Federal Court Cour fédérale

Date: 20260209

Docket: T-2948-24

Citation: 2026 FC 178

Ottawa, Ontario, February 9, 2026

PRESENT: Madam Justice Gagné

BETWEEN:

HUONG MAI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is seeking judicial review in respect of a decision by the Canada Revenue Agency [CRA] denying her eligibility for the Canada Emergency Response Benefit [CERB]. In coming to this conclusion, the CRA found that the Applicant did not earn at least $5,000 (before

taxes) of employment and/or self-employment income in 2019 or in the 12 months before the date of her first application.

II. Facts

[2] The Applicant applied for the CERB for the period starting March 15, 2020, and ending September 26, 2020.

[3] In early 2019, the Applicant left her position as a babysitter to start her own restaurant and, from early 2019 to the closure date of the restaurant on September 19, 2019, did not pay herself a salary. The Applicant later sold her business and, for two months following the sale, acted as a consultant for the buyer while being paid $3,000 in cash that was never deposited to a bank. The evidence submitted in support of this consulting work is a handwritten note authored by the Applicant, in Vietnamese, translated into English by the Applicant's daughter, that includes the first name of the buyer, describes the nature of the work completed and the amounts earned, along with certain contact information of the buyer.

[4] The restaurant has since closed.

[5] In 2020, the Applicant returned to babysitting until the start of the pandemic, in March of that year, earning $2,500.

[6] Since September 7, 2023, the Applicant's eligibility for the CERB during this period has been reviewed three times. The first review closed on September 28, 2023, when the validation

officer was unable to reach the Applicant for further information and found, based on the evidence submitted at the time, she had not earned the minimum $5,000 necessary to qualify for the CERB. The Applicant requested a second review around October 4, 2023, which was closed on July 31, 2024. This second decision made the same determination as the first albeit with more consultation with the Applicant: The Applicant was not eligible for the CERB, as she did not earn the minimum $5,000. A third review followed the discontinuance of an application for judicial review of the second decision. The results of the third review, which agreed with the prior two decisions, were communicated to the Applicant on October 30, 2024.

III. Decision under review

[7] This judicial review concerns the third decision and, at the request of the parties, is being considered solely on written representations.

[8] At the heart of the decision under review is the hand-written, Applicant-authored, $3,000 invoice for consulting income that the Applicant asserts having received from the purchaser of her restaurant.

[9] In finding the Applicant had not earned the minimum $5,000 threshold of employment and/or self-employment income in 2019 or in the 12 months before the date of her first CERB application, the CRA ordered the Applicant to pay back the CERB money received.

IV. Issues

[10] This case raises two primary issues: (1) whether the decision under review is reasonable per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; and (2) whether the decision is procedurally fair.

[11] The Respondent also raises a series of preliminary issues, including whether the Applicant's affidavits are compliant with the *Federal Courts Rules*, SOR/98-106. These will be addressed prior to examining the two principal issues.

V. Analysis

A. *Preliminary issues*

[12] The Respondent asserts that the Applicant's affidavit, affirmed November 1, 2024, does not contain a jurat of translation, required by Rule 80(2.1)(b), and that the affidavit of the Applicant's daughter seeks to adduce evidence into the record that was available before cross-examination, contrary to Rule 84(2).

(1) Applicant's affidavit

[13] Rule 80(2.1) requires that, in the event an affidavit is written in an official language for a deponent who does not understand the language, the affidavit must fulfill three procedural criteria. When the deponent does not understand English or French, the affidavit must: (1) be

translated orally to the deponent; (2) that translation must be made by a duly sworn competent and independent interpreter; and (3) the affidavit must contain a jurat of translation.

[14] The Applicant is, per her own written representations, neither fluent in English nor French; her native language is Vietnamese. Assisting the Applicant in this matter is the Applicant's daughter, who has, with consent from the Applicant, regularly supported the Applicant by translating, interpreting, and acting on her behalf in this matter. The Applicant's affidavit was interpreted to her by her daughter who affirmed that she had truly interpreted the contents of this affidavit to the deponent and that she would truly interpret to her mother the affirmation about to be administered to her.

[15] Given the above, the Respondent submits that the affidavit should not be admitted and, if it is admitted, it should be given little to no weight.

[16] As recently noted by Justice Cecily Y. Strickland in *Xun v Canada (Citizenship and Immigration)*, 2025 FC 1837 at paragraph 17, in such circumstances, affidavits at this Court have either been found to be inadmissible (for example, in *Molchanova v Canada (Citizenship and Immigration)*, 2021 FC 1305 at paras 11-12) or afforded little to no weight (for example, *Lin v Canada (Citizenship and Immigration)*, 2025 FC 1043 at para 72; *Al Mousawamaii v Canada (Citizenship and Immigration)*, 2018 FC 1256 at paras 15-18; *Tkachenko v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1652 at paras 4-8).

[17] I choose the latter. This affidavit will be given minimal probative value.

(2) Affidavit of the Applicant's daughter

[18] Rule 84(2) states that a party who has cross-examined an affiant may not then file additional evidence or affidavits, except with the consent of the opposing parties or with leave of the Court. The Applicant has obtained neither.

[19] As noted by the Respondent, the affidavit of the Applicant's daughter includes transcripts of a voice call between her and the decision maker. This call occurred on October 17, 2024, well before the service of the parties' affidavits and cross-examinations.

[20] Given that the call and the transcripts occurred before the affidavits were filed, and that it was relevant at the time of filing the Applicant's initial affidavit, I find this affidavit inadmissible.

B. *Was the decision by the CRA officer reasonable?*

[21] The Applicants submit that the decision is not responsive to the evidence put to the officer. She adds that the officer went counter to the CRA procedure in disregarding the hand-written invoice prepared by the Applicant that shows she earned $3,000 in consulting income. When assessing eligibility for the CERB, CRA officers are bound by the *Canada Emergency Response Benefit Act*, SC 2020 c 5, s 8, relevant CRA directives, and precedents from case law. The general directives for acceptable proofs are stipulated in the Canada Emergency, Recovery, or Lockdown Benefits Document (Procedural Document), which instruct officers that "[i]f the

documents submitted are not sufficient or you have further questions, please contact the taxpayer to obtain the missing information and/or documents".

[22] According to the Applicant, there is no material difference between her situation and that of the applicant in *Yousof v Canada (Attorney General)*, 2023 FC 329. In that case, Justice Aavi Yao-Yao Go of this Court stated that the CRA officer was at liberty to contact the Applicant's client to confirm the details in the invoice, i.e. the work completed by the Applicant and the amounts received by her for her work, in the absence of other evidence. The Applicant asserts that in the present case, the officer could have used the Applicant's submitted documents to obtain the client's contact information.

[23] The Applicant also relies on the decision of the Court in *Greco v Canada (Attorney General)*, 2024 FC 1520 where Justice Allyson Whyte Nowak accepted that detailed invoices could constitute acceptable proof of self-employment income (para 8). The applicant's invoices specifically included the date of service, a description of service, who the service was for, and the applicant's name. While the officer expressed concern that the invoice was written in a foreign language (Vietnamese), the Applicant's daughter provided a translation and offered to obtain a certified translation upon request.

[24] Finally, the Applicant relies on *Hayat v Canada (Attorney General)*, 2022 FC 131, together with *Yousof*, in support of her contention that the CRA officer could have looked up the Applicant's buyer of the restaurant in the CRA's own system to verify that the Applicant's submissions were true. The Applicant stated that her client was the proprietor of the subsequent

business entity that would occupy the commercial space that had been leased for the Applicant's restaurant. The Applicant's had provided the first name of the client, the operating name and address of the client's business, and her business licence with the address and closing date of her restaurant to support her statements.

[25] With respect, I disagree with the Applicant.

[26] A reasonable decision is a decision that is justified, transparent, and intelligible (*Vavilov* at para 99). In challenging a decision, the burden is on the applicant to show that the decision itself is unreasonable (*Vavilov* at para 100). The Applicant in this case has failed to meet this burden, as she was unable to prove, on a balance of probabilities, that she met all the criteria to avail herself of the CERB program.

[27] The officer's records show that his requests for documentation were justified. His detailed notes demonstrate he had reviewed, considered and understood the Applicant's submissions and arguments prior to rendering his decision. Despite the Applicant's contention that a handwritten note to herself constitutes a valid invoice for the purposes of the eligibility criteria, the officer's case notes explain his concerns with the documents provided.

[28] The officer noted that the documents provided only established that the Applicant may be affiliated with the restaurant business, but did not satisfy that the cash transaction took place given that: (i) the Applicant did not incur any expenses related to the $3,000 such as motor vehicle expenses, costs associated with the lease transfer, etc.; (ii) the Applicant had no pre or

post 2019 tax year proof of the $3,000; and (iii) the Applicant was unable to provide any other supporting documentation that the consulting work itself took place such as proof of payment, contract agreement, time sheet, lease recording of consultant work arrangement, proof of lease transfer to the buyer of her business, an invoice, or any communication with the buyer of her business regarding this work.

[29] It is a taxpayer's responsibility to prove their income adequately. While the Applicant submits that the CRA officer had more than enough information from the handwritten note to independently verify the details or simply contact the City of Vaughan to acquire the information, this is not the role of the CRA officer.

[30] The self-reporting principle underlying Canada's tax system requires individuals to report their income to the CRA, while also keeping records and books of account sufficient to enable that determination. CRA officers can only base their decision on the documents available to them. It was the Applicant's responsibility to show she received the $3,000, and it was not incumbent on the CRA to accept a specific document as clear proof of income just because it was provided. The CRA-issued guideline entitled "Confirming COVID-19 Benefits Eligibility" expressly outlines that "[a] combination of acceptable proof will generally be required to substantiate the income whether it's employment or self-employment income".

[31] I disagree with the Applicant that *Yousof* stands for the proposition that it is incumbent on the officer to "investigate" and contact third parties to assess the veracity of a taxpayer's assertion. In that case, the officer insisted on obtaining bank statements to substantiate the

taxpayer's cash income initially declared in his 2019 tax return, despite having a long history of self-employment supported by detailed invoices, and even though the taxpayer did not have a bank account. It is important to note that at the hearing, the respondent had conceded that the decision was unreasonable (*Yousof* at para 20), making the procedural fairness the only issue before the Court. In that specific context, Justice Go reviewed all the evidence before the officer and found the only reason the officer found the applicant to be ineligible was his inability to produce cheques and bank statements to verify that he deposited the self-employment income. Justice Go noted that the applicant "had submitted invoices with names, phone numbers and emails of his clients to the CRA". She added that the officer "could have contacted these companies to confirm the work that the Applicant completed and the amounts he received for his work" (*Yousof* at para 32), instead of "insisting on something that the Officer knew the Applicant could not produce for reasons beyond his control, while providing no explanation for finding that the documents provided by the Applicant were insufficient proof" (*Yousof* at para 33).

[32] In my view, contacting third parties was simply a mere possibility in that specific context, not in any way an obligation imposed on the officer. Otherwise, I am of the respectful view that it would be an error.

[33] In the case before me, the only written document provided by the Applicant is not a detailed invoice, it is by her own admission a handwritten note she kept for herself for accounting purposes. The document is also written in a foreign language and only indicates the first name of the client.

[34] Considering the evidence, the CRA officer reasonably questioned the handwritten document submitted by the Applicant. In doing so, the CRA officer found that it was not sufficient proof to support her claims with respect to the existence of the revenues. In rejecting the handwritten document, the officer rendered a reasonable conclusion that is not to be disturbed by this Court.

[35] For these reasons I find that the decision by the CRA officer was reasonable.

C. *Was the decision rendered in a procedurally fair manner?*

[36] The Applicant's argument regarding procedural fairness relates to the remedy sought in this application, and to the judicial review process itself.

[37] For the Applicant, finding the decision unreasonable and remitting the file back to the CRA for another review would be procedurally unfair.

[38] I agree with the Respondent that this issue of procedural fairness is not properly before this Court. Underlying the duty of procedural fairness is the right to be heard. Individuals impacted by a decision should be given the opportunity to know the case against them and to present their case fairly and fully (*Vavilov* at para 127). The Applicant was given a full and fair opportunity to provide written and oral submissions to the Minister, which were considered by the CRA officer in rendering his decision.

VI. Conclusion

[39] For the reasons outlined above, I find the decision by the CRA officer to be reasonable.

[40] With respect to the Applicant's submissions on remedies, the Applicant requests leave to file a complaint with the Office of the Taxpayers' Ombudsperson [OTO] within 30 days of receiving the decision. The Court does not have jurisdiction to entertain such a request, as the OTO is an independent entity whose mission is to help Canadians having service issues with the CRA. It is outside the scope of the Federal Court to grant leave to file a complaint with the OTO, and I will not be doing so in this case.

JUDGMENT IN T-2948-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are granted.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2948-24
STYLE OF CAUSE:	HUONG MAI v THE ATTORNEY GENERAL OF CANADA

APPLICATION FOR JUDICIAL REVIEW CONSIDERED IN WRITING AT OTTAWA, ONTARIO, IN ACCORDANCE WITH THE ORDER OF THIS COURT DATED OCTOBER 9, 2025.

JUDGMENT AND REASONS:	GAGNÉ J.
DATED:	FEBRUARY 9, 2026

WRITTEN REPRESENTATIONS BY:

Huong Mai	FOR THE APPLICANT
Maitland Shaheen	FOR THE RESPONDENT

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