

Federal Court



Cour fédérale

Date: 20220630

Docket: T-939-21

Citation: 2022 FC 973

Ottawa, Ontario, June 30, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JOYANTI DATTA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS AND JUDGMENT

[1] Ms. Joyanti Datta (the “Applicant”) seeks judicial review of a decision made on May 13, 2021 by the Canada Revenue Agency (the “CRA”). In that decision, the CRA determined that the Applicant is not eligible to receive benefits under the Canada Recovery Benefit (the “CRB”) program, created by the *Canada Recovery Benefits Act*, S.C. 2020 , c. 12 (the “Act”).

[2] The Applicant named the CRA as the “Respondent” in her Notice of Application. Pursuant to the Rule 303 of the *Federal Courts Rules*, S.O.R./98-106 (the “Rules”), the correct

party to this Application for Judicial Review is the Attorney General of Canada (the “Respondent”) and the style of cause is hereby amended accordingly.

[3] The details that follow are taken from the affidavit of the Applicant, affirmed on July 8, 2021 and from the Certified Tribunal Record (the “CTR”) prepared by the CRA.

[4] The Applicant came to Canada from Bangladesh following the death of her husband in 2001. She lives with her son and his family in Alberta. She provided babysitting services for the son’s children, for which she was paid in cash.

[5] The Applicant applied for benefits under the CRB program. She received funds for the periods of September 27 to October 9, 2020 and October 11 to October 24, 2020.

[6] Subsequently, the CRA conducted a validation review for eligibility and provided the Applicant the opportunity to submit documents to support her claim that she met the criteria of having a minimum earned income of \$5000.00 in 2019, 2020 or in the 12 months preceding the date of her application for the benefit.

[7] The Applicant submitted a letter dated November 27, 2020, enclosing babysitting receipts for 2019 and 2020 and a partnership income statement for the 2019 tax year relative to a business in Bangladesh.

[8] The Applicant sent another letter dated January 5, 2021 and forwarded more materials, including a screen printout of bank statement for accounts that she controlled.

[9] The documents were reviewed by an employee of the CRA. The CRA determined that the Applicant had not earned at least \$5000.00 in employment or self-employment income in 2019, 2020 or in the 12 months prior to the date of her first application for the benefit.

[10] The CRA advised the Applicant of its decision in a letter dated January 28, 2021. In this letter, the CRA said that the Applicant could request a review of that decision, to be done by a CRA employee who was not involved in the first decision.

[11] By letter dated February 5, 2021, the Applicant requested a second review.

[12] Following the second review, the CRA again found that the Applicant had not shown that she met the required income amount to qualify for the benefit. The decision of the CRA was communicated by a letter dated May 13, 2021.

[13] On June 10, 2021, the Applicant filed this Application for judicial review.

[14] The Applicant argues that the CRA erred in adding up her income for the years 2019 and 2020. She submits that she provided documents showing that her babysitting income for 2019 was \$3500.00 and \$1600.00 in 2020.

[15] The Applicant also argues that her partnership business income from outside Canada in February 2020 was \$2400.00. She submits that her partnership income in May 2020 was \$4250.00. In these circumstances, the Applicant contends that she has met the income requirements to qualify for the CRB.

[16] The Respondent, on the other hand, submits that the documents submitted by the Applicant, together with the income tax information available to the CRA, do not support her claim that she met the income requirement.

[17] The Respondent argues that the CRA carefully reviewed the documents provided by the Applicant, as well as the information available from its records, and reasonably concluded that the Applicant had failed to show that she was eligible to receive the CRB benefit.

[18] The Respondent also submits that the Applicant's partnership income does not fall within the sources of income identified in the Act because it is not "prescribed".

[19] The decision of the CRA is reviewable on the standard of reasonableness, pursuant to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[20] In considering reasonableness, the Court is to ask if the decision under review "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 that decision”; see *Vavilov*, *supra* at paragraph 99.

[21] The decision of the CRA is fact-driven, within the framework of the Act. Paragraphs 3(1)(a) to (c) of the Act provide as follows:

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

(a) they have a valid social insurance number;

(b) they were at least 15 years of age on the first day of the two-week period;

(c) they were resident and present in Canada during the two-week period;

...

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:

a) elle détient un numéro d’assurance sociale valide;

b) elle était âgée d’au moins quinze ans le premier jour de la période de deux semaines;

c) elle résidait et était présente au Canada au cours de la période de deux semaines;

...

[22] Sections 4 and 7 are also relevant and provide as follows:

Application

4 (1) A person may, in the form and manner established by the Minister, apply for a

Demande

4 (1) Toute personne peut, selon les modalités — notamment de forme — fixées

Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021.

par le ministre, demander une 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.

4(2) Limitation No application is permitted to be made on any day that is more than 60 days after the end of the two-week period to which the benefit relates.

4(2) Restriction Aucune demande ne peut être présentée plus de soixante jours après la fin de la période de deux semaines à laquelle la prestation se rapporte.

...

...

Payment of benefit

Versement de la prestation

7 The Minister must pay a Canada recovery benefit to a person who makes an application under section 4 and who is eligible for the benefit.

7 Le ministre verse la prestation canadienne de relance économique à la personne qui présente une demande en vertu de l'article 4 et qui y est admissible.

[23] The effect of these provisions is to identify who may apply for the CRB benefit and for which two week periods “to which the benefit relates”.

[24] Paragraph 3(1)(d) identifies the sources of income that will be recognized as eligible sources of income and provides as follows:

Eligibility

Admissibilité

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning

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

on September 27, 2020 and ending on October 23, 2021 if
septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes:

...

(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 \$5,000 from the following sources:

(i) employment,

(ii) self-employment,

...

...

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 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,

...

[25] The Applicant claims that she was paid \$3500.00 as babysitting income in 2019 and \$1600.00 as babysitting income in 2020. All payments were made in cash. Upon review of the CTR, it is clear that the CRA did not accept the Applicant's evidence relative to babysitting income.

[26] In my opinion, the CRA reasonably found that there was insufficient documentary evidence to support the Applicant's claim for babysitting income.

[27] The evidence submitted was a combination of invoices and bank statements. However, the amounts did not add up. The CRA communicated this concern to the Applicant. The CRA explained to the Applicant that regardless of whether it “believed the client earned the money”, the first and second reviews were evidence driven and the documentary evidence before the decision maker did not support the amounts claimed. As such, no babysitting income was considered for the purpose of eligibility for the CRB benefit.

[28] Upon this application for judicial review, the Applicant submitted additional documents. This evidence includes bank statements from her son that show withdrawals for the money that was allegedly paid to her.

[29] However, this information was not before the decision maker. A judicial review is not a *de novo* hearing.

[30] Evidence that was not before the decision maker usually cannot be considered upon an application for judicial review; see the decision in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency* (2012), 428 N.R. 297.

[31] In my opinion, based on the information and documentary evidence that was considered in the second review, the decision maker reasonably found that there was no “real proof of income earned” for babysitting.

[32] The Applicant submits that she earned \$2400.00 in partnership income in February 2020, and \$4250.00 in partnership income in May 2020.

[33] The Applicant provided proof that \$2400.00 was deposited into her account on February 12, 2020.

[34] The Applicant did not, however, provide any documentary evidence during the CRA review process to support her claim for partnership income of \$4250.00.

[35] The Applicant deposed in her affidavit that she made a mistake by not declaring this income during the CRA review process. Acknowledgement of her mistake by the Applicant does not change the fact that the information was not before the decision maker and was therefore not considered as part of the CRA's second review.

[36] The only partnership income that was sufficiently documented before the decision maker was \$2400.00, which is below the \$5000.00 threshold to be eligible for CRB.

[37] In my opinion, it follows that the decision maker reasonably found that there was insufficient documentary evidence to support the Applicant's claim that she met the requisite threshold for the CRB benefit.

[38] There is no reviewable error in the decision and no basis for judicial intervention.

[39] In the result, this Application for judicial review will be dismissed.

[40] The Respondent does not seek costs. In the exercise of my discretion, pursuant to Rule 400 of the Rules, I make no order as to costs.

JUDGMENT in T-939-21

THIS COURT'S JUDGMENT is that the Application for judicial review is dismissed.

The Respondent does not seek costs. In the exercise of my discretion, pursuant to Rule 400 of the *Federal Courts Rules*, S.O.R./98-106, I make no order as to costs.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-939-21

STYLE OF CAUSE: JOYANTI DATTA v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE BETWEEN EDMONTON, ALBERTA AND ST. JOHN'S, NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: JANUARY 17, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JUNE 30, 2022

APPEARANCES:

Joyanti Datta

FOR THE APPLICANT
(ON HER OWN BEHALF)

Daniel G. Segal

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
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FOR THE RESPONDENT