

Federal Court



Cour fédérale

**Date: 20231011**

**Docket: T-952-22**

**Citation: 2023 FC 1356**

**Toronto, Ontario, October 11, 2023**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**FARHAT J. KHALID**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms. Farhat J. Khalid [Applicant] applied for the Canada Recovery Benefit [CRB] for twenty-eight two-week periods from September 27, 2020 to October 23, 2021, and received the CRB for eighteen two-week periods from September 27, 2020 to June 5, 2021.

[2] On October 18, 2021, the Canada Revenue Agency [CRA] informed the Applicant that she was ineligible for the CRB from September 27, 2020 to October 23, 2021 [First Decision].

[3] The Applicant requested a review of the First Decision on October 25, 2021 and a different CRA Officer [Officer] conducted a second-level review of the Applicant's CRB application. On April 11, 2022, the Officer determined that the Applicant was not eligible for CRB [Second Decision] because she did not provide sufficient documents to demonstrate she earned at least \$5,000 of income from employment or self-employment in 2019, 2020, or in the 12-month period preceding the day on which she applied for CRB [Income Requirement].

[4] The Applicant seeks judicial review of the Second Decision, arguing that the Officer failed to consider her income from running an Airbnb. For the reasons set out below, I dismiss the Applicant's judicial review application.

## II. Preliminary Issues

[5] There are three preliminary matters. First, the appropriate respondent is the Attorney General of Canada and not the CRA. The style of cause will be amended accordingly.

[6] Second, the Respondent has filed a redacted version of the Application Record [AR] in order to protect certain private and confidential information of the Applicant. I order the Registrar to replace the original AR filed by the Applicant with the redacted version of the AR filed by the Respondent.

[7] Third, the Respondent submits that the Court should not consider the additional evidence the Applicant submitted to the Court that was not before the Officer. The additional evidence consists of:

- Exhibit B: Letter from the Applicant dated May 7, 2022 to the CRA.
- Exhibit C: Notice of Reassessment for the 2019 Tax Year dated May 10, 2022.
- Exhibit D: Statement of Business dated April 23, 2022.

[8] As the Respondent submits, on judicial review, the Court should only consider new evidence that was not before the decision-maker where: (1) the new evidence provides general background circumstances that may assist the Court in understanding issues relevant to the judicial review; (2) the new evidence brings the Court's attention to procedural defects that are not found in the evidentiary record; and (3) the new evidence highlights the absence of evidence before the decision-maker on a particular finding: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*], at para 20.

[9] The exhibits in question all post-date the Second Decision. The Applicant has not shown how any of the above noted exceptions in *Access Copyright* would apply to her case. As such, I find Exhibits B, C, and D of the Applicant's Affidavit inadmissible.

### III. Analysis

#### A. *Legislative Framework*

[10] The enabling legislation of the CRB is the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*].

[11] Pursuant to section 3 of the *CRB Act*, to be eligible for CRB, the Applicant must have:

- in respect of a CRB application for a two-week period beginning in 2020, earned at least \$5,000 of income from employment or self-employment income in 2019 or in the 12-month period preceding the day on which the person applied for the CRB, per paragraph 3(1)(d) of the *CRB Act*; and
- in respect of a CRB application for a two-week period beginning in 2021, earned at least \$5,000 of income from employment or self-employment in 2019, 2020, or in the 12-month period preceding the day on which the person applied for the CRB, per paragraph 3(1)(e) of the *CRB Act*.

[12] Also under subparagraphs 3(1)(d)(i) to (iv) of the *CRB Act*, the type of income eligible for CRB must be derived from employment, self-employment, and certain prescribed government benefits and allowances.

[13] In addition, CRA agents rely on a document entitled “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CRA Guidelines] to help them determine whether an applicant is eligible for the CRB. The CRA Guidelines state specifically that “pension income, rental income, Social Assistance, do **not** count as ‘employment’ or ‘self-employment income’” [emphasis in original].

B. *The Decision is reasonable*

[14] The applicable standard of review is one of reasonableness, as per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], which is a deferential, but robust, standard of review: at paras 12-13. For a decision to be unreasonable, the applicant must establish that 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.

[15] The Applicant submits that in 2019, she had a total income of \$10,361 from her rental property and self-employment income of \$5,490.42 derived from Airbnb. She argues that her income from Airbnb was mistakenly reported as rental income and that this mistake was corrected. As such, the Applicant submits her income was more than \$5,000 in accordance with the Income Requirement.

[16] After reviewing the income tax returns filed by the Applicant for the taxation years of 2019 and 2020, as well as other documents provided by the Applicant, the Officer determined the Applicant was not eligible for CRB, finding that the Applicant's employment and self-employment income from both the 2019 and 2020 taxation years was \$0.

[17] The Officer concluded that the Applicant did not provide sufficient documents to demonstrate she met the income requirement and that the rental income derived from Airbnb was not eligible income for CRB.

[18] The Applicant argues that the CRA was unable to consider the Notice of Reassessment for 2019 dated May 10, 2022, which shows that her business/self-employment income was

\$5,480. The Applicant further argues that she communicated to the CRA, in her request for a second review, that her business/self-employment income from Airbnb was \$5,040 for 2019.

[19] Lastly, the Applicant submits that it was an unprecedented emergency and rules were not clearly defined at that time and that income eligibility was in a grey area.

[20] At the hearing, the Applicant further submitted that before 2019, she was reporting her rental income and Airbnb income together, and did not know that she should have filed her Airbnb income separately. Once she realized she had to file Airbnb income separately, she did so immediately. The Applicant reiterated that she provided the statement showing her Airbnb income at over \$5000.00 and that the Officer failed to consider her Airbnb income.

[21] I find the Applicant's submissions fail to reveal any reviewable errors arising from the Second Decision. Rather, the Applicant simply disagrees with the Officer's determination that the Applicant's income from Airbnb was not considered eligible income.

[22] As noted in the Second Review Report, the Officer received the documents submitted by the Applicant in her request for a second review. The Officer noted the documents provided by the Applicant, namely, "Copies of 2019/2020 return showing rental income summary of earnings for Air BNB rental income." Thus contrary to the Applicant's assertion, the Officer did consider her letter dated October 25, 2021 and the statement of the Applicant's 2019 rental income before concluding Airbnb income is not eligible for CRB benefits.

[23] The Respondent argues, and I agree, that the Officer arrived at the Second Decision based on the evidentiary record and the Applicant's submissions. There is no indication that the Officer misapprehended or failed to account for any relevant part of the evidentiary record or the Applicant's submissions.

[24] At the hearing, the Applicant further expressed that at the time when she applied for CRB, she did not know how it worked. There were no rules about how income would be calculated. The Applicant argued that suddenly all the rules came in and thousands of people were trapped and were made to pay back the CRB. The Applicant also commented that unlike Canada, governments of other countries like the United States and the United Kingdom never imposed these eligibility requirements.

[25] While I am sympathetic to the Applicant's situation, it is not my role to comment on the policy choices made by the Government of Canada in response to an unprecedented emergency caused by the pandemic, by adopting a "pay first and ask questions later" approach to assessing eligibility. I also note that the \$5,000 minimum income requirement was put in place at the start of the CRB program. While the Applicant may believe that the government should have provided more clarity about the rules, the fact remains that the *CRB Act* makes clear the type of income eligible for CRB, and the CRA Guidelines provide further interpretation of the income eligibility requirement.

[26] I appreciate that most taxpayers would not have read the *CRB Act* or the CRA Guidelines when they submit their applications for CRB. Nevertheless, CRA officers are bound by the

legislative framework. Further, as noted by the Respondent, this Court has confirmed that CRA agents may rely on the CRA Guidelines when assessing eligibility for CRB and related emergency benefits: *Aryan v Canada (Attorney General)* 2022 FC 139 at para 43.

[27] Finally, although the factual context is different, this Court in *Smeele v Canada (Attorney General)*, 2023 FC 21, at para 18 found that the officer's determination that Airbnb income was not eligible income for CRB was reasonable.

[28] In light of all of the above, I conclude that the Officer committed no reviewable error when finding the Applicant ineligible for the CRB.

#### IV. Conclusion

[29] The application for judicial review is dismissed.

[30] There is no order as to costs.



**JUDGMENT in T-952-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. The Style of Cause shall be amended to reflect the Attorney General of Canada as the correct Respondent.
3. The Registrar shall replace the original Application Record filed by the Applicant with the redacted version of the Application Record filed by the Respondent.
4. There is no order as to costs.

"Avvy Yao-Yao Go"  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-952-22

**STYLE OF CAUSE:** FARHAT J. KHALID v ATTORNEY GENERAL  
CANADA

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 21, 2023

**JUDGMENT AND REASONS:** GO J.

**DATED:** OCTOBER 11, 2023

**APPEARANCES:**

Saled Khalid FOR THE APPLICANT

Colin McArthur FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario