

Docket: 2013-318(IT)G

BETWEEN:

SAMI AGREBI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on April 17, 2014, at Montreal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Alain Gareau

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**JUDGMENT**

In accordance with the attached Reasons for Judgment, the appeal from the determinations made under the *Income Tax Act* for the 2008 and 2009 base years with respect to the goods and services tax credit, and for the 2005, 2006, 2007, 2008 and 2009 taxation years with respect to the Canada child tax benefit, is dismissed.

Under the circumstances, no costs will be awarded.

Signed at Ottawa, Ontario, this 9th day of May 2014.

“Gaston Jorré”

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Jorré J.

Translation certified true  
on this 27th day of November 2014.

Erich Klein, Revisor

Citation: 2014 TCC 141  
Date: 20140509  
Docket: 2013-318(IT)G

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and

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### **REASONS FOR JUDGMENT**

**Jorré J.**

#### **Issue**

[1] The appellant is appealing determinations made with respect to the Canada child tax benefit and the goods and services tax credit.

[2] One of the essential conditions to be met in order for a person to be the “eligible individual” for the purpose of receiving the child tax benefit and the GST credit is being resident in Canada.<sup>1</sup>

[3] The Minister of National Revenue admits that the appellant became a resident of Canada again on July 24, 2010, and that, consequently, he is entitled to receive the Canada child tax benefit and the GST credit as of August 2010.

[4] At issue is whether the appellant was resident in Canada in 2005, 2006, 2007, 2008 and 2009 and during the period from January 1 to July 23, 2010, as he contends, or whether he was not, as the respondent contends.

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<sup>1</sup> See, with respect to the Canada child tax benefit, paragraph (c) of the definition of “eligible individual” in section 122.6 of the *Income Tax Act* and see as well subsection 122.61(1) of the Act. See, with respect to the goods and services tax credit, paragraph 122.5(2)(c).

## Facts

[5] The appellant is from Tunisia and is a Tunisian citizen. He obtained a work permit and came from Tunisia to work in Canada. While he was in Canada, he got married in May 2001. In April 2002, the appellant and his wife became parents of a daughter.

[6] On May 31, 2001, Citizenship and Immigration Canada decided to execute a removal order against the appellant. The effect of this order was to oblige the appellant to leave the country, which he did on December 16, 2004.

[7] The removal order also had as a consequence the termination of his Canadian work permit.

[8] The mother was not able to take care of the child and there was no one else in Canada who could do so.

[9] Consequently, the mother authorized the appellant to take their daughter with him and the appellant and his daughter left for Tunisia, his country of origin, in December 2004.

[10] The appellant and his daughter remained in Tunisia until he returned to Canada on July 24, 2010. Before his arrival in Canada the first time and during the entire period at issue, the appellant was a Tunisian citizen.

[11] The appellant resided with his parents in Tunisia. He received considerable financial support from his family. In addition, his sisters helped him raise his daughter.

[12] The appellant's wife remained in Canada.

[13] While he was in Tunisia, the appellant and his wife took steps to enable him to return to Canada. In particular, his wife filed applications to sponsor a member of the family class.<sup>2</sup>

[14] At last, their efforts were successful and the appellant and his daughter returned to Canada in July 2010.

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<sup>2</sup> The efforts made are reflected in, *inter alia*, Exhibits A-10 to A-15.

[15] The period during which the appellant was in Tunisia was difficult and all of these events have caused serious problems for his daughter. The appellant's current situation continues to be difficult.

### **Analysis**

[16] The issue before me is very specific: was the appellant resident in Canada from January 1, 2005, to July 23, 2010, a period of approximately five and a half years?

[17] During that period the appellant was not in Canada and could not legally enter Canada.

[18] The appellant submits that he remained a resident of Canada because he left involuntarily.

[19] Determining whether a person is resident is a question of mixed fact and law. There is considerable case law on the subject.

[20] As the Federal Court of Appeal recognized in *Canada v. Laurin*:<sup>3</sup>

2 ... a person is resident in the country where he or she, in the settled routine of life, regularly, normally or customarily lives, as opposed to the place where the person unusually, casually or intermittently stays. . . .

[21] During the period of more than five years in question, the appellant, a Tunisian citizen, had significant ties to Tunisia. He lived in Tunisia with his daughter at his parents' home. He had a bank account in Tunisia.

[22] During that period, his wife was in Canada and he wanted to return to Canada,<sup>4</sup> but he did not have the right to enter Canada. Until he obtained a visa, there was no certainty that he would succeed in returning to Canada.

[23] Under such circumstances, I do not see how I could find that the appellant "regularly, normally or customarily" lived in Canada during the period of more than five years in question.<sup>5</sup>

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<sup>3</sup> 2008 FCA 58. See also, for example, paragraphs 11 and 12 of this Court's decision in *Bower v. The Queen*, 2013 TCC 183.

<sup>4</sup> I would note that residence is a question of fact and not intention, which is different from the matter of domicile where intention is a factor.

[24] Consequently, I must find that the appellant was not resident in Canada during the period in question. The appeal is dismissed.

Signed at Ottawa, Ontario, this 9th day of May 2014.

“Gaston Jorré”

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Jorré J.

Translation certified true  
on this 27th day of November 2014.

Erich Klein, Revisor

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<sup>5</sup> I note that there is a fundamental difference between the situation here and the one in *Slater v. Commissioner of Taxes*, [1949] NZLR 678, and as a result the reasoning in *Slater* cannot apply to the circumstances here. Mr. Slater had the right to return to New Zealand, his country, at any time; he had significant ties with New Zealand, including his house and his family, but he could not return for an extended period because he was being held as a prisoner of war.

CITATION: 2014 TCC 141

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THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: April 17, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: May 9, 2014

APPEARANCES:

For the appellant: The appellant himself

Counsel for the respondent: Alain Gareau

COUNSEL OF RECORD:

For the appellant:

Firm:

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