

Federal Court



Cour fédérale

Date: 20221027

Docket: T-429-22

Citation: 2022 FC 1480

Vancouver, British Columbia, October 27, 2022

PRESENT: Madam Justice Go

BETWEEN:

SHIRAZ VIRANI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Shiraz Virani [Applicant] applied for the Canada Recovery Benefit [CRB] in October 2020. By a decision dated July 19, 2021, the Canada Revenue Agency [CRA], which administers the CRB, found that the Applicant was not eligible for the CRB as he had not earned at least \$5,000 of employment or self-employment income in 2019, 2020, or in the 12 months preceding his application. The Applicant appealed this decision and a different CRA officer conducted a

second review of the Applicant's CRB application. The CRA officer confirmed the original decision in a letter dated February 15, 2022, finding that the Applicant is not eligible for CRB for the same reason [Decision].

[2] The Applicant seeks judicial review of the Decision. The Respondent concedes that the Decision was arrived at in a procedurally unfair manner and agrees that the matter should be remitted back to a different CRA officer.

[3] The Applicant asks the Court to grant the application for judicial review with costs. The Applicant also asks the Court to return the matter to the CRA with the direction to find that the Applicant did earn at least \$5,000 in 2019.

[4] For the reasons set out below, I grant the Applicant's judicial review application, without costs. The Applicant has not satisfied me why his case would be one of the "limited scenarios" for the Court to substitute its own decision rather than remitting the matter to the decision maker: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 139-142. I find no basis to grant such an extraordinary remedy in this case.

II. Preliminary Issues

[5] As a preliminary point, the appropriate respondent in this case is The Attorney General of Canada and not the CRA. The style of cause will be amended accordingly.

III. Analysis

[6] In support of his eligibility for the CRB, the Applicant submitted T4 and T4A slips for the 2019 taxation year, showing that he had earned at least \$5,000 in income. The Applicant submits that T4 and T4A slips are “legal documents issued by a third party”, and as such are “conclusive third party verification” of his income. On that basis, the Applicant argues that the CRA need not go further to verify his eligibility for the CRB. Sending the matter for redetermination without a direction from the Court, says the Applicant, would therefore be futile.

[7] The Applicant also relies on a document entitled “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CRA Guidelines] to support his position that the T4 and T4A slips constitute sufficient proof of his income.

[8] The Applicant further argues that since the CRA issued a 2019 Notice of Assessment based on his 2019 Income Tax Return, it means that the CRA had accepted his declaration of employment and self-employment income.

[9] With respect, I disagree.

[10] As a starting point, I note that pursuant to section 3 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*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*.

[11] Further, section 6 of the *CRB Act* provides:

6 An applicant must provide the Minister with any information that the Minister may require in respect of the application.

6 Le demandeur fournit au ministre tout renseignement que ce dernier peut exiger relativement à la demande.

[12] In other words, the *CRB Act* empowers the CRA to request information from an applicant, and the obligation is on the applicant to provide the information as requested.

[13] In a section under the heading “Proof of \$5,000.00 income”, the CRA Guidelines explains that to be eligible for the three benefits, the applicant “must have earned a minimum of \$5,000.00 in 2019 or in 2020, or within the 12 months prior to the date of their first application. The income **must** be from employment or self-employment income” (emphasis in original).

[14] The CRA Guidelines continue to clarify what is not considered employment or self-employment income. It goes on to state: “If the 2019 or the 2020 income cannot be validated, proof must be provided.”

[15] The Applicant points to the section in the CRA Guidelines that starts with the sentence: “The following boxes on T slips are considered eligible employment or self-employment

income”, and compares the boxes listed in that section to the boxes that were included in his T4 and T4A slips as proof of his employment and self-employment income.

[16] My reading of the CRA Guidelines does not support the Applicant’s position. The CRA Guidelines refers to the “boxes” in the T4 slips as indication of what counts as employment or self-employment income. The fact that the Applicant has filed income under these boxes, is not, by itself, validation of income.

[17] As this Court explained in *Santaguida v Canada (Attorney General)*, 2022 FC 523:

[26] The Applicant was required, pursuant to section 6 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, to provide any information required by the CRA in respect of the application.

[27] In determining if an applicant was eligible, the officers used a document entitled “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CRA Guideline] to guide them. It addressed the documentation required to establish the \$5,000 minimum income. For employment income, acceptable proof would consist of recent pay slips, employment verification letters, record of employment, bank statements showing the name, address and payroll deposit and any other documentation that will substantiate employment income for \$5,000. As for self-employment income, the CRA Guideline provided several examples of what would constitute acceptable proof. An example of such proof would consist of invoices to clients showing the date of the service, the name of the client, the cost of the service and the type of payment received.

[18] Thus, both the *CRB Act* and the CRA Guidelines call for an applicant to provide proof of income in order to satisfy their eligibility for the CRB. In this case, the Applicant has insisted that all other information, including his bank records, are confidential and has thus far not provided any documentation other than the T4 and T4A slips.

[19] In light of the limited evidence the Applicant has submitted to the CRA to date, I agree with the Respondent that this is not an appropriate case for the Court to direct the CRA to find that the Applicant did earn at least \$5,000 of income and is thus eligible for the CRB.

[20] The Applicant cites the following passage of Justice Strickland's decision in *Aryan v Canada (Attorney General)*, 2022 FC 139 to support his position:

[32] The CRB Guideline states that income must be from employment or self-employment. This can be established by review of the 2019 income tax return, including self-employment income indicated on lines 13499 to 14299 (gross income) and lines 13500 to 14300 (net income) of their 2019 income tax return. If an applicant did not earn at least \$5000 in 2019, they are to be asked if they were working and earned income between January 1, 2020 and the date they applied for the benefit, the source of the income and the amount earned. The document instructs that "If you determine that documentation is required, advise the applicant what needs to be provided to show they made at least \$5000 in the last 12 months".

[21] With respect, nothing in the above-quoted passage suggests that the CRA must not look beyond the income tax return to confirm an applicant's eligibility. If anything, it confirms that if the CRA determines further documentation is required, they shall so advise the taxpayer. The CRA's failure to do so in this case constitutes a breach of procedural fairness. But it does not follow that CRA cannot ask the Applicant for further documentation.

[22] Rule 400 of the *Federal Court Rules*, SOR/98-106, affords this Court with full discretionary power over costs. Having considered the factors in awarding costs enumerated in Rule 400(3), I do not find this to be an appropriate case to award costs.

[23] Further, I am not satisfied that this situation is one where a successful self-represented litigant should be provided an allowance for the time and effort spent to present a case. The Applicant was not wholly successful on this application for judicial review and has not demonstrated that he incurred an opportunity cost by foregoing remunerative activity in preparing for this case: *Yu v Canada (Attorney General)*, 2011 FCA 42 at para 37.

[24] I will therefore set aside the Decision and refer the matter back for redetermination by a different decision maker. In so doing, I encourage the Minister to provide an opportunity for the Applicant to make further submissions and to provide additional documentation.

IV. Conclusion

[25] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision maker.

[26] There is no order as to costs.

JUDGMENT in T-429-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is referred back for redetermination by a different decision maker.
3. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-429-22

STYLE OF CAUSE: SHIRAZ VIRANI v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: OCTOBER 24, 2022

JUDGMENT AND REASONS: GO J.

DATED: OCTOBER 27, 2022

APPEARANCES:

Shiraz Virani

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Jessica Ko

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT