

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240917**

**Docket: A-75-23**

**Citation: 2024 FCA 147**

**CORAM: STRATAS J.A.  
LASKIN J.A.  
BIRINGER J.A.**

**BETWEEN:**

**ANNA FEDORENKO**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard by online videoconference hosted by the Registry on September 17, 2024.

Judgment delivered from the Bench at Ottawa, Ontario, on September 17, 2024.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**BIRINGER J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on September 17, 2024).**

**BIRINGER J.A.**

[1] The applicant seeks judicial review of a decision of the Canadian Agricultural Review Tribunal: 2023 CART 04. The Tribunal upheld a notice of violation and associated penalty issued to the applicant for failing to declare the importation of meat products, contrary to subsection 16(1) of the *Health of Animals Act*, S.C. 1990, c. 21. Subsection 16(1) requires that

any person importing into Canada any animal, animal product, or animal by-product, among other items, present the product to an inspector, officer or customs officer for inspection, either before or at the time of importation.

[2] The applicant, on arrival to Pearson International Airport in Toronto, completed a declaration at the self-serve primary inspection kiosk (“PIK”). She answered “yes” to the question whether she was in possession of “[r]aw or cooked meat, fish, seafood, eggs, dairy products, fruits, vegetables, seeds, nuts...” and “no” to the question whether she had “any live animals, pets, food, plants, meat or animal items other than the following: nuts, mango, planting, dried fish, dates, breadfruit, group spices, chocolate, cookies, sugar cane.....citrus fruits and/or avocado”.

[3] After a detector dog identified the applicant’s bag as containing meat products, a border services officer asked the applicant about the food in her bag. She responded: “Just fruits, pomegranates and sweets”. The officer referred the applicant to secondary inspection. A different border services officer asked about the contents of her bag. The applicant said that it contained only fruits and sweets, but after being told that a detector dog had identified meat products, acknowledged the meat products. The bag contained 2.2 kg of chicken sausage, 1.3 kg of beef sausage, and 5.4 kg of pork ears and sausage.

[4] A notice of violation was issued pursuant to section 7 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40 [AAMP Penalties Act] and an administrative penalty of \$1,300 was imposed: Division 1 of Part 1 of Schedule 1 of the

*Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, S.O.R./2000-187.

The applicant asked the Tribunal to review the notice of violation and penalty.

[5] The sole question before us is whether the Tribunal’s decision—upholding the notice of violation and penalty—was reasonable: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 23 [*Vavilov*]; *Canada (Attorney General) v. Chu*, 2022 FCA 105 at para. 4. As the reviewing court, we must ask “whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”: *Vavilov* at para. 99. The party challenging the decision must identify flaws that are “sufficiently central or significant to render the decision unreasonable”: *Vavilov* at para. 100. Absent exceptional circumstances, this Court is not entitled to interfere with the factual findings of the Tribunal: *Vavilov* at para. 125.

[6] The Tribunal determined that the central issue was whether the applicant had sufficiently declared the meat products and, therefore, made them available for inspection. The Tribunal found that the applicant correctly answered the first question in the PIK declaration, but made no further express declarations of meat products until told in the secondary inspection that a dog had detected meat in her luggage. The Tribunal found this insufficient to meet the applicant’s disclosure obligations under subsection 16(1), a conclusion that was reasonable.

[7] The Tribunal considered the applicant’s argument that an E311 declaration card, completed on the airplane prior to arrival, satisfied her disclosure obligations. The card was not

collected; the applicant was questioned on her PIK declaration. While we question the relevance of the E311 card, we agree with the Tribunal's observation that a "yes" on any declaration, merely creates a rebuttable presumption that all products have been fully declared. It did not excuse the applicant's failure to provide complete answers to border services officers.

[8] The Tribunal's approach, that declaration of animal products must be truthful and timely, is consistent with this Court's decision in *Canada (Attorney General) v. Savoie-Forgeot*, 2014 FCA 26 (at para. 25): "[a] traveller is not allowed to gamble that he or she will not be directed to the secondary search area, and to declare the goods only if it appears they will be discovered as a result of a search". See also *Canada (Border Services Agency) v. Tao*, 2014 FCA 52 at para. 25.

[9] The Tribunal also reasonably determined that the applicant did not have a defence to incorrectly answering the second question on the PIK declaration based on a misunderstanding of the question. The Tribunal referred to subsection 18(1) of the *AAMP Penalties Act* which provides that a person named in a notice of violation does not have a defence by reason of due diligence or mistaken facts, even if "reasonably and honestly" believed to be true. As this Court noted in *Gantcheff v. Canada (Attorney General)*, 2019 FCA 317 at para. 9, the scheme under the *AAMP Penalties Act* is one of absolute liability, leaving the person who commits a violation very few defences: *Gantcheff* at para. 9, citing *Doyon v. Canada (Attorney General)*, 2009 FCA 152 at para. 27.

[10] In this Court the applicant reiterates arguments raised before the Tribunal about the sufficiency of her disclosure. The applicant further submits that the Tribunal did not consider

whether she had been provided with an opportunity to establish that the meat products were eligible for importation pursuant to an exemption in section 40 of the *Health of Animals Regulations*, C.R.C., c. 296 [*HA Regulations*], thereby excusing any non-disclosure. We disagree.

[11] In our view, the obligation to declare products for inspection under subsection 16(1) exists regardless of any exemption under section 40 of the *HA Regulations*. Declaring animal products when required, which did not happen here, enables the border services officers to inspect the animal products and determine whether they meet the requirements for importation. A failure to declare can effectively remove that opportunity for inspection: *Savoie-Forgeot* at para. 22.

[12] The applicant has not established that the Tribunal's decision is unreasonable. Accordingly, we will dismiss the application, with costs fixed in the all-inclusive amount of \$1,000.

“Monica Biringer”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-75-23

**STYLE OF CAUSE:** ANNA FEDORENKO v. THE  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** BY ONLINE  
VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 17, 2024

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
LASKIN J.A.  
BIRINGER J.A.

**DELIVERED FROM THE BENCH BY:** BIRINGER J.A.

**APPEARANCES:**

Anna Fedorenko FOR THE APPLICANT  
(ON HER OWN BEHALF)

James Stuckey FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Shalene Curtis-Micallef FOR THE RESPONDENT  
Deputy Attorney General of Canada