

Federal Court



Cour fédérale

**Date: 20230608**

**Docket: T-784-22**

**Citation: 2023 FC 812**

**Toronto, Ontario, June 8, 2023**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**ADEOLA MWANDALA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Adeola Mwandala has brought an Application for Judicial Review of a decision by the Canadian Revenue Agency [CRA] to deny her the Canada Recovery Benefit [CRB]. For the reasons outlined below, I will dismiss the Judicial Review.

I. Background

[2] Ms. Mwandala works as a self-employed hair, nails, and makeup artist. She applied for a benefit pursuant to the CRB program. Her CRB application was selected for a validation review of eligibility.

[3] On May 8, 2021, in response to the validation review process, Ms. Mwandala submitted a number of documents to support her eligibility [Submitted Documents] consisting of:

- A number of e-transfer receipts dated February 2019 to March 2020;
- A spreadsheet breakdown of forty-seven (47) instances of income – less than the number of e-transfer receipts submitted by Ms. Mwandala – earned between March 2019 and March 2020 indicating a total amount of income of \$5,617.00;
- A letter dated May 18, 2021, written by Ms. Mwandala in response to the CRA request to provide proof of her self-employment income, indicating (i) she had “a total of more than \$5600 net income”, having “earned at least \$5,000 in the 12 months before the date [she] initially applied for the benefit”; (ii) she was attaching “proof of self-employment income”; and (iii) explaining that she was not able to work as a makeup artist in Canada during the COVID-19 pandemic because of health restrictions and that she had no other sources of income at that time.

[4] On August 4, 2021, a CRA officer informed Ms. Mwandala by letter that she was not eligible for the CRB [First Review decision], because she did not earn at least \$5,000 of

employment or net self-employment income in 2019, 2020, or in the 12 months before the date of her first application [Income Requirement].

[5] On or around February 4, 2022, Ms. Mwandala requested a Second Review, which was assigned to a different CRA officer [Second Review Officer].

[6] The Second Review Officer considered Ms. Mwandala's original application for CRB, including: the Submitted Documents; internal CRA information about her income and deductions for the 2019 and 2020 taxation years; notes from the first reviewer; and a telephone conversation that the Second Review Officer had with Ms. Mwandala on March 8, 2022.

[7] During the March 8, 2022 telephone call, the Second Review Officer requested that Ms. Mwandala submit additional information. She did not submit any additional information following the call.

[8] On March 31, 2022, the Second Review Officer informed Ms. Mwandala by letter that she was not eligible for CRB [Decision] because she did not meet the Income Requirement.

## II. Preliminary Issue

[9] The Attorney General of Canada [AGC] submits, and I agree, that the style of cause should be amended to identify the Respondent as "Attorney General of Canada" in place of "Canada Emergency Benefits Validation" pursuant to Rule 303(2) of the *Federal Courts Rules*,

SOR/98-106. In the circumstances, the Court orders that the style of cause be amended accordingly.

### III. Issues Raised

[10] Ms. Mwandala raises two issues in this Application, namely that the Second Review Officer's Decision erred in its outcome, and was also procedurally unfair.

[11] The applicable standard of review for the Decision's merits is reasonableness (*Aryan v Canada (Attorney General)*, 2022 139 at para 16 [*Aryan*]). In *Canada (Minister of Citizenship and Immigration) Vavilov*, 2019 SCC 65 at paras 102 and 105 [*Vavilov*], the Supreme Court of Canada explains that reasonableness review assesses whether an administrative decision demonstrates a reasoning that is rational and logical and whether it is "justified in relation to the constellation of law and facts that are relevant to the decision".

[12] Questions of procedural fairness, on the other hand, are to be reviewed on a correctness-like standard, with the Court asking whether the process leading to the decision was fair in all circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55; *Hu v Canada (Attorney General)*, 2022 FC 1678 at para 16 [*Hu*]).

[13] First, Ms. Mwandala argues that she submitted sufficient evidence to show that she met the Income Requirement, such that the Second Review Officer erred in concluding she did not earn \$5,000 of self-employment income. She contends that the failure to consider the way that she conducts her business and how her clients pay was "racist and condescending".

Ms. Mwandala explains that her clients are Nigerian-based and therefore do not use Canadian business methods such as invoicing by mail or email. She explains that she conducts business transactions mainly through text messages, phone calls and social media. All payments to her are made in cash and bank transfers. Thus, she relied on e-transfer receipts as proof of income she earned from her makeup business.

[14] Second, Ms. Mwandala argues that the Decision was procedurally unfair because the CRA failed to do any due diligence of reaching out to her clients, many of whom she states are well-known figures or celebrities in Nigeria. She states that had CRA done so, it would have been able to verify that the funds received were indeed payments for services rendered in the context of her makeup business. Ms. Mwandala further submits that she was given only five days to submit additional documents in support of her eligibility, and she was prevented from uploading anything further because her online account was locked. Ms. Mwandala argues that the Decision breached her rights under the *Canadian Charter of Rights and Freedoms*, s 8, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [Charter].

[15] The AGC counters that the Decision was both reasonable and procedurally fair. The AGC submits Ms. Mwandala failed to provide any proof that the income amounts claimed corresponded with her self-employment as a hair, nails, and makeup artist, and that insufficient documentation on the part of the applicant does not constitute a reviewable error or an issue of procedural fairness. The AGC contends that the Second Review Officer reasonably sought

receipts or invoices from Ms. Mwandala during their telephone call on March 8, 2022, and that she indicated that “she [was] going to look for what she can and upload” but failed to do so.

[16] The AGC relies on *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 26 [*Hayat*] to submit that this Court should decline to address the merits of the constitutional arguments due to the inadequacy of the record and the fact that Ms. Mwandala has not provided a clear articulation of how her *Charter* rights have been breached by the Decision.

#### IV. Analysis

[17] I agree with the AGC that the Decision is both reasonable and procedurally fair. While Ms. Mwandala argues that the Submitted Documents were sufficient proof that she met the Income Requirement and that they should have satisfied the Second Review Officer, as held by Justice Ahmed in *Hu*, “requesting certain evidence does not necessarily mean that the evidence, once proffered” will successfully achieve a favourable outcome (at para 23). Here, I note that no further evidence was provided to the Second Review Officer, and no effort was made to advise the Officer or CRA that there were issues with any attempts to upload any new documentation.

[18] It was therefore reasonable for the Second Review Officer to conclude that the bank transfer receipts, without invoices or additional information about services rendered, do not suffice. As explained in *Aryan*, this basic documentation does not prove the source of the amounts deposited nor when they were earned (*Aryan* at para 28).

[19] Furthermore, Justice Elliott in *Walker v Canada (Attorney General)*, 2022 FC 381 at paragraph 37 notes:

With the responsibility of self-reporting, comes an obligation, as set out in section 6 of the *CRBA*, to provide any information that the CRA may require to confirm compliance with the legislative provisions. This requirement compels an applicant to provide documents and information requested by the CRA *or explain why it is not possible to comply*. It does not restrict what an applicant may submit to support their claim.

[Emphasis added].

[20] During the March 8, 2022 call, Ms. Mwandala indicated that she would look for what she could find and upload it. Again, that was not done. She submitted no additional documents to the Second Review Officer, although she attaches to her Affidavit prepared for the purposes of this judicial review, but which does not appear in the Certified Tribunal Record, a screenshot of a CRA login page with an error message.

[21] Ms. Mwandala argues it was unreasonable and unfair for the Second Review Officer not to accept her explanation for her inability to produce invoices or receipts. However, neither the First Review and Second Review notes indicate that she provided any such explanation, given that nothing appears in the CTR. Rather, the Officers' notes indicate that she explained she could not produce receipts or bank statements for payments made in cash. The Officers both expressed concerns that neither had (i) any evidence been provided to corroborate that the bank transfers were self-employment income, nor (ii) had Ms. Mwandala explained why corroborating evidence could not be produced.

[22] I concur with the Officer's concerns on the merits of the decision. It was eminently reasonable for both to find that Ms. Mwandala failed to prove that she earned the threshold required given the failure to substantiate her income. The onus was on her to provide proof of qualifying income, and not for the Officer to hunt down the documentation or otherwise verify that her e-transfers were for self-employed services rendered.

[23] By way of comparison, in *Bishop v Canada (Attorney General)*, 2023 FC 755, this Court very recently found that the applicant had met his onus by providing the CRA with an affidavit explaining the details of the work he did, the steps he had taken to obtain documentation confirming he was paid, and why further documentation was not available to him.

[24] Here, by contrast, Ms. Mwandala did not provide such documentation or explanations to the CRA. She only provided the Submitted Documents and, as noted by the First Review Officer in their notes, "a list of names of who she did make up services for in Nigeria", and unreasonably expected both Officers to follow up with her clients.

[25] Although Ms. Mwandala argues before this Court that she conducts most of her business through text messages and social media, she neither submitted any messages between her and her clients that could confirm that the bank transfers were income from self-employment, nor provided any affidavit – or any other document to the Second Review Officer – to explain why she could not provide this information in the three weeks between the Officer's call on March 8, 2022 and the Decision of March 31, 2022.



[26] Ms. Mwandala argues that if she had not been locked out of her CRA account – which again was not explained to CRA at the time – she would have submitted the screenshots of her social media page about her business, which she included in her Application Record at Exhibit “D”. Had these screenshots properly formed part of the record before the decision-maker at the CRA, they only confirm that Ms. Mwandala works as a self-employed hair, nails, and makeup artist. CRA did not question that fact. Yet, they do not assist in demonstrating what CRA requested – namely that the various bank transfers she received were indeed income from self-employment.

[27] Given the totality of the evidence, the Decision was justified, transparent and intelligible (*Vavilov* at para 100). The Decision indicates that Ms. Mwandala did not meet the Income Requirement because she did earn at least \$5,000 of self-employment income in 2019-2020, since she did not submit any invoices, receipts or any additional information with her bank transfer receipts, to confirm the source of her bank transfers was self-employment income from her beauty business.

[28] I also find that the process that led to the Decision was fair. Ms. Mwandala had the opportunity to be heard – during the First, and then the Second Review. On both occasions, she was provided the opportunity to back up the provenance of her income with sufficient documentation. She failed to do that on both occasions, and in so doing fell short of her onus under the CRB program and its legislation.

[29] Finally, I decline to address the merits of the constitutional argument made by Ms. Mwandala as it was not clearly articulated, nor did she provide a sufficient evidentiary basis to support her allegation that the Officer's Decision to deny her CRB because she did not meet the Income Requirement amounted to a *prima facie* violation of s. 15(1) of the *Charter* (see *Hayat* at para 28).

V. Costs

[30] Ms. Mwandala and the AGC agree that each party should bear their own costs.

VI. Conclusion

[31] For these reasons, I will dismiss the Application for judicial review and decline to award costs.

**JUDGMENT in file T-784-22**

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

1. The Application is dismissed.
2. The style of cause is amended to identify the Respondent as "Attorney General of Canada" in place of "Canada Emergency Benefits Validation."
3. There are no costs awarded.

"Alan S. Diner"

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Judge

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

**DOCKET:** T-784-22

**STYLE OF CAUSE:** ADEOLA MWANDALA v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 6, 2023

**JUDGMENT AND REASONS:** DINER J.

**DATED:** JUNE 8, 2023

**APPEARANCES:**

Adeola Mwandala ON HER OWN BEHALF

Colin Stephens FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

None FOR THE APPLICANT

Attorney General of Canada FOR THE RESPONDENT  
Edmonton, Alberta