Federal Court  Cour fédérale

**Date: 20230815**

**Docket: T-2335-22**

**Citation: 2023 FC 1104**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, August 15, 2023**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**SOUAD AKOUZ**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The applicant, Souad Akouz, is representing herself. She is a self-employed worker who provides housekeeping services. During the COVID-19 pandemic, the applicant's income declined due to housekeeping cancellations by her clients.

[2] The applicant applied for and received the Canada Recovery Benefit [CRB]. The CRB is part of a package of measures introduced by the Government of Canada in response to the impacts of the COVID-19 pandemic. This benefit was available for any two-week period falling within the period from September 27, 2020, to October 23, 2021, for eligible employed and self-employed individuals who suffered a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)* 2022 FC 139 at para 2 [*Aryan*]).

[3] The eligibility criteria for the CRB are set out in detail in subsection 3(1) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [Act]. These criteria include a requirement for the employee or self-employed person to have earned at least $5,000 in employment income or net self-employment income in 2019, 2020, or in the 12-month period preceding the day of their last application (paragraph 3(1)(e) of the Act).

[4] The applicant seeks a judicial review of the decision of a compliance officer [officer] of the Canada Revenue Agency [CRA], dated October 7, 2022 [decision], in which, following a second review, the officer found that the applicant was not eligible for the CRB. The officer denied her application on the grounds that she had not earned at least $5,000 in net self-employment income in 2019, 2020, or in the 12-month period preceding the day of her first application for the CRB.

[5] The applicant claims that the decision is unreasonable because in her view, she met the criteria set out in the Act, including earning income of more than $5,000 in 2019. According to the applicant, the officer should have considered her new notice of assessment that resulted from

the amended income tax return for the 2019 taxation year. This new notice of assessment, dated August 15, 2022, indicates net income of $5,711, whereas the previous one indicated $4,852. The applicant maintains that her accountant made an error, which he later corrected.

[6] The respondent argues that the decision is reasonable considering that the applicant reported $450 in net business income for 2018; $4,852 for 2019; and a loss of $5,179 for 2020. Given that her income was less than $5,000, the applicant was not eligible for the CRB on the basis that she did not meet the minimum net income requirement of $5,000 in 2019, 2020, or in the 12-month period preceding the date of her first application. The respondent submits that it was reasonable for the officer to disregard the new notice of assessment since it was filed after the first negative decision in order to meet the criterion of $5,000. The respondent points out that the applicant did not specify what amounts had been deducted in error by her accountant, and that she informed the CRA that she could not provide it with any documents to that effect other than her new notice of assessment.

[7] For the reasons that follow, I find that the officer's decision is reasonable. It follows that the applicant's application must be dismissed.

## II. The standard of review

[8] It is well established that the appropriate standard of review in this case is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20 [*He*]; *Aryan* at paras 15–16).

[9] A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). The burden is on the applicant, the party challenging the decision, to show that it is unreasonable (*Vavilov* at para 100).

[10] The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). For the reviewing court to intervene, the challenging party must satisfy the Court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" and such alleged flaws or shortcomings "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[11] The focus must be on the decision actually made, including the justification offered for it, and not the conclusion the Court itself would have reached in the administrative decision maker's place. Absent exceptional circumstances, a reviewing court should not interfere with factual findings. Moreover, in the context of an application for judicial review, it is not for this Court to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125; *Clark v Air Line Pilots Association*, 2022 FCA 217 at para 9).

## III. Analysis

[12] As discussed above, the onus is on the applicant, in her application for judicial review, to show that the decision is unreasonable.

[13] The applicant maintains that the new notice of assessment dated August 15, 2022, more than two weeks after the first CRA decision rendered on July 27, 2022, shows that she earned income of more than $5,000 in 2019. She argues that the decision is therefore unreasonable because she met the criteria set out in the Act.

[14] At the hearing, the applicant provided no explanation as to the origins of her new notice of assessment, other than that her accountant made a mistake. She was also unable to point to a document on the record providing details of the accountant's error or an explanation for it. The explanation given to the CRA with her request for a second review was: [TRANSLATION] "we realized that a careless mistake had been made, leading to income of less than $5,000." In her discussions with the officer, the applicant commented that her new notice of assessment indicates reduced expenses, allowing her to meet the criterion of $5,000. She also informed the officer that she was unable to provide any other document to that effect.

[15] The respondent maintains that the applicant cannot simply amend her 2019 tax return once the first decision has been made in order to qualify for the CRB. The respondent argues that the CRA was entitled to request information it considered relevant to the determination of the applicant's admissibility. In this case, no information was provided to the CRA to prove that the applicant met the criterion of $5,000.

[16] I have carefully reviewed the decision and the record on which the decision is based, and I find that the applicant has been unable to identify a shortcoming or flaw sufficiently significant or serious to render the decision unreasonable.

[17] There is no doubt that the onus is on CRB applicants to establish that they meet, on a balance of probabilities, the criteria of the enabling legislation (*He* at para 25; *Cantin v Canada (Attorney General)*, 2022 FC 939 at para 15).

[18] I agree with my colleague, Justice Gascon, that "[t]he Canadian tax system—which, since the pandemic, includes the CERB among its components—is based on the principles of self-assessment and self-reporting. In particular, all taxpayers are responsible for reporting and proving their income" (*He* at para 25).

[19] With the responsibility of self-reporting comes an obligation, as set out in section 6 of the Act, to provide "any information that [the CRA] may require in respect of the application." This requirement compels an applicant to provide the documents and information requested by the CRA in order to confirm compliance with the legislative provisions, or explain why it is not possible to comply with the request.

[20] In this case, the applicant did not provide justification, or at the very least, the context for her new notice of assessment. According to the respondent, the applicant's failure to provide documentation or explanations is sufficient to establish the reasonableness of the decision.

[21] I have not been persuaded that the officer's finding that the applicant did not prove that she earned at least $5,000 (before tax) in employment income or net self-employment income in 2019, in 2020 or in the 12-month period preceding the date of her first application was unreasonable. The decision is consistent with the *Vavilov* requirements—indeed, the underlying

logic and reasoning of the decision can be discerned on the face of the record. The logic and reasoning are coherent and based on the evidence. The officer's decision is therefore reasonable.

## IV. Conclusion

[22] The appellant has not discharged her burden of establishing that the officer's decision is unreasonable. Accordingly, the application for judicial review is dismissed.

[23] The respondent seeks the costs to which he is entitled following the dismissal of the application. The parties agreed on costs in the amount of $500. I find that amount to be reasonable and justified.

**JUDGMENT in T-2335-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.

2. Costs in the amount of $500 are awarded to the respondent.

"Vanessa Rochester"
Judge

Certified true translation
Francie Gow

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-2335-22 |
| **STYLE OF CAUSE:** | SOUAD AKOUZ v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | JUNE 21, 2023 |
| **JUDGMENT AND REASONS:** | ROCHESTER J. |
| **DATED:** | AUGUST 15, 2023 |

**APPEARANCES:**

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|---|---|
| Souad Akouz | FOR THE APPLICANT (ON HER OWN BEHALF) |
| Anne-Élizabeth Morin | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |