

Date: 20231128

Docket: T-2324-22

Citation: 2023 FC 1590

Ottawa, Ontario, November 28, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

HUI PING HU

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Hui Ping Hu, is self-represented in these proceedings. She seeks judicial review of the Canadian Revenue Agency's ("CRA") decision dated October 6, 2022, finding her ineligible for the Canada Recovery Benefit Program ("CRB").

[2] In its initial determination, communicated to Ms. Hu in a letter dated July 21, 2022 (the “First Decision”), the CRA found Ms. Hu ineligible on the basis that she did not earn at least \$5,000 (before taxes) in income in 2019, 2020, or in the 12 months prior to the date of her first application. On October 6, 2021, the CRA confirmed its initial decision upon a second review of Ms. Hu’s application (the “Second Decision”), declaring Ms. Hu ineligible for the CRB.

[3] Ms. Hu submits that the Second Decision is unreasonable and procedurally unfair. She submits that the CRA failed to review the relevant evidence, which establishes that she made the requisite minimum \$5,000.

[4] While I am mindful of and commend Ms. Hu for her self-representation before this Court, for the reasons that follow, I find that the Second Decision is reasonable and procedurally fair. This application for judicial review is therefore dismissed.

II. Facts

A. Relevant Background

[5] Ms. Hu is a mother of three. Her husband lives in China. She operates a “Dai Gou” business in Canada, which entails purchasing commodities in Canada and selling them to individuals in China.

[6] The CRB is a benefit program introduced by the *Canadian Recovery Benefits Act*, SC 2020, c 12, s 2 (the “Act”) and administered by the CRA. The CRB provided income support to

employed and self-employed persons who were affected by the COVID-19 pandemic and were not entitled to Employment Insurance benefits.

[7] Section 3 of the 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.

[8] Beginning on October 11, 2020, Ms. Hu applied for and received CRB payments in the amount of \$1,000 for 26 weeks in two-week periods until October 9, 2021. As was typical for CRB payments, the CRA accepted the Applicant's claims and paid them prior to reviewing her application.

[9] On December 7, 2020, the CRA selected the Applicant's file for a review to determine her eligibility for the CRB program. Consequently, her file was assigned to a Benefits Compliance Officer for a first review (the "First Reviewer").

[10] On July 21, 2022, the First Reviewer informed the Applicant that her applications for CRB were denied because she did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months prior to the date of her first application.

[11] On August 10, 2022, the Applicant sought a second review of her eligibility.

B. *Decision under Review*

[12] On October 6, 2022, the CRA informed Ms. Hu of its Second Decision, advising the Applicant that since she did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months prior to the date of her first application, she was ineligible for the CRB.

[13] The Benefits Compliance Officer in the Second Decision (the “Second Reviewer”) concluded that:

 Tp did not meet the >5K in 2019, 2020 or 2021 with speaking with tp and the information she provided to me there was nothing to prove the \$5k. Tp stated she started this company in 2018 tp does not have a history of filing net self employment income. Tp stated that she buys merchandise from Costco and other places and sends them to her customers in China. Tp was unable to provide me a Canadian bank statement with invoice to match. She stated that she gets paid in Chinese currency at Chinese restaurants and Chinese Grocery stores. She also said that she often would buy her personal merchandise while shopping for her customers therefore it would all be in one purchase.

[14] In coming to the Second Decision, the Second Reviewer relied on the documents provided in the examinations, Ms. Hu’s Notices of Assessment for the 2019 and 2020 taxation years, the notepad notes for the Applicant’s file, and the “observations” communication log from the CRA system. The Second Decision is the subject of this application for judicial review.

III. Issues and Standard of Review

[15] This application for judicial review raises the following issues:

- A. *Is the Applicant's Affidavit evidence admissible?*
- B. *Is the Second Decision procedurally fair?*
- C. *Is the Second Decision reasonable?*

[16] The parties agree that the merits of the Second Decision are reviewed on a standard of reasonableness (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 16-17, 23-25). I agree.

[17] Although not pled in detail, Ms. Hu's submissions briefly raise, and I therefore address, the issue of procedural fairness. I find that the issue of procedural fairness is to be reviewed on the correctness standard (*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). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[18] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). 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

decision that is reasonable as a whole 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).

[19] 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).

[20] Correctness, by 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).

IV. Analysis

[21] Ms. Hu submits that the Second Decision is unreasonable because the CRA erroneously ignored acceptable documentation, relies upon bank statements and invoices only to evaluate her self-employment income, did not explain why the decision was made, and was not sufficiently

responsive to the significant mental and financial impacts this decision had upon her. She further submits the CRA unfairly decided she could not provide Canadian bank statements and invoices to match her documentation, questions why she was chosen for the CRB review, and submits that the CRA did not afford her the opportunity to rectify a mistake she made.

[22] The Respondent submits that the Second Decision is reasonable, as the conclusion that the Applicant had not met the \$5,000 minimum income threshold under the Act is based on a thorough analysis of the evidence available to the Second Reviewer, including documents provided in the first and second review, the information contained in the Applicant's Notices of Assessment from 2016-2021, and the Second Reviewer's "Notepad" and "Observations" communication logs.

[23] With respect, Ms. Hu has not framed her arguments in a way that allows me to intervene. While understandable, she has not identified errors in the Second Decision for this Court to consider on judicial review.

A. *Admission of Evidence*

[24] Ms. Hu seeks to introduce various documents as evidence before this Court, with her Affidavit including several documents that were not before the First Reviewer nor the Second Reviewer. The Second Reviewer's Affidavit attests to the fact that the following documents were not before them when rendering the Second Decision because the documents were created after the date of the Second Decision:

- Copy of examples of self-employed income expenditures;
- The applicant's notice of Application for CRB to CRA dated November 9, 2022;
- A T1 Adjustment Request for 2018, 2019, 2020 and 2021 taxation years to CRA dated December 9, 2022; and
- A Letter from the CRA dated December 16, 2022.

[25] As the Federal Court of Appeal explained in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 (“*Access Copyright*”), reviewing courts are not forums for fact-finding on the merits of the matter (at para 19). In my view, none of the exceptions to this rule outlined in *Access Copyright* apply here. The evidentiary record before the Court is restricted to the evidentiary record that was before the Second Reviewer. I therefore do not consider the above documents when assessing the reasonableness of the Second Decision.

[26] For the same reasons, I will also not consider the following:

- Ms. Hu's arguments that seek to remedy insufficient evidence or advance new submissions;
- Paragraph 16 of Ms. Hu's Affidavit containing information that was not before the Second Reviewer; and
- Self-employed income expenditure examples.

B. *Procedural Fairness*

[27] Ms. Hu maintains that the CRA treated her unfairly under the excuse that she could not provide Canadian bank statements and invoices to match her documentation, despite her having provided evidence to demonstrate her business income. She also questions why she was chosen for the CRB review and submits that while she made a mistake, the CRA did not afford her the opportunity to rectify that mistake. Respectfully, I disagree. The Second Decision is procedurally fair.

[28] The “Confirming CERB, CRB, CRSB and CRCB Eligibility” (“CRA Guidelines”) state that “[i]f the 2019 or the 2020 income cannot be validated, proof must be provided.” The CRA Guidelines further state, “[i]f you determine that documentation is required, advise that applicant what needs to be provided to show they made at least \$5,000.00 in the last 12 months.” As this Court has previously explained, guidelines may be “useful in indicating what constitutes a reasonable interpretation of a given provision” (*Crook v Canada (Attorney General)*, 2022 FC 1670 at para 16, citing *Kanthisamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32).

[29] In my view, the Second Reviewer followed these guidelines. The record reflects that the First Reviewer contacted the Applicant and informed her that further documentation was required to establish her proof of self-employment income, including bank statements and invoices. The Second Reviewer’s notes state that on September 20, 2022, the Second Reviewer called the Applicant and described:

... to her that I received a lot of documents but was unable to match any documents to prove [*sic*] she had started her company in 2018 she buys in Canada mostly Costco and then send this to China to clients uses husbands credit card to buy the items. She received Chinese currency for the items she buys. Tp stated that she would often put her personal purchases in with what she was getting for her customers. Tp stated that she sent me a excel spreadsheet of all of her expenses advised tp that her name was not present on the document I advise the tp that I need a bank statement showing the money going into her account and invoices to match. Tp stated that her customers pay her in Chinese currency...

[Emphasis added]

[30] When the CRA requires further documentation to assess an applicant's eligibility, they must advise the taxpayer (*Virani v Canada (Attorney General)*, 2022 FC 1480 (“*Virani*”) at paras 20-21). The evidence above reflects that is exactly what the Second Reviewer did in this case. As such, I am of the view that the Second Reviewer afforded the requisite procedural fairness.

C. Reasonableness

[31] Ms. Hu maintains that the Second Reviewer's decision is unreasonable for relying upon only bank statements and invoices to evaluate her self-employment income, despite receipts of payment being acceptable to substantiate the \$5,000 threshold for employment or self-employment. She submits that the CRA did not explain why the decision was made, and that the significant mental and financial impacts on her were not reflected in the Second Reviewer's decision as required by *Vavilov* at paragraph 133.

[32] The Respondent submits that the Second Reviewer's decision is reasonable. The Respondent maintains that this Decision represents a thorough analysis of the evidence available to the Second Reviewer, including documents provided in the first and second review, the information contained in the Applicant's Notices of Assessment from 2016-2021, and the "Notepad" and "Observations" communication logs, to conclude that the Applicant had not met the \$5,000 minimum income threshold for the Act. The Respondent submits that this conclusion is supported by the Applicant's tax return documents from 2019-2021 in particular, which show the Applicant did not meet this threshold.

[33] I agree with the Respondent. Here, the central issue with respect to the Ms. Hu's case was her lack of evidence demonstrating she had met the \$5,000 minimum requirement (*Vavilov* at para 100). With sympathy for Ms. Hu, she had to convince the Second Reviewer that she met the eligibility criteria (*Virani* at para 12). Unfortunately, she effectively concedes that she did not provide the necessary evidence to the Second Reviewer. She instead argues that the CRA should have accepted the evidence that she was able to provide. She explains that she does not have any Canadian bank statements related to her business as all the transactions take place in WeChat. She also acknowledges that, "it is [her] mistake to have thrown away all the receipts that can prove [her] expending on customer orders." Aside from arguing that the Second Reviewer should have found her evidence sufficient, Ms. Hu does not point to an error in the Second Decision. It is not this Court's role to reweigh evidence or take a different view of the evidence on judicial review (*Vavilov* at para 125; *Lalonde v Canada (Revenue Agency)*, 2023 FC 41 ("*Lalonde*") at para 29).

[34] In addition, Ms. Hu responds, in this application, to issues raised by the CRA officers. For example, the Second Reviewer identified the following issues and explained them to Ms. Hu: (i) that they could not match the documents; (ii) her name was not on the excel spreadsheet; and (iii) the need for invoices. Ms. Hu here addresses these concerns, providing extensive submissions on these findings. She does not, however, raise these concerns as unreasonable. Rather, she asks this Court to fashion its own reasons to remedy the Second Reviewer's concerns. This Court cannot do so on judicial review (*Vavilov* at para 96).

[35] Furthermore, Ms. Hu references a re-payment of the Canada Worker Lockdown Benefit ("CWLB") in her submissions. However, the only decision before this Court is the CRB assessment and I am unable to consider the CWLB issues.

[36] Finally, the parties agreed to costs in the amount of \$500. Given the circumstances and Ms. Hu's self-representation in this matter, I do not find that this is an appropriate case for costs (see e.g. *Lalonde* at para 97).

V. Conclusion

[37] I commend Ms. Hu for arguing her case before this Court as a self-represented litigant, which can present unique challenges and may be overwhelming for certain individuals. I especially commend her for expressing gratitude to counsel for the Respondent and to members of this Court, including Registry Officers. This respect for the judicial process has not gone unnoticed, nor have Ms. Hu's financial situation and the personal difficulties the COVID-19 pandemic caused her. I recognize that her submissions may not provide the type of legal

analysis normally provided by counsel, and I have done my best to accommodate her in this regard. It is vital that self-represented litigants have their day in court. I also thank the Respondent's counsel for her exercise of patience and respect during oral arguments.

[38] The CRA's Second Decision, finding that Ms. Hu does not meet the income eligibility criteria for the CRB, is reasonable and procedurally fair. This application for judicial review is therefore dismissed without costs.

JUDGMENT in T-2324-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed
with no costs.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2324-22

STYLE OF CAUSE: HUI PING HU v THE ATTORNEY GENERAL OF CANADA

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