

Federal Court



Cour fédérale

Date: 20231011

Docket: T-290-23

Citation: 2023 FC 1357

Toronto, Ontario, October 11, 2023

PRESENT: Madam Justice Go

BETWEEN:

MAGGIE NICOLA IBRAHIM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Maggie Nicola Ibrahim [Applicant] applied for and received the Canada Recovery Benefit [CRB] for the twenty-eight two-week periods from September 27, 2020 to October 23, 2021.

[2] After a review, on April 22, 2022, the Canada Revenue Agency [CRA] informed the Applicant that she was ineligible for CRB for the entire twenty-eight two-week periods [First Decision].

[3] The Applicant requested a review of the First Decision on November 6, 2022 and a different CRA Officer [Officer] conducted a second-level review of the Applicant's CRB application. In a decision dated January 13, 2023 [Second Decision], the Officer confirmed that the Applicant was not eligible for CRB. The Officer found that the Applicant did not provide sufficient documents to demonstrate she earned at least \$5,000 of income from employment or self-employment in 2019, 2020, or in the 12-month period preceding the day on which she applied for CRB [Income Requirement]. The Officer also found that the Applicant was not working for reasons unrelated to COVID-19.

[4] The Applicant seeks judicial review of the Second Decision. I am sympathetic to the Applicant's situation, and have no reason to doubt she honestly believed that she qualified for CRB. Nevertheless, I find the Officer made a reasonable decision without any breach of procedural fairness. I therefore dismiss the Applicant's judicial review application.

II. Preliminary Issues

[5] The Respondent raises a preliminary issue with regard to the additional evidence that the Applicant submitted to the Court that was not before the Officer. The Respondent argues that the evidentiary record is restricted to that which was before the decision-maker, otherwise, the evidence is inadmissible: *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 42, citing

Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright) 2012 FCA 22 [*Access Copyright*], at para 19. The Respondent contends the evidence the Applicant submitted to the Court does not fall within any of the exceptions to this rule: *Access Copyright*, at para 20.

[6] I agree with the Respondent and I find the following evidence inadmissible: Exhibits F and G, as well as paras 10 and 13 of the Applicant's Affidavit.

[7] In para 10 of the Applicant's Affidavit, the Applicant submits that her accountant noticed a miscalculation on her 2019 Tax Return and once corrected, reflected her net self-employment income for 2019 at \$6,300. The Applicant claims that this adjustment was filed on February 9, 2023, and sent to the CRA. Exhibit F is a Notice of Reassessment for the 2019 Tax Year dated July 7, 2020 [2019 Notice of Reassessment] that the accountant filed with the CRA.

[8] Exhibit G is a copy of the news release from the Government of Canada, dated February 9, 2021, announcing that it would not require self-employed individuals who applied for the Canada Emergency Response Benefit, and who would have qualified based on their gross income, to repay the benefit, provided they met all other eligibility requirements.

[9] In para 13 of the Applicant's Affidavit, the Applicant submits that the COVID-19 pandemic affected her work because immigration offices and airports were closed as a result of travel restrictions. In support of her submission, the Applicant provides links to several news

articles with respect to restrictions on international travels and the resulting impact on immigration into Canada.

[10] The 2019 Notice of Reassessment is inadmissible. This document was created after the Second Decision was made. The Applicant knew as of November 17, 2022, during a phone call with a CRA staff, that the CRA considered her net self-employment income of \$3,939 insufficient to meet the Income Requirement. The Applicant did not explain why she waited until after she received the Second Decision to speak to her accountant about this issue. In any event, the 2019 Notice of Reassessment cannot serve, retroactively, as proof of the Applicant's income for 2019.

[11] For the same reasons, I will not consider paragraph 10 of the Applicant's Affidavit.

[12] As to the other new exhibits and paragraph 13 of the Applicant's Affidavit, I pause here to note that the Applicant raises a procedural fairness issue in relation to the Second Decision finding that she was not working for reasons unrelated to COVID-19. Applying the exception under *Access Copyright* generously, the evidence in question is submitted to show procedural defects, and as such may be admissible. However, as I will explain below, I find the Applicant knew the case to be met and was given an opportunity to provide further submissions. The Applicant also did not explain how the evidence would have altered the Second Decision. I therefore find the new evidence inadmissible.

III. Issues

[13] The Applicant raises three issues:

- A. The procedural fairness of the Second Decision;
- B. The reasonableness of the Second Decision; and
- C. The Second Decision violates section 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [the *Charter*].

[14] At the hearing, I advised the parties that I would not consider the Applicant's *Charter* claim, in light of the lack of supporting evidence and legal arguments, and the Applicant's failure to follow the requisite rules under the *Federal Courts Rules*, SOR/98-106 to initiate her *Charter* claim.

IV. Analysis

A. *Legislative Framework*

[15] The enabling legislation of the CRB is the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*].

[16] Pursuant to section 3 of the *CRB Act*, to be eligible for CRB, the Applicant must have:

- in respect of a CRB application for a two-week period beginning in 2020, earned at least \$5,000 of income from employment or self-employment income in 2019 or in the 12-month period preceding the day on which the person applied for the CRB, per paragraph 3(1)(d) of the *CRB Act*; and

- in respect of a CRB application for a two-week period beginning in 2021, earned at least \$5,000 of income from employment or self-employment in 2019, 2020, or in the 12-month period preceding the day on which the person applied for the CRB, per paragraph 3(1)(e) of the *CRB Act*.

[17] Section 6 of the *CRB Act* requires an applicant to provide the Minister of Employment and Social Development [Minister] with any information that the Minister may require in respect of the application.

B. *There is no Procedural Fairness Breach*

[18] The Applicant submits that the Officer failed to afford her procedural fairness. First, the Applicant argues she was not given the opportunity to fully present her case and provide additional evidence on her eligibility. Second, the Applicant submits that the instructions regarding which documents she should provide were unclear and that such unclear instructions breached the duty of procedural fairness.

[19] The Applicant cites *Fentum v Canada (Attorney General)*, 2023 FC 857 [*Fentum*]. In *Fentum*, the applicant alleged that he was unaware of the requirement to submit proof that he was not working due to COVID-19 reasons. The Applicant submits that in her conversation with the second CRA Officer, she agreed to send bank statements to match her invoices. However, the Applicant notes that the Officer did not mention the need for more documents to prove her eligibility, leading her to believe that the bank statements would be enough to prove her eligibility to receive the benefits.

[20] The Applicant also submits that she tried “several times” to contact the Officer after she received the Second Decision but received no reply.

[21] I reject the Applicant’s arguments.

[22] The case of *Fentum* is distinguishable on facts. In that case, I determined that the CRA officer erred in “making an unjustifiable leap” when they found that the applicant’s entire unemployment period - from 2019 to 2021 - was for reasons unrelated to COVID-19, as the officer did not take into account the applicant’s explanation in the interview with the officer. The Officer in this case noted, based on the evidence, that the Applicant stopped work in December 2019, four months before the pandemic. The Officer also noted the Applicant’s explanation that she runs a business of translating for new immigrants, and due to the pandemic, the number of people coming into the country reduced significantly and so her service was being used less and less.

[23] Further, when the Officer spoke with the Applicant, the Officer gave her an opportunity to verify whether she had any other income in 2019 and 2020 apart from what was declared in her tax returns, to which the Applicant replied in the negative.

[24] The Applicant did not explain, if given the opportunity, what, if any, further evidence she would have provided, other than the new evidence she submitted concerning the general lockdown conditions.

[25] The Respondent argues that the Second Decision was based on an insufficiency of evidence rather than an adverse credibility finding. Based on my review of the Officer's notes, I agree with the Respondent.

[26] I also note that the Applicant was informed of the Income Requirement several times during the first and second reviews. Once again, the Applicant asserts but does not explain what information she would have provided but could not due to the alleged procedural fairness breach.

C. *The Decision is Reasonable*

[27] The parties agree that the standard of review is one of reasonableness, as per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], which is a deferential, but robust, standard of review: at paras 12-13. For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention.

[28] The Applicant submits that the Second Decision was unreasonable because it failed to consider the Applicant's honest belief in her eligibility and the extraordinary circumstances of the COVID-19 pandemic.

[29] I reject the Applicant's submission. The Income Requirement for CRB is based on statutory and non-discretionary criteria, and as such, the Officer had no choice but to apply it. The Applicant's belief, however honestly held, has no bearing on her eligibility for CRB.

[30] At the hearing, the Applicant continued to assert that she was eligible for the CRB by pointing to her 2019 Notice of Assessment showing that she had an income of \$5,343.00 that year.

[31] Under subsections 3(1)(d)(i) to (iv) of the *CRB Act*, the type of income eligible for CRB must be derived from employment, self-employment, and certain prescribed government benefits and allowances. According to the Applicant's income tax return for 2019, while her total income did exceed \$5,000, \$1,404.00 of that came from interest and other investment income. Her reported net self-employment income in 2019 was \$3,939.00, thus falling short of the \$5,000 mark necessary for the eligible Income Requirement. By relying on the 2019 Notice of Assessment, the Applicant appears to have misapprehended the eligibility criteria for CRB by asserting that all income, regardless of its source, would qualify her for CRB.

[32] It may well be that the Applicant's accountant made some errors in their calculation, and overestimated the expenses incurred by the Applicant in 2019. The fact remains, however, that the Decision was based on the information that the Applicant submitted at the time, and the Applicant has not pointed to any reviewable errors made by the Officer on that basis.

[33] The Applicant further submitted at the hearing that if the Officer did not believe her, the Officer could have contacted her employer to verify her information. However, as the Respondent rightly pointed out, as a self-assessment tax system, the onus falls on the taxpayer to show that they are in compliance with the tax provisions. I would reiterate further, in the context of the CRB, this onus is set out under section 6 of the *CRB Act*.

[34] Finally, with respect to the Applicant's comment that her bank statements show that she had more than \$6,000 in income, I note that the Officer did consider the Applicant's bank statements but found inconsistencies between these statements and the invoices. The Officer also noted the lack of information about where the e-transfer payments came from, as well as the fact that the Applicant acknowledged she did not have any income other than that reported in her 2019 and 2020 tax returns, before rendering the Decision. I find that the Officer reasonably concluded that the Applicant failed to meet the Income Requirement, in light of the evidence and the legislative framework before them.

D. *Remedy*

[35] The Respondent asks the application be dismissed with costs.

[36] The Applicant is facing a challenge of having to repay \$24,600 in CRB, after several years of reduction in income due to the pandemic. In light of all the circumstances of this case, while I find in favour of the Respondent, I decline to issue costs.

E. *Redaction of the Application Record*

[37] As a final note, I have reached out to the Respondent to help remove all references to the Applicant's social insurance number in the Application Record. The Court wishes to thank the Respondent for their assistance in this regard.

V. Conclusion

[38] The application for judicial review is dismissed.

[39] There is no order as to costs.

JUDGMENT in T-290-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The Registrar shall replace the original Application Record filed by the Applicant with the redacted version of the Application Record filed by the Respondent.
3. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-290-23

STYLE OF CAUSE: MAGGIE NICOLA IBRAHIM v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 26, 2023

JUDGMENT AND REASONS: GO J.

DATED: OCTOBER 11, 2023

APPEARANCES:

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FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Grace Jothiraj

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