

Federal Court



Cour fédérale

Date: 20231215

Docket: T-1597-22

Citation: 2023 FC 1710

Ottawa, Ontario, December 15, 2023

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

DAVOOD KHODAVERDI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Davood Khodaverdi, applied for the Canada Recovery Benefit [CRB], which was denied by an officer of the Canada Revenue Agency [CRA] following a second review dated July 11, 2022 [Decision].

[2] The Applicant seeks on judicial review, a declaration that he meets the requirements of eligibility for the CRB, or in the alternative, an order setting aside the Decision and referring the matter to CRA for reconsideration. The Applicant is also seeking costs.

[3] The Respondent states that the Applicant did not provide sufficient or satisfactory information to meet the statutory requirements for CRB.

[4] It bears underlining that this is not an appeal and that the only question I can deal with is whether to set aside the Decision and refer the matter back to CRA for reconsideration.

[5] For the reasons below, the application for judicial review is dismissed. The Applicant has not demonstrated that the Decision is unreasonable or that there was a breach of procedural fairness.

II. Relevant Legislation

[6] The CRB is a federal benefit program created in response to the COVID-19 pandemic. Subsection 3(1) of the *Canada Recovery Benefits Act*, SC 2020, c 12, [CRBA], sets out the detailed eligibility criteria for the CRB. The following eligibility criteria are relevant:

- (i) Self-employed taxpayers must demonstrate a net self-employment income of at least \$5,000.00 in 2019, 2020, or in the 12 months before the date they applied.
- (ii) For each 2-week period for which they apply the taxpayer must not be employed or self-employed for reasons related to COVID-19, or have had a 50% reduction in their average weekly income compared to the previous year due to COVID-19.

(iii) For each 2-week period for which they apply, the taxpayer must also demonstrate they were seeking work during the period, either as an employee or in self-employment.

III. Preliminary Issues

[7] At the beginning of the hearing, preliminary evidentiary issues were raised by both parties.

[8] On November 15, 2023, the Applicant sought to file a further affidavit and additional exhibits [Further Affidavit] by motion under Rules 369 and 312 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*]. The following day, the Court directed that the issue of the Further Affidavit be addressed at the hearing on November 20, 2023.

[9] Although he objected to the late filing of the Further Affidavit, counsel for the Respondent advised the Court that the Applicant contacted him on November 6, 2023, to discuss his intention to submit a Further Affidavit.

[10] The Applicant explained that he wished to submit the Further Affidavit as background to his application and that this Further Affidavit would provide context to the Court. The documents in the Further Affidavit included immigration documents describing his status in Canada, corporate documents describing his business, and copies of three invoices.

[11] The Applicant stated in his Further Affidavit, and repeated in his oral submissions, that he had reported income earned in 2018 and 2019 and paid taxes on this income outside Canada but would rectify any underreporting of taxes, if necessary.

[12] The Applicant indicated that the Further Affidavit would support his claim that he met the requirements for the CRB. He confirmed that the three invoices in the Further Affidavit were the same as those submitted for the CRB. The Applicant confirmed that the other documents or the information contained in the Further Affidavit were not part of his CRB application.

[13] The Respondent objected to the Further Affidavit and to certain documents that were included in the Applicant's Record, as inadmissible. The objections are summarized as follows:

- (i) From the Applicant's Record, Tabs 5 through 8: These documents were not attached to any affidavit and therefore not proper exhibits to the Applicant's Record. The Respondent confirmed that some documents in Tabs 5 through 8 of the Applicant's Record were also found in the Respondent's Record.
- (ii) From the Applicant's Record, at Tab 8: A letter from the Applicant to the CRA officer dated July 16, 2022, with attachments. These are documents or communications that the Applicant sent to the CRA after the Decision of July 11, 2022, was communicated to him.
- (iii) All statements and documents in the Further Affidavit. The copies of three invoices were duplicates from the Applicant's CRB application. The rest is new.

[14] Rule 80 and Rule 306 of the *Federal Courts Rules* set out the requirement for affidavits generally and in the context of an application for judicial review.

[15] In reviewing the Applicant's Record, Tabs 5 through 8 are not referenced in the Applicant's affidavit, and were simply attached to the Applicant's Record. Tabs 5 through 8 do not conform to the *Federal Courts Rules*, and the Applicant provided no explanation for the discrepancy.

[16] It is well established in law that on judicial review, the Court is limited to the evidentiary record that was before the decision-maker, and the parties cannot supplement that material in their affidavits. There are limited exceptions to this general rule, which include evidence that provides general background information, but care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker; identifies procedural defects to assist the judicial review court to fulfil its role of reviewing for procedural unfairness; or, demonstrates a lack of evidence before the decision-maker. (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 and 20 [*Access Copyright*]).

[17] Based on the above context, the exceptions in *Access Copyright* and without a reasonable explanation from the Applicant, documents in Tabs 5 through 8 of the Applicant's Record that were not before the CRA officer are not admissible.

[18] I also decline to admit the Further Affidavit under Rule 312 of the *Federal Courts Rules*, as these documents were not before the CRA officer and none of the exceptions in *Access Copyright* apply.

IV. Facts

[19] The record before the Court includes notes that CRA officers keep as a record of interactions between the officer and an individual in a system called the T1 Case notepad [notes]. The Respondent's Record contained notes describing communications between the Applicant and the CRA between December 1, 2021, and July 7, 2022.

[20] The Applicant applied for and received CRB for 11 two-week periods from December 20, 2020, to May 22, 2021. He also applied for CRB for 9 two-week periods from May 23, 2021, to September 25, 2021, which was denied. This second time period is the subject of the Decision.

[21] On June 17, 2021, the Applicant provided documentation for his CRB application and claimed that he "worked for Hamshahri News as a self employed person" from January 1 to March 31, 2020. He provided an undated letter from Hamshahri News that stated "Mr. Davood Khodaverdi was working as a part-time self-employee in our company and her monthly salary was \$2000.00 CAD" (emphasis added) [First Hamshahri Letter].

[22] The Applicant sent a copy of the First Hamshahri Letter to the CRA on two subsequent occasions, on July 5, 2021, and July 29, 2021.

[23] On August 3, 2021, the Applicant provided copies of three invoices and bank statements to the CRA. All three invoices were addressed to “Donya-E-Safar Business Ltd” for consulting charges for April, May and June 2021. The CRA officer identified that the invoices do not indicate who issued them, do not charge GST/HST and do not include a GST/HST number.

[24] On August 26, 2021, the Applicant provided a letter from Hamshahri News dated December 22, 2020, which stated “Mrs. Zohreh Behrouzi, has been worked as a member of our marketing and administrative team Hamshahri publication in from Jan 01 to Mar 31, 2020.” [Second Hamshahri Letter]. Mrs. Behrouzi is the Applicant’s wife.

[25] The Applicant sent a copy of the First Hamshahri Letter to the CRA on three subsequent occasions: August 26, 2021, September 14, 2021, and October 6, 2021.

[26] On December 1, 2021, the CRA denied the application for CRB and found that the Applicant was ineligible [First CRB Decision]. The Applicant was notified by letter dated February 14, 2022, which also stated that he could request a review of the First CRB Decision.

[27] The Applicant requested a second review and submitted a letter dated March 8, 2022, from Syed Hashmi from SSH Public Accountant. This letter claimed that the Applicant had received \$6,000.00 from Hamshahri News, and that the Applicant forgot to inform an accountant regarding this income. Attached was a T1 Adjustment Request dated March 8, 2022, with a change to the Applicant’s 2020 income to \$6,000.00.

[28] On May 16, 2022, the CRA officer conducting the second review attempted to contact the Applicant. On May 17, 2022, the CRA officer spoke with the Applicant and requested that the Applicant “submit some invoices and bank statements from the income claimed in the employment letter.” The Applicant indicated he would resubmit documents that detail income/reassessment. Further communications between the CRA officer and the Applicant took place on May 19, 2022.

[29] On May 25, 2022, the Applicant submitted additional documentation, including documentation already submitted on March 8, 2022. The Applicant provided a Notice of Reassessment dated March 17, 2022. The Notice of Reassessment required that the Applicant pay \$264.22 in taxes based on revised “Business Income Gross” of \$6,000.00. The documentation also included an email from the Applicant indicating the \$6,000.00 was received as cash.

[30] On June 13, 2022, a CRA officer reviewed the Applicant’s documents. The CRA officer identified that the First Hamshahri Letter was not dated, refers to paying “her” and not “him”, and that the Applicant’s wife had submitted in a similar letter stating the same income earned but her letter was dated. The CRA officer noted that the First Hamshahri Letter could not be accepted as proof of income, and described the plan to request from the Applicant proof of income, such as proof of deposits, asking how many hours a week the Applicant was working, copies of receipts or pay stubs. If the 2020 self-employment income could not be confirmed, the CRA officer noted they would be asking if the Applicant earned other income in 2019, 2020, or in the 12 months prior, to send invoices or receipts with supporting bank statements as the three invoices and bank statements do not confirm \$5,000.00.

[31] On June 14, 2022, the CRA officer spoke with the Applicant. Based on the notes of this call, the CRA officer informed the Applicant that the T1 Adjustment Request and the First Hamshahri Letter could not be accepted as proof of income and the reasons why. The CRA officer advised the Applicant the type of acceptable documentation, and requested a new letter from the employer. The Applicant requested 10 days to get the paperwork and the CRA officer agreed.

[32] On June 21, 2022, the Applicant submitted additional documentation. This included a third letter from Hamsharhi News still dated December 22, 2020, stating “Mr. Davood Khodaverdi was working as a part time self-employee in our company and his monthly salary was \$2000.00 CAD” [Third Hamsharhi Letter].

[33] On June 28, 2022, the CRA officer left a message for the Applicant “to go over missing documents that had been requested as not all documents were submitted.”

[34] On June 29, 2022, the CRA officer spoke with the Applicant. The CRA officer indicated they noticed that the Second Hamshari Letter was related to the Applicant’s spouse. The CRA officer asked the Applicant if they both worked for the same employer during the same period, which the Applicant confirmed. The CRA officer asked the Applicant who made the correction and changes to the employer’s letters and asked why the new letter did not have a current date. The notes of this call indicate that the Applicant provided an explanation but the CRA officer “couldn’t make out his explanation very well.” The CRA officer also requested proof of deposits, and proof of payment from his employer. The Applicant asked for time to gather the documents,

and the CRA officer agreed. No further documentation was submitted by the Applicant after this call.

[35] On July 11, 2022, the CRA wrote to the Applicant advising that they had denied the Applicant's CRB application further to the second review. The basis of the denial was that the Applicant was not eligible to receive CRB for the time frame sought because the Applicant did not earn at least \$5,000.00 (before taxes) of employment or net-self-employment income in 2019, 2020 or in the 12 months before the date of the Applicant's application.

V. Issues

[36] The Applicant contends that the CRA agent's decision on the second review was unreasonable because he clearly met the eligibility requirements for CRB. In his written materials, he stated that the CRA was procedurally unfair because they did not give him an opportunity to be heard, or did not request additional information or indicate that the information was inadequate.

[37] The questions before this Court are:

- (i) Whether there was a breach of procedural fairness.
- (ii) Whether the CRA officer's Decision was reasonable.

VI. Standard of review

[38] An allegation of procedural fairness is determined on the basis that approximates a correctness review. Ultimately, the question comes down to whether the Applicant knew the case to be met and had a full and fair chance to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56 [*Canadian Pacific*]).

[39] The Supreme Court of Canada has established that when conducting a judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23).

[40] Furthermore, this Court has established that decisions on CRB eligibility are reviewable on a reasonableness standard (*You v Canada (Attorney General)* 2023 FC 1433 at para. 15, citing *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16 [*Aryan*]; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15 [*Walker*]; each applying *Vavilov* at para 23).

[41] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision-maker (*Vavilov* at para 13). It does not attempt to conduct a *de novo* analysis or seek to determine the “correct” solution to the problem (*Vavilov* at para 83).

[42] The decision-maker may assess and evaluate the evidence before it and absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125). A reasonable decision is one 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. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85).

[43] The burden of proof lies with the party claiming that the decision is unreasonable. The party must prove to the reviewing court that the decision is so seriously flawed that it cannot be said to meet the requirements of justification, intelligibility and transparency (*Vavilov* at para 100).

VII. Analysis

A. Was there a breach of procedural fairness?

[44] It is a well-established principle that every person has the right to have a chance to “present their case fully and fairly” (*Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at para 28 [*Baker*]).

[45] Based on the CRA officer’s notes, the Applicant had two telephone calls with the CRA officer on June 14, 2022, and June 29, 2022.

[46] During these calls, the CRA officer identified their concerns about the records that the Applicant provided in support of his CRB application. The CRA officer informed the Applicant that his documentation would not be acceptable to prove income and why it would not be acceptable. The CRA officer also described the type of documentation that would be acceptable. The Applicant then had occasion to submit additional documentation to support his CRB application.

[47] The Applicant did not dispute the CRA officer's notes describing the conversations or the information requested during the calls with the CRA officer.

[48] In considering the record, I find that there has been no breach of procedural fairness. The Applicant knew the case he had to meet to qualify for CRB and had ample and meaningful opportunities to provide documentation to support his application.

B. Is the decision reasonable?

[49] The Applicant argues that the records clearly show that he was eligible for CRB. He stated that he had to make more than \$5,000.00 given that he had to support his family in Canada. He stated that he was in the tourism industry which was severely impacted by the COVID-19 pandemic. The Applicant submits that he does not understand how the CRA could decide that he did not meet the minimum \$5,000.00 threshold.

[50] In his materials and during his oral submissions, the Applicant relied on the Hamsharhi Letters that state income of \$6,000.00, the T1 Adjustment Request that state revised income of \$6,000.00, the Notice of Reassessment Form that accepted the \$6,000.00 revised income, and assertions that his personal circumstances and the impact of the pandemic qualified him for CRB. He stated that he was not satisfied with the Respondent's answer.

[51] The Applicant submitted three versions of letters from Hamshahri News [Hamsharhi Letters]. The CRA officer identified concerns and irregularities about the Hamsharhi Letters. The CRA officer's notes throughout the record demonstrate that they raised this issue with the Applicant, advised the Applicant they could not rely on these letters as proof of income, and requested other underlying documentation to support the claimed income as well as a new letter from the employer.

[52] The Applicant submitted copies of three invoices, each dated "4/30/2021", "5/31/2021" and "6/30/2021" and each claiming \$800.00 in consultancy charges for each of those months. The invoices are addressed to "Donya-E-Safar Business Ltd", and have no identifying information about who issued the invoices. The invoices also fall outside the time frame being claimed under the CRB application. In any event, the three invoices do not total \$5,000.00.

[53] The Applicant provided copies of bank statements. The CRA officer could not connect the bank statements to any income derived from an association with Hamshahri News in 2020 nor consulting for Donya-E-Safar Business Ltd in 2021. The CRA officer did not find any correlation between the Applicant's documentation to the bank statements.

[54] The Applicant included in his Applicant's Record copies of other bank statements that he sent to the CRA officer after he received the Decision. These records were not provided to the CRA during the first or second review. As stated above, I will not consider these bank statements in assessing the reasonableness of the Decision.

[55] The Applicant argues that it was unreasonable for the CRA on one hand, to accept the T1 Adjustment Request and issue a Notice of Reassessment asking for payment based on \$6,000.00 of income (which he complied with), and on the other hand, to reject these documents as proof of income.

[56] The Respondent states that because the Canadian tax system is based on self-reporting by the tax payer, the T1 form and Notice of Reassessment do not prove actual income earned. The CRA was entitled to ask the Applicant for the documents that support the earnings he claimed.

[57] I agree with the Respondent that the T1 form and Notice of Reassessment could not be used alone to prove income, and that CRA could ask for support of the income declared in the Applicant's return (*Aryan* at para 43; *Santaguida v. Canada (Attorney General)*, 2022 FC 523 at para 30; *Walker* at para 37).

VIII. Conclusion

[58] Although the Applicant disagrees with the Decision, as stated above, it is not the role of the reviewing Court to step into the shoes of the decision-maker, and to re-determine the merits of the Decision.

[59] Based on the evidentiary record and the eligibility requirements for the CRB, it was reasonable for the CRA officer to conclude that the Applicant did not meet the criteria required. The Applicant has not demonstrated how the CRA officer's Decision was not justified, intelligible or transparent (*Vavilov* at para. 100). There is no reviewable error in the Decision.

[60] The application for judicial review is therefore dismissed.

[61] Both parties sought costs in their written materials. At the hearing, the Respondent submitted that costs in the lump sum amount of \$250.00 would be appropriate. The Applicant submitted that if he were successful, he would not be seeking costs against the Respondent.

[62] The Court has full discretion to award costs pursuant to Rule 400 of the *Federal Courts Rules*. Having regard to all of the circumstances, I exercise my discretion not to award costs.

JUDGMENT in T-1597-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No costs are awarded.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1597-22
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PLACE OF HEARING: OTTAWA, ONTARIO
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APPEARANCES:

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(ON HIS OWN BEHALF)

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FOR THE RESPONDENT

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