

Federal Court



Cour fédérale

Date: 20230720

Docket: T-2222-22

Citation: 2023 FC 995

Ottawa, Ontario, July 20, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MOHAMMAD REZA NASSER

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT and REASONS

I. Overview

[1] The Applicant, Mohammad Reza Nasser, applied for the Canada Recovery Benefit [CRB]. The Canada Revenue Agency [CRA] determined Mr. Nasser was ineligible because he failed to provide sufficient evidence that he had earned at least \$5,000 in income in 2019, 2020, or the 12 months before the date of his first application. Mr. Nasser had provided the CRA with a bank statement showing a \$5,500 deposit in his account in 2019 but did not provide any

documentation connecting this deposit to his self-employment providing church ministry services.

[2] Mr. Nasser argues that the CRA breached procedural fairness by not informing him of what document, other than an invoice, he could have provided as proof of his income of \$5,500 in 2019. Mr. Nasser also argues the decision to find him ineligible based on the lack of an invoice for his church ministry services was unreasonable.

[3] The CRA also addressed Mr. Nasser's claims relating to his income from his wife's hair salon business. On judicial review, Mr. Nasser has not challenged the CRA's finding about his evidence relating to the purported income from the hair salon business. Accordingly, I have not addressed the part of the CRA's decision dealing with the hair salon.

[4] Having carefully reviewed the record on judicial review, I agree with Mr. Nasser that the CRA handled his case in a procedurally unfair manner. Mr. Nasser did not know the case to meet. The CRA asked for an invoice to confirm his employment income. When Mr. Nasser's son explained the invoice was unavailable, the CRA did not explain that he should try to provide other documents to prove his self-employment. The CRA left Mr. Nasser with an incorrect understanding of the eligibility requirement; he believed that the CRA would only accept an invoice as proof of his employment in 2019. This was not fair and therefore the matter must be redetermined. As I have found the decision procedurally unfair, it is unnecessary for me to address Mr. Nasser's arguments about the reasonableness of the decision.

[5] Based on the reasons below, I grant the judicial review.

II. Procedural History

[6] Mr. Nasser applied for CRB from September 27, 2020 to October 9, 2021. Mr. Nasser's son assisted him in applying. Before conducting the first review, on March 11, 2022, a CRA agent spoke to Mr. Nasser and explained that bank statements and invoices matching the amounts in those bank statements are required to show that Mr. Nasser meets the minimum income requirement. Mr. Nasser provided a 2019 bank statement showing a \$5,500 deposit . That deposit was highlighted, but Mr. Nasser did not explain where the deposit came from or what parts of the statements are relevant. The first CRA reviewer found Mr. Nasser not eligible for CRB because the documents he provided were insufficient to demonstrate that he meets the minimum income requirement.

[7] Mr. Nasser sought a second review of his CRB application. The second reviewer also noted that Mr. Nasser had provided a transaction list showing a \$5,500 deposit in July 2019 without indicating the nature of the self-employment.

[8] On August 24, 2022, the CRA agent conducting the second review contacted Mr. Nasser and spoke with Mr. Nasser's son to discuss proof of income. Mr. Nasser's son explained that the \$5,500 deposit in July 2019 was income Mr. Nasser earned for work with a church ministry, that there was no corresponding invoice, and that the ministry has since closed so it was not possible to obtain an invoice.

[9] On September 14, 2022, the CRA determined that Mr. Nasser is not eligible for CRB because he did not meet the \$5,000 minimum income criterion.

III. Issues and Standard of Review

[10] The determinative issue in this judicial review is whether the CRA breached procedural fairness by not informing Mr. Nasser that he could provide other documents, other than an invoice, to demonstrate his employment income. This issue does not relate to the merits of the decision. The general presumption of a reasonableness standard of review does not apply to procedural fairness issues (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77). The question I need to ask is whether the procedure was fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

IV. Procedural Fairness Breach

[11] The CRB provided direct financial support to eligible people residing in Canada and affected by the COVID-19 pandemic for any two-week period between September 27, 2020 and October 23, 2021. Residents had to meet the eligibility requirements for each of the two-week periods. The eligibility requirement at issue in this judicial review is the Income Eligibility Requirement set out in paragraphs 3(1)(d) to (f) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*] requiring an applicant to demonstrate that they had at least \$5,000 in income in 2019, 2020, or in the 12 months before the date of their first application.

[12] Section 6 of the *CRB Act* requires that an applicant provide the Minister with any information that the Minister may require in respect of the CRB application. The second reviewer asked Mr. Nasser to provide proof that the deposit in his bank account in 2019 was related to his self-employment providing church ministry services in 2019.

[13] The Respondent argues that Mr. Nasser knew the case to meet based on Mr. Nasser's son's conversation with the second reviewer on August 24, 2022. In particular, the Respondent submits that Mr. Nasser's son was advised that he could "upload anything" to confirm self-employment with the church.

[14] Having reviewed the affidavit of the second reviewer, the notes from the second reviewer of the August 24, 2022 call, the second review report, and Mr. Nasser's son's affidavit, I do not agree. The call with the second reviewer dealt with two issues: the purported self-employment with the church in 2019 and the deposits that the Applicant claimed came from his work with his wife's hair salon. The statement that is reproduced in the second reviewer's notes and affidavit advising Mr. Nasser to "upload anything that would confirm the payments or confirm [Mr. Nasser's] operation of the business" is not with respect to the church ministry services; it specifically addresses Mr. Nasser's payments from the hair salon. The second reviewer's affidavit and notes from the call confirm that they only asked Mr. Nasser's son about whether an invoice could be produced to confirm the church ministry income. There is no indication that the CRA gave further guidance to Mr. Nasser about whether he should try to produce other documents. This is consistent with Mr. Nasser's son's affidavit filed on judicial review.

[15] Mr. Nasser was then left with the erroneous impression that he could only meet the eligibility requirement if he could produce an invoice for his ministry services, which he could not do. The CRA guidelines “Confirming CERB, CRB, CRSB, CRCB, and CWLB Eligibility” also instruct CRA agents to work with applicants who are unable to provide any of the documents suggested “to see what other acceptable documents they may have.”

[16] On judicial review, Mr. Nasser indicated that had he known that he could have provided documents other than an invoice, he would have sought and provided those documents to the CRA. Mr. Nasser has now been able to contact individuals who knew about his work at the church in 2019 to provide supporting documentation. He should have an opportunity to provide this documentation to the CRA on redetermination.

V. Disposition

[17] The application for judicial review is allowed and sent back to be redetermined by a different decision-maker. Mr. Nasser should be given an opportunity to provide further documentation on redetermination. Mr. Nasser has not sought costs. In these circumstances, I exercise my discretion under Rule 400 of the *Federal Courts Rules* and order no costs.

[18] Finally, at the request of the Attorney General, and in accordance with Rule 303 of the *Federal Courts Rules*, the title of proceedings shall be amended to name the Attorney General of Canada as the Respondent in this application.

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed;
2. The title of proceedings shall be amended to identify the Respondent as the Attorney General of Canada; and
3. No costs are awarded to either party.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2222-22

STYLE OF CAUSE: MOHAMMAD REZA NASSER v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JUNE 22, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JULY 20, 2023

APPEARANCES:

Mohammad Reza Nasser ON HIS OWN BEHALF

Raphael Clément FOR THE RESPONDENT

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Ottawa, Ontario