Federal Court of Appeal | Cour d'appel fédérale

Date: 20240919

Docket: A-274-23

Citation: 2024 FCA 152

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

BETWEEN:

AIJUN SUN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online videoconference hosted by the Registry on September 19, 2024.

Judgment delivered from the Bench at Ottawa, Ontario, on September 19, 2024.

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

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on September 19, 2024).

STRATAS J.A.

[1] Ms. Sun appeals from the judgment dated September 12, 2023 of the Federal Court (*per* Aylen J.): 2023 FC 1225. The Federal Court dismissed her application for judicial review of a decision of the Canada Revenue Agency.

[2] The Agency decided that Ms. Sun was not eligible for the benefits she received under section 3 of the *Canada Recovery Benefits Act*, S.C. 2020, c. 12, s. 2 and required her to repay the benefits. The Agency found that she did not satisfy two eligibility requirements for the benefits. First, she did not earn at least $5,000 (before taxes) of employment or net self-employment income (as opposed to, for example, rental income from property) in 2019, 2020 or in the 12 months before the date of her first application. Second, she did not have a 50% reduction in her average weekly income compared to the previous year due to COVID-19.

[3] We must dismiss the appeal. The Agency's decision is reasonable: as the Federal Court found, the Agency's decision is based on findings supported by an acceptable and defensible view of the evidence and the law. As well, as the Federal Court found, the Agency's decision is not subverted by any procedural unfairness. The Agency gave the appellant a full and fair opportunity to make submissions and the Agency took into account the appellant's submissions when making its decision.

[4] Appeals in this Court from judicial reviews in the Federal Court are essentially do-overs: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 and *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 3 S.C.R. 107). However, where the Federal Court's reasons are compelling and complete, as here, the appellant in this Court faces a tactical burden to identify some error in the Federal Court's reasoning: *Bank of Montreal v. Attorney General of Canada*, 2021 FCA 189, [2021] D.T.C. 5111. On this, the appellant has fallen well short: on both the substantive reasonableness of the Agency's decision

and the procedural fairness issues the appellant raises, we agree with the result reached by the Federal Court for the reasons it gave.

[5] In oral argument, the appellant submits that she had made an accounting mistake and that in reality she had employment or self-employment income that met the eligibility requirements. She may well have made an accounting mistake but the fact remains that there was evidence in the record upon which the Agency could decide that the appellant did not meet the eligibility requirements and so the Agency's decision is reasonable.

[6] Also in oral argument, the appellant submits that the Federal Court did not understand the nature of her income or business. We disagree. There are express indications that the Federal Court did indeed understand and was mindful of the entire record before it: see, e.g., paras. 20-21.

[7] The appellant submits that the Federal Court erred in refusing to admit certain additional evidence she offered that was not before the Agency when it made its decision. In submissions before us, the appellant referred to some new evidence. Among other things, the appellant pointed us to a revised income tax return that she filed after the Agency's decision.

[8] We cannot consider this submission or the new evidence. This is because the Federal Court refused to admit the evidence by way of an interlocutory Order dated September 1, 2023. If dissatisfied with the Order, the appellant had to appeal it. She did not. As a result the Order is final and cannot be collaterally attacked in this separate appeal.

[9] In any event, we agree with the Federal Court's Order. As the Federal Court held, the new evidence is inadmissible under the principles in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 F.T.R. 297; see also *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128. The normal rule set out in these and many other cases is that reviewing courts review administrative decisions using only the evidence the administrative decision-maker had before it. This rule admits of few exceptions canvassed in those cases. No exceptions apply here. The administrative decision-maker, here the Agency, not the reviewing court, alone decides the merits of the case on the facts and the law and so, as a result, all evidence must be offered there, not in the reviewing court.

[10] Therefore, we will dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

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