

Federal Court



Cour fédérale

Date: 20260410

Docket: T-2052-24

Citation: 2026 FC 483

Vancouver, British Columbia, April 10, 2026

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

DAVID A. VISAGIE

Applicant

and

**THE ATTORNEY GENERAL
OF CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, David Visagie, represents himself in this proceeding in seeking judicial review of the June 19, 2024 decision of an agent with the Canada Revenue Agency [CRA] finding him ineligible to receive the Canada Emergency Response Benefit [CERB].

[2] For the reasons that follow, the application for judicial review is granted.

II. Background

[3] In the 2015 to 2022 period, the Applicant worked as a self-employed geologist, on a contractual basis, for a Canadian company. His work required him to travel to complete projects in Canada, the United States, and Mexico.

[4] In 2020, the Applicant applied for and received the CERB for seven consecutive four-week periods from March 15, 2020, to September 26, 2020.

[5] By letter dated June 29, 2023, the CRA informed the Applicant that a review of his CERB eligibility was being undertaken. The letter identified the eligibility criteria requiring the Applicant to have earned at least \$5,000 in 2019 or in the 12 months prior to the date of his CERB application (*Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8, s 2 [*CERB Act*]). The letter also identified acceptable sources of income and the type of documentation that might be relied upon to establish the minimum income requirement.

[6] In responding to the letter, the Applicant provided documentation showing proof of employment and income in 2019. A CRA agent advised the Applicant by telephone on August 29, 2023, that the documents he had submitted satisfied the minimum income requirement. However, on August 31, 2023, the CRA determined the Applicant was not eligible for the CERB because he had not ceased working for reasons related to COVID-19. The Applicant was informed by letter dated September 5, 2023.

[7] The Applicant requested a second review by way of letter dated September 13, 2023, to which he attached a spreadsheet that detailed his income from 2015 to 2022 per client and project completed [Earnings Table].

III. Decision Under Review

[8] By letter dated June 19, 2024, a CRA agent [the Agent] informed the Applicant that the CRA had completed the second review and that all the information provided to support his CERB eligibility had been carefully considered, but that the Applicant was determined not eligible for the CERB. This because he did not stop working or have his hours reduced for reasons related to COVID-19.

[9] In an entry dated June 17, 2024, the Agent's internal notes – which form part of the reasons for the decision (*Farahnak v Canada (Attorney General)*, 2026 FC 379 at para 9) – state as follows:

Decision: BR mentioned on the call 2024-06-17 that he didn't work at all in 2020 and he worked only for few hours in may 2020. BR mentioned he has reported his income correctly in all the previous years including 2020. BR has submitted the spreadsheet, documents like bank statements, paystubs which states that BR was not working from the beginning of 2020. BR is not eligible for CERB as BR was not affected by covid-19. DL will be sent for CERB.

Denial letter sent date: 2024-06-17

IV. Issue and Standard of Review

[10] The Respondent has identified two issues arising in this matter – (1) whether the decision was rendered in a procedurally fair manner, and (2) whether the decision was reasonable. The

Respondent's fairness arguments appear to have been advanced out of an abundance of caution. The Applicant has not alleged a breach of fairness, and I therefore need not address the issue.

[11] Having reviewed the Applicant's written submissions and having heard his oral arguments, only a single issue arises:

- A. Was the Agent's finding that the Applicant was ineligible for the CERB reasonable?

[12] As the Respondent notes, decisions related to COVID-19 benefits eligibility, including the CERB, are to be reviewed on the presumptive standard of reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20).

[13] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8). The party challenging a decision has the burden of demonstrating to a reviewing court "sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

V. Analysis

A. *Preliminary Matters*

(1) Style of cause

[14] The Respondent submits, and I agree, that the Applicant has incorrectly identified the responding party as the Canada Revenue Agency. The proper Respondent is the Attorney General of Canada (*Federal Courts Rules*, SOR/98-106, r 303). The style of cause will be amended accordingly.

(2) New evidence on judicial review

[15] The Respondent, relying on the general rule that limits the record before a court on judicial review to that which was before the decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20), submits there are a number of documents appended as exhibits to the Applicant’s affidavit affirmed on January 10, 2025, and certain facts raised in the course of oral submissions that are not properly before the Court.

[16] I agree, and I have not considered documents and facts related to the merits of this application that were not available to or known by the Agent as disclosed in the Certified Tribunal Record.

B. *The Agent's decision is unreasonable*

[17] Paragraph 6(1)(a) of the *CERB Act* provides that to be eligible for the CERB, a worker must cease working for reasons related to COVID-19 for at least 14 consecutive days during the period they applied for:

6 (1) A worker is eligible for an income support payment if

(a) the worker, whether employed or self-employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment;

[...]

6 (1) Est admissible à l'allocation de soutien du revenu le travailleur qui remplit les conditions suivantes :

a) il cesse d'exercer son emploi — ou d'exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de quatre semaines pour laquelle il demande l'allocation;

[...]

[18] The Respondent submits – relying upon *Lee v Canada (Revenue Agency)*, 2024 FC 1039, *Walker v Canada (Attorney General)*, 2022 FC 381, and *Sanders v Canada (Attorney General)*, 2024 FC 616, and the Applicant's responses to the Agent's questions during a June 17, 2024 telephone call – that the Agent reasonably concluded that the Applicant had failed to establish that he satisfied paragraph 6(1)(a) of the *CERB Act*. The Respondent also argues that the Applicant did not provide any evidence to demonstrate that he lost specific work opportunities and that he would have worked but for the COVID-19 pandemic.

[19] The Agent’s notes with respect to the June 17, 2024 telephone call reflect the following statements made by the Applicant:

- A. He was not employed or self-employed in 2020.
- B. In 2020, he only worked for a few hours in May and, with that exception, he did not work at all that year.
- C. He did not look for other work in 2020, but was instead “waiting for everything to open so that he can restart working in the same job.”
- D. His income had been accurately reported in all previous years.
- E. Having not worked at the time COVID-19 benefits became available, he applied for the CERB.

[20] In light of the Applicant’s statement that he was not employed or self-employed in 2020, except for a few hours in May, and in the absence of evidence disclosing that the Applicant had worked prior to the onset of the pandemic in March 2020, it may well have been reasonable for the Agent to conclude the Applicant was not eligible for the CERB on the basis that he was not affected by COVID-19. However, in doing so, the Agent’s reasons were required to reflect and be responsive to the central issues and concerns raised by the Applicant (*Vavilov* at para 127).

[21] As *Vavilov* teaches, judicial review is concerned with both outcome and process (at paras 86–87) – it is not enough for the outcome reached by the decision-maker to be one that was reasonably available, the outcome must also be justified by way of the reasons provided.

[22] Here, in finding the Applicant was not eligible for the CERB, the Agent does not consider or grapple with the core issue identified by the Applicant in his September 13, 2023 letter requesting a second review – the projects he had worked on and supervised and the business travel required to perform those projects had been “taken...off the table” by government-imposed COVID-19 restrictions, and COVID-19 had resulted in a “disruption unlike anything [the mining industry] ha[d] seen before.” The Applicant cited an industry publication in support of this submission and also provided the Agent with his Earnings Table that disclosed that his 2020 income was significantly lower than that reported for the years preceding 2020 and the years following. He also pointed out in that letter that “I worked prior to the imposition of Covid restrictions and have after the restrictions were eased. When the restrictions were imposed my hours were reduced due to the Covid pandemic.” [Emphasis added.]

[23] During the telephone call on June 17, 2024, the Applicant again explained the reason for his reduced income in 2020. The Agent’s call notes indicate the Applicant reported that he was a geologist working for a Canadian-based mining company that was giving him contracts for Canada and the United States, but due to COVID-19 all travel was shut down, that he was unable to travel to do his work, and that there were no hours to work so he did not work during the pandemic.

[24] It was open to the Agent to reject this evidence or to otherwise conclude it to be of no assistance to the Applicant in determining the question of his CERB eligibility. However, it was unreasonable for the Agent not to engage with the evidence and then address the Applicant’s key argument – COVID-19 had prevented him from working in his field as a geologist in 2020 – a

reality he asserted was clearly demonstrated by his Earnings Table and was reflected in mining industry publications.

[25] In reaching this conclusion, I acknowledge that decision-makers need not grapple with every piece of evidence and address every argument made. However, as I have noted above, the unanswered arguments and the evidence not meaningfully addressed in this instance were central to the Applicant's position that he qualified for the CERB. The failure to grapple with those arguments and supporting evidence warrants intervention.

VI. Conclusion

[26] The application for judicial review is granted.

[27] The Applicant has not sought costs, and none are awarded.

JUDGMENT IN T-2052-24

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended to name the Attorney General of Canada as the Respondent.
2. The application for judicial review is granted.
3. The June 19, 2024 decision is set aside, and the matter is returned for redetermination by a different decision-maker.
4. No costs are awarded.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2052-24

STYLE OF CAUSE: DAVID A. VISAGIE v THE ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 8, 2026

JUDGMENT AND REASONS: GLEESON J.

DATED: APRIL 10, 2026

APPEARANCES:

David A. Visagie

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Nikhil Pandey

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT