

Federal Court



Cour fédérale

Date: 20221205

Docket: T-802-21

Citation: 2022 FC 1678

Ottawa, Ontario, December 5, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

XIANGYI BRUCE HU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Xiangyi Bruce Hu (Mr. “Hu”), is self-represented in these proceedings. Mr. Hu seeks judicial review of a decision of the Canada Revenue Agency (“CRA”) dated April 15, 2021, finding him ineligible for the Canada Recovery Benefit (“CRB”).

[2] In its initial determination, communicated to Mr. Hu in a letter dated February 22, 2021 (the “First Decision”), the CRA found Mr. Hu ineligible on the basis that he did not earn at least \$5,000 (before taxes) in income in 2019, 2020, or in the 12 months prior to the date of his first application. On April 25, 2021, the CRA confirmed its initial decision upon a second review of Mr. Hu’s application (the “Second Decision”), declaring Mr. Hu ineligible for the CRB.

[3] Mr. Hu submits that the CRA’s Second Decision is unreasonable and procedurally unfair. He submits that the CRA failed to consider the evidence of payments made to his bank account, showing the income he received from Ever One Group Ltd. (“Ever One Group”), and did not specify what kind of evidence was required to show eligibility.

[4] For the reasons that follow, I find that the CRA’s Second Decision is reasonable and procedurally fair. This application for judicial review is therefore dismissed.

II. Facts

A. *Relevant Background*

[5] The CRB is a benefit program introduced by the *Canadian Recovery Benefits Act*, SC 2020, c 12, s 2 (“*CRB Act*”) and administered by the CRA. The CRB provides income support to employed and self-employed persons who were affected by the COVID-19 pandemic and were not entitled to Employment Insurance benefits.

[6] Section 3 of the *CRB Act* stipulates the income eligibility criteria for the CRB. Subsection 3(1)(e) requires an applicant to have earned at least \$5,000 in 2019, 2020, or in the 12 months before the date of their initial CRB application.

[7] Mr. Hu applied for the CRB and received payments for the first seven CRB periods, from September 27, 2020 to January 2, 2021. On January 18, 2021, Mr. Hu submitted an additional document to support his income eligibility: a single page issued by Ever One Group, showing the company had sent Mr. Hu contract income in January, February, and March of 2020.

[8] CRA sent a letter to Mr. Hu dated February 22, 2021, informing him that he did not meet the income eligibility criteria and was therefore ineligible for the CRB. The CRA officer's review notes for the First Decision, dated February 16, 2021, state the following:

LJJ471 2021-02-16 Review. Tp does not have any working income in 2019. Tp has not filed with self employ in previous years. Tp provides single page that says contract paid 5600 from jan to mar 2020. Tp does not provide any proof of payment. Not elig. Tp will need to provide proof of payment to match what he provided and meet other requirements such as looking for work. [sic]

[9] The First Decision letter also informed Mr. Hu that he was entitled to request a second review of his application. A different CRA officer would conduct this second review.

[10] On February 25, 2021, Mr. Hu initiated a second review of his application by submitting additional documentation to support his income eligibility. These documents included bank

drafts of Ever One Group and Mr. Hu's bank statements for the months of January, February, and March of 2020.

B. *Decision Under Review*

[11] In a letter dated April 15, 2021, the CRA informed Mr. Hu of its Second Decision. The letter confirmed that Mr. Hu did not meet the income eligibility requirements for the CRB, because he did not earn at least \$5,000 in 2019, 2020, or in the 12 months before his application was made, and because he did not have a 50% reduction in his average weekly income compared to the previous year due to the COVID-19 pandemic.

[12] The review notes for the Second Decision state that Mr. Hu was ineligible because he “has had only investments on his dd.3 account, has declared no income for several years [sic].” The Second Decision is the subject of this application for judicial review.

III. Preliminary Issue

[13] The Respondent submits that the style of cause should be amended to identify the Respondent as the Attorney General of Canada in place of the Minister of National Revenue, and the Applicant does not object. I agree with the Respondent, as per sub-rule 303(2) of the *Federal Courts Rules*, SOR/98-106. The style of cause is amended effective immediately.

IV. Issues and Standard of Review

[14] The application for judicial review raises the following issues:

A. *Whether the Second Decision is reasonable.*

B. *Whether the Second Decision is procedurally unfair.*

[15] The parties agree that the applicable standard of review for the first issue is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[16] Although not pled in detail, Mr. Hu’s submissions briefly raise, and I therefore address, the issue of procedural fairness. Issues of procedural fairness attract a standard of review of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (“*Canadian Pacific Railway Company*”) at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85).

Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] For a decision to be unreasonable, the applicant must establish 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. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[19] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

V. Analysis

[20] Mr. Hu submits that the Second Decision is unreasonable because the CRA disregarded the income statement from Ever One Group, and the bank statements of Ever One Group and Mr. Hu. He submits that this evidence establishes that he met the \$5,000 minimum income criteria.

Mr. Hu further submits that he was never informed of what kind of evidence was required to support his income eligibility, raising procedural fairness concerns.

[21] The Respondent maintains that the Second Decision is reasonable. The Respondent submits that it is reasonable for the second CRA officer to find that Mr. Hu's evidence was insufficient to show that he met the minimum income of \$5,000. This evidence included a "contract income statement," a one-page document showing that a total of \$5,600 was paid over the three months of January, February and March 2020. The Respondent notes that the document is issued by Mr. Hu's common law partner, that Ever One Group has the same address as Mr. Hu, and that it lacks any details, only stating that the contract position is for "preparation work and support for start-up Online store [sic]." The document also does not include hours worked or contract details. The Respondent notes that the Applicant also provided bank statements for Ever One Group for January, March and April of 2020. While these documents show transfers of money, they are insufficient to prove Mr. Hu's employment or self-employment income and, contrary to the Mr. Hu's position, tax assessments are not proof of income. The Respondent contends that the CRA requested supporting documentation, and was entitled to find that the proffered evidence was insufficient to show that Mr. Hu met the income eligibility requirement for the CRB.

[22] I find that the CRA's Second Decision is both reasonable and procedurally fair. I sympathize with the essence of Mr. Hu's submission on reasonableness, that the CRA requested bank statements to indicate deposits of income, only to find that these statements did not provide

sufficient information to show his eligibility. I also express my sympathy for Mr. Hu's financial situation and the personal difficulties that the COVID-19 pandemic has caused him.

[23] However, requesting certain evidence does not necessarily mean that the evidence, once proffered, will be successfully achieve a favourable outcome for the Applicant. It is reasonable to conclude that the information provided by the Applicant was insufficient to show that he had earned at least \$5,000 through employment or self-employment, as defined in the *CRA Act*, during the relevant period.

[24] In this Court's recent decision in *Aryan v Canada (Attorney General)*, 2022 FC 139 ("*Aryan*"), my colleague Justice Strickland reviewed an analogous decision by the CRA, finding that the applicant did not meet the income eligibility requirement for the CRB (at para 3). Similarly to Mr. Hu's case, the applicant in *Aryan* submitted that the CRA's decision was unreasonable because her bank statements showed she received the minimum amount of income, and that she was not told which documentation was required (*Aryan* at paras 28, 41). On these points, respectively, Justice Strickland found that "while the Officer could have been more precise in identifying the relevant period, again, nothing turns on this point," the documents provided "do not prove the source of the amounts deposited nor when they were earned," and "in any event, the record establishes that the first agent did indicate the type of supporting documents that could be submitted" (*Aryan* at paras 28, 41).

[25] The same line of reasoning applies in Mr. Hu's case. The record indicates that the CRA informed Mr. Hu that bank statements were required to show that deposits were made. It is also

reasonable for the officer conducting the second review to find that these bank statements lack in foundational details about how this income was earned. The CRA is entitled to find that these bank statements and the contract statement do not show sufficient proof of employment or self-employment, as required. I further note that, contrary to Mr. Hu's submissions, tax assessments do not conclusively prove that an applicant actually earned the reported income and that this income was earned from an eligible source, as per the *CRB Act (Aryan at para 35)*.

VI. Conclusion

[26] The CRA's Second Decision, finding that Mr. Hu does not meet the income eligibility criteria for the CRB, is both reasonable and procedurally fair. Neither party pled submissions on costs. This application for judicial review is therefore dismissed, with no costs.

JUDGMENT in T-802-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, with no costs.
2. The style of cause is amended to identify the proper Respondent as Attorney General of Canada, with immediate effect.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-802-21

STYLE OF CAUSE: XIANGYI BRUCE HU v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: NOVEMBER 10, 2022

REASONS FOR JUDGMENT AND JUDGMENT: AHMED J.

DATED: DECEMBER 5, 2022

APPEARANCES:

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(On his own behalf)

FOR THE APPLICANT

Daniel G. Segal

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT