

Federal Court



Cour fédérale

Date: 20240916

Docket: T-216-22

Citation: 2024 FC 1451

Ottawa, Ontario, September 16, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

YUNDONG LI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of a Benefits Validation Officer (Reviewing Officer) of the Canada Revenue Agency (CRA) dated January 11, 2022, that the Applicant, Mr. Li, was not eligible to receive the Canada Recovery Benefit (CRB) for 27 two-week periods from September 27, 2020, to October 9, 2021 (Decision).

[2] I will note at the outset that the Applicant did not attend the scheduled oral hearing of this application on Monday, August 26, 2024, at 1:00 p.m. in Toronto. The Court did not receive a request for an adjournment or an explanation regarding his non-attendance. I also note that the

Applicant did not acknowledge receipt of the order dated May 21, 2024, setting down the date, time, and place of the hearing for this application. Three attempts were made by the Court Registry to reach the Applicant on August 8, 2024, a copy of the May 21, 2024 order was emailed to the Applicant on August 8, 2024, and sent by Registered mail on August 9, 2024, which was delivered on August 10, 2024. The Court Registry made an unsuccessful final attempt to reach the Applicant on August 26, 2024. Finally, I note that in the Notice of Motion filed on April 29, 2024, the Applicant included a medical certificate dated March 28, 2024, indicating that he suffered from a serious medical condition with risk of death within six months.

[3] For the reasons that follow, this application is dismissed.

II. Background

[4] The *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*] came into effect on October 2, 2020. The CRB provided income support to eligible employed and self-employed individuals directly impacted by the COVID-19 pandemic for any two-week period beginning on September 27, 2020, and ending on October 23, 2021. One eligibility requirement for the CRB was a minimum income of \$5,000 received from specified sources within specified periods as set out in paragraph 3(1)(d) of the *CRB Act*. The Minister of Employment and Social Development is responsible for the CRB (*CRB Act*, ss 2, 3 and 4); however, the CRB is administered by the CRA (*CRB Act*, s 41).

[5] The Applicant applied for and received CRB for seven two-week periods from September 27, 2020, to January 2, 2021. The CRA selected the Applicant's application for further validation in January 2021 because the Applicant had not reported any income on his income tax returns since 2019. The Applicant applied for but did not receive the CRB for an additional 20 two-week

periods from January 3, 2021, to October 9, 2021. The validation of the Applicant's CRB application concerned both the seven weeks of benefits provided and the 20 weeks of benefits that were not provided.

[6] On March 5, 2021, the CRA informed the Applicant via letter that his CRB application was denied. The CRA agent validating the application found that the Applicant was not eligible for the CRB because he did not experience a 50% or more reduction in his average weekly income compared to the previous year due to the COVID-19 pandemic.

[7] Between February 15, 2021, and October 27, 2021, the Applicant provided additional documentation through the electronic portal to support his application. The additional information provided by the Applicant indicated that:

- He had an oral agreement with his brother in China that he would be paid at least \$10,000 CAD to assist the his niece to come and receive an education in Canada;
- He is a Canadian citizen after immigrating to Canada in 2003;
- He did not have a bank account in China. He had an undated, unsigned check for payment. In addition, he had an acknowledgement of receipt dated August 30, 2020, for 30,000 Chinese yuan to support payment for his services as per the oral agreement with his brother. The Applicant indicated that the money owed to him by his brother for services rendered in 2019 was held in China in cash;
- He requested to have the money sent to his account in Canada via wire deposit, and copies of his bank statements from TD Canada Trust show that on October 21, 2021, he received a wire deposit of \$5,982.50 CAD to his account.

[8] The Applicant requested a second review of his CRB application on March 8, 2021.

[9] The CRA assigned the second review to a new CRA agent who was not involved in the initial review of the Applicant's CRB application.

[10] On October 13, 2021, the Reviewing Officer spoke with the Applicant via telephone and requested that the Applicant provide bank statements and other relevant documents to support their application.

[11] Two subsequent entries on the case file from the Reviewing Officer dated October 18, 2021, and October 28, 2021, note the following:

[October 18, 2021:] TP [tax payer] sent additional documents. The [sic] sent in a note explaining that the cheque that is written in Mandarin and is unsigned and not dated. TP claims this cheque is from younger brother. No bank statements to show cheque was deposited. TP claims this was because he was saving the money to travel back to China

[October 28, 2021:] TP has been sending in information that shows money deposited by his brother in OCT 2021. This does not show earned income for benefits.

[12] The Reviewing Officer made three attempts to contact the Applicant with no success. The Second Review Report, which forms part of the reason for decision (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22 [*Aryan*]), states:

Applicant provided additional information:

Eligibility criteria not met: \$5k in employment or self-employment income[.]

Explain your decision regarding each criteria the taxpayer did not meet: Contact not established, further information required as this appears to be family assisting family, not a business.

[13] On January 11, 2022, the Reviewing Officer emailed the Decision to the Applicant; that the Applicant was not eligible to receive the CRB because he did not earn at least \$5,000 of employment income or net self-employment income in 2019, 2020, or in the 12 months prior.

[14] The Applicant commenced his application for judicial review on February 3, 2022. This matter was scheduled to be heard on December 4, 2023, and May 6, 2024. On both occasions, the hearings were adjourned due to the Applicant's health condition. As noted above, the Applicant did not attend the most recent hearing and he did not make a request for a further adjournment of the hearing.

III. Relevant Legislation

[15] The relevant provisions of the CRB Act are reproduced below:

Eligibility

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

...

(d) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least

Admissibilité

3 (1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

[...]

d) dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, ses revenus provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la

\$5,000 from the following sources:

- (i) employment,
- (ii) self-employment,
- (iii) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the *Employment Insurance Act*,
- (iv) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and
- (v) any other source of income that is prescribed by regulation;

(e) in the case of an application made under section 4 by a person other than a person referred to in paragraph (e.1) in respect of a two-week period beginning in 2021, they had, for 2019 or for 2020 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from the sources

date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars :

- (i) un emploi,
- (ii) un travail qu'elle exécute pour son compte,
- (iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la *Loi sur l'assurance-emploi*,
- (iv) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption,
- (v) une autre source de revenu prévue par règlement;

e) dans le cas d'une demande présentée en vertu de l'article 4, par une personne qui n'est pas visée à l'alinéa e.1), à l'égard d'une période de deux semaines qui débute en 2021, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i) à (v) pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente sa demande

referred to in subparagraphs (d)(i) to (v);

s'élevaient à au moins cinq mille dollars;

...

[...]

(i) they sought work during the two-week period, whether as an employee or in self-employment;

i) elle a fait des recherches pour trouver un emploi ou du travail à exécuter pour son compte au cours de la période de deux semaines;

...

[...]

Income from self-employment

Revenu — travail à son compte

(2) For the purpose of paragraphs (1)(d) to (f), income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue.

(2) Le revenu visé aux alinéas (1)d) à f) de la personne qui exécute un travail pour son compte est son revenu moins les dépenses engagées pour le gagner.

...

[...]

Regulations

Règlements

(4) The Governor in Council may, by regulation, fix a lower percentage for the purpose of paragraph (1)(f).

(4) Le gouverneur en conseil peut, par règlement, fixer un pourcentage moins élevé pour l'application de l'alinéa (1)f).

...

[...]

Attestation

Attestation

5 (1) Subject to subsections (2) to (5), a person must, in their application, attest that they meet each of the eligibility conditions referred to in paragraphs 3(1)(a) to (n).

5 (1) Sous réserve des paragraphes (2) à (5), la personne atteste, dans sa demande, qu'elle remplit chacune des conditions d'admissibilité visées aux alinéas 3(1)a) à n).

Exception — paragraphs 3(1)(d) and (e)

(2) A person is not required to attest to their income under paragraphs 3(1)(d) and (e) if they have previously received any benefit under this Act and they attest to that fact.

...

Obligation to provide information

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

Exception — alinéas 3(1)d et e)

(2) Une personne n'est pas tenue d'attester de ses revenus visés aux alinéas 3(1)d) et e) si elle a déjà reçu une prestation au titre de la présente loi et qu'elle atteste de ce fait.

[...]

Obligation de fournir des renseignements

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

IV. Issues

[16] The issues in this application for judicial review are:

- A. Is the Respondent party properly named in this application?
- B. Can this Court consider new evidence in this application?
- C. Is the Decision that the Applicant is not eligible for the CRB reasonable?
- D. Was the Decision procedurally fair?

V. AnalysisA. *Proper name for Respondent Party*

[17] The Respondent noted that pursuant to subsection 303(2) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], the Respondent in this proceeding should be the Attorney General of

Canada (*Flock v Canada (Attorney General)*, 2022 FC 305 [*Flock*] at para 29. The Applicant did not make submissions on this issue.

[18] The Court agrees with the Respondent. The style of cause for this application is so amended.

B. *New evidence*

[19] In his memorandum of argument, the Applicant set out a number of new facts that were not before either the CRA agents or the Reviewing Officer. Specifically:

- That his brother hired other tutors in China;
- There are contemporaneous written records that demonstrate that the Applicant would be paid for his services (phone texts and emails);
- Information about the immigration status of the Applicant and his spouse;
- Information concerning the Applicant and his spouse's professions;
- The quantum of the Applicant and his spouse's tax contributions; and
- Financial assistance from relatives in China was not required.

[20] Generally, a party may not submit new evidence on an application for judicial review (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 13; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 42). This Court is to determine if the Decision was reasonable based on the evidence that was before the original decision maker (*Connolly v Canada (Attorney General)*, 2014 FCA 294 at para 7; see also *Sharma v Canada (Attorney General)*, 2018 FCA 48 [*Sharma*] at para 7).

[21] A court may admit new evidence on judicial review in three circumstances. One, where the new evidence provides general background information that assists the Court in its understanding of the issues relevant to the judicial review, without adding evidence that goes to the merits of the matter before the Court. Two, where the new evidence brings the Court's attention to procedural defects not found in the record before the decision maker. Three, where the new evidence highlights a complete absence of evidence before the decision maker on a finding (*Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at paras 23–24 citing with approval *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 20).

[22] While the list of exceptions is not exhaustive, the exceptions “exist only in situations where the receipt of evidence by this Court is not inconsistent with the differing roles of the judicial review court and the administrative decision-maker” (*Access Copyright* at para 20).

[23] Pursuant to sections 3 and 4 of the *CRB Act*, Parliament granted the Minister the authority to make determinations with respect to the eligibility for the CRB. This Court's role is to review the Decision based on the facts before the Minister and not to consider new evidence that should have been made available to the CRA in the course of the validation process (*Sharma* at paras 8–9).

[24] The new evidence was not available to the CRA for the original or secondary review of the Applicant's CRB application. The Applicant did not make submissions concerning the admissibility of the new evidence or provide an explanation as to why this evidence was not provided to the CRA agents or Reviewing Officer.

[25] I find that the evidence provided does not fit within any of the exceptions noted above for the admission of new evidence on judicial review. Accordingly, the new evidence is inadmissible and is struck from the record.

C. *Reasonableness of the Decision*

[26] The Applicant did not make submissions on the applicable standard of review.

[27] The Respondent submits and I agree that the applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 25, 86).

[28] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (Vavilov at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the Vavilov framework, 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).

[29] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (Vavilov at para 100).

[30] The Applicant argues that it was unreasonable for the Reviewing Officer to conclude that the money from his brother in China was “family assisting family.” The Applicant says that this was employment income, and as the amount of the income was over the \$5,000 minimum threshold set out in section 3 of the CRB Act, he is eligible to receive the CRB. The Applicant submitted additional documentation to support his claim via the CRA MyAccount web page. The

additional documentation included letters of explanation from the Applicant concerning the employment contract; a copy of an unsigned, undated check for a bank in China; a receipt from the Applicant; and copies of bank statements from TD Canada Trust showing a wire deposit of \$5,982.50.

[31] The Respondent has filed an affidavit of Mr. Bill McArthur, the Reviewing Officer, sworn on October 14, 2022.

[32] The Reviewing Officer clearly set out all the materials considered in the course of the second review. This included the entries from the CRA's T1 Case Notepad, the SA Notepad (CRA Notepads), and the SA Database—which contain all the notes from the original CRA agent and the Reviewing Officer's Second Review Report, all the documentation submitted by the Applicant for consideration via the CRA MyAccount web page, and records of telephone conversations with the Applicant.

[33] This Court has found that, similar to the Global Case Management System notes developed by immigration officers in the course of their review, the Second Review Report forms a part of the reasons for the Reviewing Officer's Decision (*Aryan* at para 22).

[34] The Second Review Report notes that contact with the Applicant had not been established, but found that the eligibility criteria, namely the need to demonstrate a minimum of \$5,000 in employment or self-employment income, was not met. In addition, the Second Review Report notes that further information was required because “this appears to be family assisting family, not a business.” As noted above, the CRA Notepads clearly document the numerous unsuccessful attempts to contact the Applicant to obtain further information necessary to validate their application for the CRB.

[35] The record demonstrates that the Reviewing Officer considered all the documents submitted by the Applicant, as well as the Applicant's explanations concerning his income during the relevant periods. In my opinion, the Reviewing Officer's Decision is reasonable.

[36] Accordingly, the Reviewing Officer's Decision that the Applicant does not meet the statutory eligibility requirements, as set out in the *CRB Act*, is reasonable.

[37] Before concluding this section of my reasons, I note that the Applicant also argued that the Respondent relied on false data concerning he and his family's income in the 2018–2020 taxation years. The Applicant provided no evidence to support this argument.

[38] A review of the record indicates that the Reviewing Officer obtained information concerning the Applicant's 2018–2020 income from his previous tax year filings to the CRA. Therefore, I find the Applicant's argument that the Respondent relied on falsified data to be without merit.

D. *Procedural fairness*

[39] The Applicant asserts that the Reviewing Officer's Decision was made in a careless manner, that he was not provided an opportunity to communicate with the Reviewing Officer, and that it was improper to have emailed him the Decision as opposed to mailing it.

[40] The principles of procedural fairness were set out by the Federal Court of Appeal in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR]. The Court notes that “[n]o matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether

the applicant knew the case to meet and had a full and fair chance to respond” (*CPR* at para 56; see also *Larocque v Canada (Attorney General)*, 2022 FC 613 [*Larocque*] at paras 25–26).

[41] The central consideration to determine if the Reviewing Officer’s Decision was procedurally fair is if the Applicant was given a “full and fair opportunity to make submissions to the CRA, and the Officer took these into account in rendering [their] decision” (*Flock* at para 26).

[42] As noted previously, the record indicates that all information submitted by the Applicant was considered by the Reviewing Officer.

[43] The Reviewing Officer’s supporting affidavit and the CRA Notepad entries indicate that three telephone attempts were made to discuss the file with the Applicant to the phone number he provided in his application, and that a voice mail with a return phone number for the Reviewing Officer was provided to the Applicant.

[44] In my opinion, the record supports that the Applicant was afforded procedural fairness. The Reviewing Officer attempted to discuss the application with the Applicant as part of the Second Review Report; the Applicant was aware of the evidence needed to support his application following the first negative decision and provided further information, which was considered by the Reviewing Officer.

[45] Similar to the situation before this Court in *Larocque*, the Applicant did not avail himself of the opportunity to discuss his application with the Reviewing Officer, despite having multiple opportunities to do so.

[46] In the circumstances, there is no evidence that the Reviewing Officer breached any applicable principles of procedural fairness.

VI. Conclusion

[47] The Decision was reasonable and exhibited the requisite degree of justification, intelligibility, and transparency. The Applicant did not demonstrate that the Decision was unreasonable.

[48] Similarly, the Applicant did not demonstrate that the Reviewing Officer breached any applicable principles of procedural fairness in the making of the Decision.

[49] Therefore, this application for judicial review is dismissed.

[50] The Respondent seeks costs of this application. The general rule is that costs follow the event.

[51] However, an award of costs is not appropriate in this case, and I exercise my discretion to not award costs. The Applicant is self-represented. His materials were concise and clear. Considering all the circumstances, an award of costs in this case, would, in my view, be unfairly punitive.

JUDGMENT in T-216-22

THIS COURT'S JUDGMENT is that:

1. The style of cause for this matter is amended with immediate effect.
2. The application for judicial review is dismissed.
3. No award of Costs.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-216-22

STYLE OF CAUSE: YUNDONG LI v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 26, 2024

JUDGMENT AND REASONS: BLACKHAWK J.

DATED: SEPTEMBER 16, 2024

APPEARANCES:

Yundong Li

FOR THE APPLICANT
ON HIS OWN BEHALF

Princess Okechukwu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT