Federal Court of Appeal

Cour d'appel fédérale

Date: 20260121

Docket: A-30-25

Citation: 2026 FCA 11

2026 FCA 11 (CanLII)

CORAM: **LOCKE J.A.**
ROUSSEL J.A.
GOYETTE J.A.

BETWEEN:

ANTONIO J CARDENAS and GLORIA C CARDENAS

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on January 20, 2026.
Judgment delivered from the Bench at Montréal, Quebec, on January 20, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: GOYETTE J.A.

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<u>REASONS FOR JUDGMENT OF THE COURT</u>
(Delivered from the Bench at Montréal, Quebec, on January 20, 2026).

<u>GOYETTE J.A.</u>

[1] Mr. Antonio J. Cardenas and his wife, Mrs. Gloria C. Cardenas, were each denied a full pension under the *Old Age Security Act*, R.S.C. 1985, c. O-9. Instead, the Minister of Employment and Social Development awarded them a partial pension based on the number of years during which they resided in Canada. The Social Security Tribunal of Canada's Appeal Division agreed with the Minister: 2024 SST 1453. The Appeal Division's decision only

addresses the details of Mr. Cardenas' situation. But it also applies to Ms. Cardenas, who was added as a party and whose situation was almost the same as her husband's.

[2] Mr. and Mrs. Cardenas seek judicial review of the Appeal Division's decision.

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[3] Mr. Cardenas resided in Canada from 1974 until September 1996. However, from September 1996 until October 2010, Mr. Cardenas lived abroad and worked for Canadian companies. During that period of 14 years, he spent only about 2½ months in Canada.

[4] The Appeal Division determined that Mr. Cardenas did not reside in Canada during this period within the meaning of paragraph 21(1)(a) of the *Old Age Security Regulations*, C.R.C., c. 1246, because he did not make his home and did not ordinarily live in any part of Canada during these years.

[5] The Appeal Division further determined that Mr. Cardenas' absence from Canada could not count as a period of residence under subsections 21(4) and 21(5) of the *Regulations*. Subsections 21(4) and 21(5) "deem time spent working abroad for [Canadian companies] not to interrupt a person's residence in Canada if that person returned to this country within the six months following the end of their employment, and if they had at all times during the period abroad maintained a 'permanent place of abode to which [they] intended to return' or a 'self-contained domestic establishment' in Canada": *Paulus v. Canada (Attorney General)*, 2025 FCA 162 at para. 9.

[6] Mr. and Mrs. Cardenas disagree with the Appeal Division's findings. They insist that they maintained a self-contained domestic establishment in Canada, and that the Appeal Division failed to consider that they came back to Canada for a few days in February 2009, that is, within six months after Mr. Cardenas' work assignment in Brazil.

[7] In a judicial review application, it is not this Court's role to re-weigh the evidence before the Appeal Division. The Court's role is to determine whether the Appeal Division's decision was reasonable. This means that this Court must be satisfied that the decision is transparent, intelligible and justified in relation to the relevant factual and legal constraints bearing upon it: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 99.

[8] The Appeal Division concluded that Mr. Cardenas did not maintain a "permanent place of abode" or maintain a "self-contained domestic establishment" after carefully reviewing the evidence and considering its previous decision on the meaning of these terms.

[9] As to Mr. Cardenas' return to Canada in February 2009, the Appeal Division did consider it: see para. 78 of its decision. However, because this return happened after Mr. Cardenas had ceased to reside in Canada, and because he did not have a "permanent place of abode" or maintain a "self-contained domestic establishment" during the relevant period, he could not benefit from subsections 21(4) and 21(5) of the *Regulations*: see paras. 75 to 78 of the decision.

[10] Mr. and Mrs. Cardenas do not point to any element that convinces us that these conclusions are unreasonable.

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[11] For these reasons, the application will be dismissed. The respondent does not seek his costs, and none will be awarded.

"Nathalie Goyette"

J.A.

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-30-25
STYLE OF CAUSE:	ANTONIO J CARDENAS and GLORIA C CARDENAS v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	JANUARY 20, 2026
REASONS FOR JUDGMENT OF THE COURT BY:	LOCKE J.A. ROUSSEL J.A. GOYETTE J.A.
DELIVERED FROM THE BENCH BY:	GOYETTE J.A.

APPEARANCES:

Antonio J Cardenas	FOR THE APPLICANTS ON HIS OWN BEHALF
Ian McRobbie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT

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