, the Appellant admitted that he went to New York a few times and to Texas once for a few days. He also admitted that

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<sup>26</sup> GD8-9.

<sup>27</sup> GD2-245 to GD2-561.

<sup>28</sup> GD2-570 to GD2-575.

<sup>29</sup> GD2-576.

<sup>30</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.



he didn't inform Quebec's last-resort assistance services about his travels abroad while receiving social assistance.<sup>31</sup>

[34] This situation troubles the Tribunal and makes it question the veracity of the Appellant's testimony and submissions. The Tribunal will prefer more substantial evidence to establish the Appellant's Canadian residence.

[35] The Appellant arrived in Canada as a refugee on March 20, 1989. This status was recognized on June 7, 1990.<sup>32</sup> On June 13, 1990, he applied for a travel document to go to the DRC to see his ailing mother.<sup>33</sup> He explained that he went there, was smuggled through Brazzaville (Republic of the Congo), and crossed the border illegally to get there. He only stayed there for two weeks. When questioned by the Tribunal, he said that his mother had severe diabetes. The Appellant testified that she died around 1998.

[36] The Tribunal asked him whether—during his subsequent trips to the DRC, since the Appellant had children born there in 1993, 1995, and 1997<sup>34</sup>—he had gone there the same way, specifically via Brazzaville and crossing the DRC border illegally. He admitted that this was the case. The Appellant also said that he can now go directly to the DRC through Kinshasa since Mobutu's departure around 1997.

[37] This shows the Tribunal that the Appellant disregards laws, no matter what country, to get what he is looking for. Also, if he crossed the border between the DRC and the Republic of the Congo illegally, he could also do so between Canada and the United States, which have a very long shared land border that is only loosely monitored or not at all in many places. The Tribunal can give little credibility to what the Appellant does, says, or submits.

[38] The Tribunal noted that the Appellant contradicted himself in his testimony. At the outset, when the Tribunal asked him how he would pay for his plane ticket back to

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<sup>31</sup> GD2-83 to GD2-89, and GD2-106 to GD2-116.

<sup>32</sup> GD2-243.

<sup>33</sup> GD2-242.

<sup>34</sup> GD8-11.

Canada, he said that he would pay for it with his credit card, and that he didn't know its limit. Later at the hearing, when the Tribunal discussed his financial ties with him, the Appellant testified that he didn't have a credit card and that he only had a debit card to access his account. This gives the Tribunal the impression that the Appellant responds to questions without any concern for giving accurate answers. So, the Tribunal can't rely on the accuracy of the Appellant's answers.

[39] When asked about his previous addresses, the Appellant no longer remembered living on X Street. Instead, he referred to the X and living on X Street. The Tribunal can only note that, according to the RAAQ [sic],<sup>35</sup> he had lived on X Street for almost 12 years and on X Street for only 3 years. That is at odds with Service Canada's address history,<sup>36</sup> which refers instead to X, X, and X Streets during that period.

[40] Also, during an interview with the Minister, the Appellant allegedly said that he lived with his brother on X Street, which isn't listed in the above-mentioned address lists, to allow him to receive social assistance.<sup>37</sup> Also, later at the hearing, the Appellant admitted to owning a house on X Street, for which he declared bankruptcy. Again, this gives the Tribunal the impression that the Appellant answers questions without any concern for giving accurate answers. So, the Tribunal can't rely on the accuracy of the Appellant's answers.

[41] The Tribunal finds that using addresses in Canada to go to medical appointments, get social services, have a lease with an immediate family member who is paid in cash, or live with a family member for free, doesn't show ties strong enough to establish, on a balance of probabilities, a Canadian residence, especially since the Appellant can't answer questions about his frequent trips abroad,<sup>38</sup> and he answers questions without any concern for giving accurate answers. So, the Tribunal can't rely on the accuracy of the Appellant's answers.

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<sup>35</sup> GD2-680 and GD2-681.

<sup>36</sup> GD2-57.

<sup>37</sup> GD2-23.

<sup>38</sup> GD2-576.

[42] The Tribunal asked the Appellant to comment on notes in the Minister's file indicating that it suspected that the Appellant wasn't in Canada when he contacted Service Canada on March 27, 2018, but was rather in the DRC.<sup>39</sup> The Appellant replied that this comment is subjective and is only the opinion of the person who wrote it, that it is only their point of view, and that he isn't discussing their point of view. When the Tribunal asked him whether he confirmed that he wasn't in the DRC on March 27, 2018, the Appellant answered, [translation] "exactly." But, the Tribunal can only note that the CBSA's traveller history indicates that the Appellant entered Canada on April 5, 2018.<sup>40</sup> The burden of proof, on a balance of probabilities, is on the Appellant.<sup>41</sup>

[43] For all of these reasons, the Tribunal finds that the Appellant isn't a credible person in terms of his submissions and testimony. The burden of proof, on a balance of probabilities, is on the Appellant.<sup>42</sup>

## **Was the Appellant a resident of Canada under the OAS Act?**

### **– The Appellant's ties to Canada**

[44] The Appellant is currently in the DRC and testified that he left Canada around December 20, 2022. He hasn't bought his return ticket yet and thinks he should be back in about a month. He is paying for it with his BMO credit card.

[45] The Appellant says that he has been a Canadian citizen since about 1993 and that it is his only citizenship. He explains that when a Congolese person acquires another citizenship, they automatically lose Congolese citizenship. He says that he doesn't have a Congolese national identity card and uses his Canadian passport. But, he has a voter's card. He says that the government provides non-citizens with a voter's card but that they can't or should not use it. Since he is entering the DRC with his Canadian passport, the Tribunal asked him whether he gets a visa from the DRC to

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<sup>39</sup> GD2-18.

<sup>40</sup> GD2-118.

<sup>41</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>42</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.

enter. He said that the DRC gives him an official visa at the airport because he is Congolese by birth.

[46] He says that he has lived for about two years on X Street. He used to live in a co-op on X Street, first in a smaller apartment and then when his family joined him, in a larger apartment.<sup>43</sup> He now lives in a three-bedroom apartment with his partner and their four children, one of whom is a disabled daughter. He says that he pays rent with cash and that he has always done this for his rent, both on X and on X.

[47] When looking at the Appellant's bank statements,<sup>44</sup> the Tribunal finds cash withdrawals very rarely, and these amounts aren't constant and regular. There are also Interac transfers of different amounts, but the Appellant didn't mention paying the rent using this method.

[48] The Appellant testified that he had a Quebec driver's licence since shortly after arriving in Canada in 1989. He always had it but is no longer sure whether it was valid when he was absent from 1999 to 2003.<sup>45</sup> He also almost always had a motor vehicle registered in Quebec and he paid auto insurance for it.

[49] When asked why he hadn't submitted confirmation of his driving history from the Société de l'assurance-automobile du Québec [Quebec's Automobile Insurance Corporation] (SAAQ) or of his automobile insurance history, the Appellant said that he didn't know he could do so. When asked why he submitted his change of address to the SAAQ on June 13, 2012,<sup>46</sup> when he had moved to X on June 1, 2011, he said that he had no idea and didn't know that he had to.

[50] The Tribunal notes that the lease submitted by the Appellant is for a three-bedroom apartment, effective August 1, 2011. This means that is the largest apartment that the Appellant would have rented in this cooperative when his family

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<sup>43</sup> GD2-66 to GD2-68.

<sup>44</sup> GD2-245 to GD2-561.

<sup>45</sup> GD8-9.

<sup>46</sup> GD2-680.

arrived. He testified that he lived in the same co-op in a smaller apartment just before—a one-bedroom apartment.

[51] As a result, the Tribunal can only find that the Appellant also didn't change his address with the SAAQ and that he was delinquent with the SAAQ in this regard. This again shows the Tribunal that the Appellant doesn't follow the rules set by public agencies and casts doubt on all the documents the Appellant submitted to the Tribunal and on the information he shared with public agencies. But, the burden of proof, on a balance of probabilities, is on the Appellant.<sup>47</sup>

[52] The Tribunal testified that the utility accounts associated with his housing in Canada were mostly in his name. He was the one paying them and he did so either with cash or his bank accounts.<sup>48</sup> But, when verifying the Appellant's bank statements, there are very few payments for public utilities: sometimes there were payments to Hydro-Québec, Videotron, Public Mobile, TBooth Wireless, but not very often or regularly.

[53] The Tribunal asked the Appellant why he only provided one bill for Videotron from March 2018.<sup>49</sup> He explained that the account was in his daughter's name because he had bad credit. He said that he was the one paying the account and that his daughter didn't live with him. This also seems to be a contradiction because earlier at the hearing, he testified that he lived with his partner and their four children. But, this girl may have been from his marriage to A.

[54] The Appellant explained that he went bankrupt only once, around 1997, because he could no longer pay the costs associated with his home on X Street. The National Bank foreclosed the house. The Tribunal finds that the information about this house is inconsistent with the information he gave the SAAQ.<sup>50</sup>

[55] The Appellant says that he has been covered by the Régie de l'assurance-maladie du Québec [Quebec's health insurance board] (RAMQ) since shortly after

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<sup>47</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>48</sup> GD2-245 to GD2-561.

<sup>49</sup> GD2-60.

<sup>50</sup> GD2-681.

arriving in Canada except during his years of reported absences—from 1999 to 2003.<sup>51</sup> He admitted in his testimony that he hadn't notified the RAMQ of his absences from Quebec.

[56] The Appellant only contributed to the Régie des Rentes du Québec [Quebec pension board] (RRQ) (now Retraite Québec) for two years, in 1989 and 1990.<sup>52</sup> He made contributions that didn't meet the minimum required to qualify for a pension for six years, from 1991 to 1993, in 1995, and from 1997 to 1998. He testified that he tried to start his business and was a real estate agent. He said that it was difficult for him to find work in government and in the private sector. In spite of this, he turned to last-resort social assistance.

[57] The Tribunal asked the Appellant why he was travelling abroad so much when he said he was looking for a job in Montreal. He says he lives modestly. But, when looking at the Appellant's chart of entries to Canada<sup>53</sup> confirming his frequent trips abroad, the Tribunal isn't certain whether the Appellant's mode of living is significantly rooted in Canada, especially since the Appellant can't support his dates of entry and exits from Canada.

[58] When asked, the Appellant estimated that, overall, he spends about 10% of his time outside Canada and 90% of the time in Canada. But, this may vary, like during his reported absence from 1999 to 2003 and some years when he doesn't travel. But, the Appellant doesn't have evidence of entering or leaving Canada.<sup>54</sup>

[59] The Appellant has submitted his income tax returns to the Canada Revenue Agency (CRA) since arriving in 1989. But, the Tribunal noted that the Appellant submitted some of his returns late,<sup>55</sup> and that his return wasn't filed in 2006.<sup>56</sup>

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<sup>51</sup> GD8-9.

<sup>52</sup> GD2-123.

<sup>53</sup> GD2-118.

<sup>54</sup> GD2-576.

<sup>55</sup> GD2-164 to GD2-171, GD2-174, and GD2-176.

<sup>56</sup> GD2-172.

[60] The Appellant testified that the obligation to file his returns on time is only for people with higher incomes and that there is no obligation for people with little income. He filed his returns to be able to get some credits. He also says that he filed his return for 2006. He also testified that he had a history of filing them late. The Tribunal commented that these delays may also be because of the Appellant's frequent trips.

[61] The Appellant testified that his companies in Canada have always been registered and none have been incorporated. He said that one of his registrations had to be changed because the name of his registered company was too similar to another company's. The registration was cancelled because of a name change.<sup>57</sup>

[62] The Appellant testified that he has no financial or real estate investment. He has had a bank account with a bank card since shortly after arriving in Canada.<sup>58</sup> He has only had life insurance for about three or four years at Manulife, and he makes monthly payments for it by money order when he receives a bill.

[63] The Appellant testified that, since arriving in Canada, he has been [translation] "very involved" with community Baptist churches. The Tribunal asked him to define [translation] "very involved." He added that he has been a member of a Pentecostal church since shortly after arriving. He wasn't a pastor, but was an evangelist to preach to members to be good Christians. He spends about at least six hours per week on his pastoral role. He provides guidance, especially to young people. Since arriving, he has done this at two or three churches. His network of friends and acquaintances in Canada is linked to his involvement with his church.

[64] The Tribunal asked the Appellant why he feels he is more rooted in Canada than anywhere else in the world, particularly in the DRC, given his frequent returns and being a [translation] "clan leader." He responded that this is because his direct and immediate family, his wife and children, are in Canada and that this is more valuable to him than anything else.

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<sup>57</sup> GD2-614 to GD2-616.

<sup>58</sup> GD2-245 to GD2-561.

– **The Appellant’s ties to the DRC**

[65] At the very beginning of the hearing, when the Tribunal asked the Appellant why he was in the DRC, he responded that he still has ties there and they haven’t been severed. There is family—uncles, nephews. He testified that his family is very important to him.

[66] Later, the Appellant testified that he no longer had ties or contacts in the DRC. The Tribunal asked the Appellant to explain his role as a [translation] “clan leader,” which—according to one of his well-off brothers who paid him [translation] “frequent” trips and stays in the DRC—is the Appellant’s responsibility. The Appellant explained that he is co-opted to be a clan leader. He testified that the role isn’t hereditary.

[67] But, that seems to contradict the Appellant’s statement to the Service Canada investigator when he told him that he inherited this position through his ancestors.<sup>59</sup> The Appellant testified that it is chosen by people and he can’t do anything about it. He will do everything possible to help his clan, even though he is now in Canada.

[68] The Tribunal asked the Appellant why his brother, who is a member of the same clan, could not become a clan leader, or why he simply could not give up his responsibilities given that he is now in Canada with his family. He responded that the choice is up to the tribe members and it is that [translation] “authenticity” that westerners can’t understand. Africans choose a clan leader because he is a sage.

[69] The Appellant indicated that he was in the DRC from 1999 to 2003.<sup>60</sup> He explained that he had a lot of problems after his mother died and during the period of his father’s death.

[70] He testified that when he left the DRC in 1989, he came to Canada because his brother lived here. He has no family in France or Belgium. He lived in the family home with his extended family. He doesn’t necessarily go back there when he is in the DRC. It

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<sup>59</sup> GD2-23.

<sup>60</sup> GD8-9.



is inhabited by family members and he could go back if needed. He no longer considers it home.

[71] The Appellant testified that he has no medical coverage in the DRC. He must pay for his medical care, as needed, out of pocket. But, that doesn't happen often. He pays cash and doesn't get receipts. He also doesn't buy travel insurance when he goes.

[72] The Appellant doesn't have a vehicle in the DRC or a Congolese driver's licence. He had a driver's licence in the DRC before leaving, but it expired and he never renewed it. He uses public transit or travels with his brother who has a vehicle.

[73] The Appellant testified that his community involvement is limited to acting as a [translation] "clan leader." He gives advice to people who need it. It is an occasional position that he spends very few hours on per week—[translation] "not much," as he put it. But, his brother said that he [translation] "frequently asked the Appellant, who is the clan leader, to settle disputes within his community [*sic*]." <sup>61</sup> The Appellant testified that this wasn't every week, not even every month, but once in a while.

[74] Given this contradiction, the Tribunal will give little weight to the letter of support from the Appellant's brother, especially since the Appellant justified his frequent returns to the DRC by stressing his role as a [translation] "clan leader."

[75] The Appellant's network of friends and acquaintances consists mainly of people they knew before coming to Canada and whom he occasionally sees when he is in the DRC.

## **The Tribunal's findings on the Appellant's periods of Canadian residence**

### **– March 20, 1989, to May 24, 1995**

[76] On a balance of probabilities, the Appellant was a resident of Canada under the OAS Act.

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<sup>61</sup> GD2-37.

[77] March 20, 1989, is the date the Appellant entered Canada and applied for refugee status at the Lacolle border crossing. May 24, 1995, is the date the registration for his business X was cancelled.<sup>62</sup>

[78] The Minister says that it won't reconsider its decision to consider the Appellant a resident of Canada under the OAS Act during that period, even after the Tribunal had asked him to explain his trip to the DRC with a refugee travel document as early as 1990 and the birth of some of his children in that country in 1993 and 1995.<sup>63</sup>

[79] The Tribunal is satisfied with the Minister's analysis for this period and, on a balance of probabilities, the Appellant was a resident of Canada under the OAS Act from March 20, 1989, to May 24, 1995.

– **May 25, 1995, to December 31, 1998**

[80] On a balance of probabilities, the Appellant was a resident of Canada under the OAS Act.

[81] The Appellant submitted new evidence about his period of residence<sup>64</sup> and reasonable explanations during his testimony that suggest to the Tribunal, on a balance of probabilities, that the Appellant was a resident of Canada under the OAS Act during that period.

[82] Looking at the chart listing the history of the RAMQ's insured medical services, the Tribunal notes that the Appellant had medical visits later in 1995, 1996, and 1997. Although there are long periods between these visits, there is still some doubt in the Tribunal's eyes that the Appellant can benefit from.

[83] Also, the Appellant submitted logical explanations taking into account his income and expenses as reported on the notices of assessment from the CRA from 1995 to 1998.<sup>65</sup> The Appellant also submitted his Real Estate Agent Certificate, which was valid

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<sup>62</sup> GD2-40.

<sup>63</sup> GD8-11.

<sup>64</sup> GD8.

<sup>65</sup> GD2-157 to GD2-162.

until December 31, 1995.<sup>66</sup> He says he owned a house for a time even though his financial venture ended in bankruptcy around 1997. The Appellant also submitted a confirmation letter from the registrar of O'Sullivan College in Montreal confirming that the Appellant was a full-time student for the 1996-97 school year, which explains the lower earnings during those years.

[84] The Tribunal is satisfied with the Appellant's explanations regarding the evidence in the submissions and finds that, during that period, on a balance of probabilities, the Appellant was a resident of Canada under the OAS Act.

– **From January 1, 1999, to March 30, 2023**

[85] On a balance of probabilities, the Appellant wasn't a resident of Canada under the OAS Act.

[86] **The burden of proof, on a balance of probabilities, is on the Appellant.**<sup>67</sup>

[87] January 1, 1999, is the first date when the Appellant admits not being in Canada.<sup>68</sup> March 30, 2023, is the date of the hearing the Appellant attended from the DRC.

[88] In his submission to the Tribunal on March 13, 2023, the Appellant said that he was absent from Canada from 1999 to 2003. This means that the length of stays in Canada in relation to the length of absences from Canada doesn't tilt in favour of a Canadian residence, and the Tribunal gives significant weight to this factor in its analysis.

[89] The Tribunal still asked the Appellant about a visit he allegedly made to a doctor in Canada on September 28, 1999,<sup>69</sup> during the period when he admits he wasn't in

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<sup>66</sup> GD2-613.

<sup>67</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>68</sup> GD8-9.

<sup>69</sup> GD2-130.

Canada. The Appellant believes, although he isn't sure, that he may have returned to Canada for short stays during this period.

[90] Although his role as a clan leader is voluntary,<sup>70</sup> it appears to the Tribunal that this active responsibility is very important to him and that it involves work and a very strong link with the DRC, even though this role is voluntary. His brother even indicates that he [translation] "frequently" asks the Appellant to settle disputes in his community and that the Appellant has to travel to the DRC for it. This active role carries more weight in the eyes of the Tribunal than the payments received in Canada for last-resort assistance that only passively helps Canadian citizens. Also, the Appellant testified that he didn't inform social assistance about his absences from Canada.

[91] The CBSA has been collecting travellers' entry information since 2001.<sup>71</sup> The Minister asked the Appellant to justify the information obtained by the CBSA.<sup>72</sup> The Appellant replied that he didn't have any proof of entry and exit regarding these trips.<sup>73</sup>

[92] The Appellant admitted that he wasn't in Canada from 1999 to 2003. The Tribunal finds that the Appellant isn't a credible person in terms of his submissions and testimony. The Appellant does have some ties to Canada, but he didn't want to answer some of the Tribunal's questions and, at other times, he didn't give details or answered the Tribunal's questions very generally.

[93] **The burden of proof remains on the Appellant.** For these reasons, the Tribunal finds that, on a balance of probabilities, the Appellant wasn't a resident of Canada under the OAS Act from January 1, 1999, to March 30, 2023.

## Conclusion

[94] Canadian citizenship gives the Appellant the right to enter and leave Canada without constraint, as many times as he wants and for as long as he wants. A person

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<sup>70</sup> GD2-37.

<sup>71</sup> GD2-118.

<sup>72</sup> GD2-570 to GD2-575.

<sup>73</sup> GD2-576.

may be present in Canada without being a resident of Canada, even if they have Canadian citizenship.

[95] The Tribunal finds that the Appellant isn't a credible person in terms of his submissions and testimony. The burden of proof, on a balance of probabilities, is on the Appellant.<sup>74</sup>

[96] Even so, given the evidence on file and by accepting some of the testimony supported by this documentary evidence, the Tribunal finds that the Appellant was a resident of Canada under the OAS Act, on a balance of probabilities, from March 20, 1989, to December 31, 1998. This represents a total of 9 years, 9 months, and 12 days.

[97] The Tribunal finds that the Appellant hasn't discharged the burden of proving that, on a balance of probabilities, he was a resident of Canada under the OAS Act, from January 1, 1999, to March 30, 2023.

[98] The Appellant doesn't meet the minimum required to be eligible for the OAS, so he isn't eligible for the GIS either.

[99] As a result, the appeal is allowed in part because the Tribunal changed the Appellant's period of Canadian residence.

François Guérin  
Member, General Division - Income Security Section

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<sup>74</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.