Federal Court Cour fédérale

Date: 20250721

Docket: T-1784-24

Citation: 2025 FC 1289

Montréal, Quebec, July 21, 2025

PRESENT: Mr. Justice Gascon

BETWEEN:

VITALIS TCHERKAS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Vitali Tcherkas, is seeking judicial review of three decisions dated June 17, 2024 [Decisions] whereby the Canada Revenue Agency [CRA] found him inadmissible for three COVID-era economic measures [together, the Benefits]: the Canada Emergency Response Benefit [CERB], the Canada Recovery Benefit [CRB], and the Canada Worker Lockdown

Benefit [CWLB]. The CRA found Mr. Tcherkas ineligible for the Benefits because he had not earned at least $5,000 in employment income in the prescribed periods, and because he had not stopped working or had his hours reduced for reasons related to COVID-19.

[2] Mr. Tcherkas, who represents himself, challenges both the reasonableness of the Decisions and the procedural fairness of the process through which they were rendered. With respect to reasonableness, he argues that the CRA erred in classifying his Airbnb income as rental income (rather than self-employment income eligible for the Benefits) and failed to consider evidence of his continued operations and intent to resume activities, including services provided to his guests. As for procedural fairness, he contends, among other things, that the CRA failed to accommodate his language problems and to provide clear and intelligible instructions during its communications with him.

[3] I pause to observe that, in this matter, Mr. Tcherkas challenges three different decisions regarding three different COVID-era benefits in the same application for judicial review. As acknowledged by the respondent, the Attorney General of Canada [AGC], and as prescribed by the *Federal Courts Rules*, SOR/98-106, there should have been one separate application for judicial review for each of the three distinct CRA decisions refusing a benefit to Mr. Tcherkas, which the Court could have joined. In the circumstances, and considering that Mr. Tcherkas is self-represented, I have accepted to deal with the three Decisions all at once and to consider what should have been three applications for judicial review as a single one.

[4] For the reasons that follow, Mr. Tcherkas' applications for judicial review will be dismissed. After reviewing the CRA's reasons and the evidence, I find that the Decisions were

properly grounded on the evidence, and that the conclusions regarding Mr. Tcherkas' ineligibility for all three COVID-era Benefits possess the qualities that make the CRA's reasoning logical and coherent in light of the relevant legal and factual constraints. More specifically, the CRA was entitled to find that Mr. Tcherkas' Airbnb income was not self-employment income, which suffices to render the Decisions reasonable. Moreover, the Decisions are devoid of any procedural fairness breach.

II. Background

A. *The Benefits' eligibility requirements*

[5] The Benefits were part of an arsenal of measures introduced by the federal government starting in 2020 to alleviate the economic repercussions caused by the COVID-19 pandemic. They consisted of targeted monetary payments designed to provide financial support to workers who suffered a loss of income due to the pandemic, and who could not benefit from the protection offered by the usual employment insurance plan. The CRA is the federal agency responsible for administering these income-supplementing programs on behalf of the Minister of Employment and Social Development.

[6] The CERB was available for seven four-week periods between March 15, 2020 and September 26, 2020, for eligible employees and self-employed workers who had suffered a loss of income due to the COVID-19 pandemic. The CRB followed the CERB and was available for any two-week period between September 27, 2020 and October 23, 2021, for eligible employees and self-employed workers who had suffered a loss of income due to the COVID-19 pandemic

(*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 2 [*Aryan*]). The CWLB then followed the CRB and was available for any one-week period between October 24, 2021 and May 7, 2022 (*Wahba v Canada (Attorney General)*, 2024 FC 858 at para 25).

[7] The eligibility criteria for the CERB are set out in the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act]. Among other things, the CERB Act requires employees or self-employed workers to have earned at least $5,000 in employment income or self-employment income in 2019 or in the 12-month period preceding their application for the CERB (see the definition for "worker" at section 2). It also states that the worker must have ceased working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which the worker had applied for the CERB (paragraph 6(1)(a)).

[8] The eligibility criteria for the CRB are set out in the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act]. Notably, the CRB Act equally requires employees or self-employed workers to have earned at least $5,000 in employment income or net self-employment income in 2019, 2020, 2021 or in the 12 months preceding the date of their last application (paragraphs 3(1)(d) and (e) and subsection 3(2)). In addition, employees or self-employed workers had to have not worked or suffered a 50% drop in their average weekly income compared with the previous year for reasons related to COVID-19 (paragraph 3(1)(f)).

[9] The eligibility criteria for the CWLB are set out in the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5 [CWLB Act]. Like the CERB Act, the CWLB Act requires employees or self-employed workers to have earned at least $5,000 in employment income or net self-employment income in 2019, 2020, 2021 or in the 12 months preceding the date of their last

application (paragraphs 4(1)(d) and (e) and subsection 4(2)). Moreover, employees or self-employed workers had to have not worked or suffered a 50% drop in their average weekly income compared with the previous year for reasons related to COVID-19 (paragraph 3(1)(f)).

B. *Mr. Tcherkas' applications for the Benefits*

[10] In 2019, Mr. Tcherkas' sole source of income stemmed from renting out a portion of his family's house for short-term stays through Airbnb. Due to the pandemic, Mr. Tcherkas applied for and initially received the Benefits: (a) CERB for periods 1–7 (March 15 to September 26, 2020); (b) CRB for periods 1–17 and 19–28 (September 27, 2020 to May 22, 2021 and June 6 to October 23, 2021); and (c) CWLB for periods 9–10 (December 19, 2021 to January 1, 2022).

[11] The CRA subsequently decided to validate Mr. Tcherkas' entitlement to the Benefits. At the conclusion of the first review, Mr. Tcherkas was found to be ineligible for the Benefits by failing to meet the $5,000 income threshold for all three Benefits. In response, Mr. Tcherkas requested a second review.

[12] As part of his second review of Mr. Tcherkas' applications, Sean Lynott, the CRA agent assigned to re-examine his file [Agent], had several phone calls with Mr. Tcherkas. During the second review, Mr. Tcherkas did not seek any accommodation with respect to his English proficiency and the Agent did not perceive that he had any difficulties understanding the information provided to him. Mr. Tcherkas also filed additional documentation and submissions, including a Form T2125 – Statement of Business of Professional Activities.

C. *The CRA's Decisions*

[13] The second review Decisions regarding Mr. Tcherkas' eligibility for the Benefits were rendered on June 17, 2024. It is these Decisions that are the subject of the present applications for judicial review.

[14] After reviewing all the documents and submissions from Mr. Tcherkas, the Agent concluded that Mr. Tcherkas did not earn $5,000 in self-employment income in 2019, 2020, or in the 12 months prior to applying for the Benefits. The Agent's reasons were the following:

> ● From 2016 – 2019 inclusive, Mr. Tcherkas reported his Airbnb income as rental income, not as self-employment income;
>
> ● Mr. Tcherkas believed that his income tax filings categorizing the Airbnb income as rental income was correct;
>
> ● There was no other income reported for 2020 or 2021 (aside from the Benefits);
>
> ● The Form T2125 did not list any expenses that showed additional services being offered other than the rental of the space;
>
> ● Mr. Tcherkas confirmed during a call on May 14, 2024, that the majority of the services for his Airbnb listing was cleaning and preparing for the next guests; and
>
> ● There was no further evidence to substantiate the additional services that were allegedly provided, and nothing to show that the additional services were of such an extent that payment could be considered largely put towards those services instead of a pure rental.

[15] In making the Decisions, the Agent relied on a document entitled "Confirming Covid-19 benefits eligibility" [CRA Guidelines] to help him determine whether Mr. Tcherkas' Airbnb income qualified as self-employment income within the meaning of the Benefits' enabling

legislation. The CRA Guidelines state that income from Airbnb is generally considered as rental income. This is the case when the applicant is only providing basic services such as heat, water, parking, Internet, laundry facilities, and maintenance of the rental property, adjacent areas, appliances, or furnishing (towels, utensils, beddings, etc.).

[16] The CRA Guidelines explain that Airbnb income will only be classified as self-employment income when "additional services" are offered or made available like meals, security, cleaning during the stay, delivery service, transportation, city tours or excursions, etc. The range of services offered must be of such magnitude that the rental payment could be considered as being largely put towards those services instead of a pure rental.

[17] In his reasons, the Agent also concluded that Mr. Tcherkas stopped working for reasons unrelated to COVID-19.

D. *Relevant provisions*

[18] The relevant provisions are paragraphs 3(1)(d) and (f) of the CRB Act. They are basically identical as their sister provisions within the CERB Act and CWLB Act. They read as follows:

Eligibility	**Admissibilité**
3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if	**3 (1)** Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :
[...]	

(d) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least $5,000 from the following sources:

(i) employment,

(ii) self-employment,

(iii) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the Employment Insurance Act,

(iv) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and

(v) any other source of income that is prescribed by regulation;

[...]

(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if

d) dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, ses revenus provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars :

(i) un emploi,

(ii) un travail qu'elle exécute pour son compte,

(iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la *Loi sur l'assurance-emploi*,

(iv) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption,

(v) une autre source de revenu prévue par règlement;

[...]

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f)(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au

a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to	moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :

E. *Standards of review*

[19] It is now well established that the standard of review applicable to the merits of the CRA's decisions regarding COVID-era benefits such as CERB and CRB payments is reasonableness (*Devi v Canada (Attorney General)*, 2024 FC 33 at para 14; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 15; *He v Canada (Attorney General)*, 2022 FC 1503 at para 20 [*He*]; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12; *Aryan* at paras 15–16). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[20] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of

reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[21] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention," seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[22] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[23] With respect to issues of procedural fairness, however, the Federal Court of Appeal has repeatedly stated that these do not require the application of the usual standards of judicial review, although the reviewing exercise is akin to correctness review (*Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace*

Workers, 2019 FCA 263 at paras 24-25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33–56 [*CPR*]). It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*CPR* at para 54).

[24] Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct." Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54; *Algoma Steel Inc v Canada (Attorney General)*, 2023 FCA 164 at para 22). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Maritime Employers Association v Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93 at para 81).

III. Analysis

A. *Preliminary issues*

[25] Before dealing with the merits of this case, I must first rule on the two preliminary issues raised by the AGC and discussed at the hearing.

(1) New evidence on judicial review

[26] At paragraph 16 of his affidavit, Mr. Tcherkas alleges that in 2020, "there were instances where guests were booked through Booking.com but never showed up, with no payments made." The AGC points out that the fact that some of these guests never showed up and did not make any payments was not before the Agent when he rendered the Decisions. The AGC therefore submits that this specific evidence should be disregarded. I agree.

[27] On judicial review, the Court cannot normally review evidence that was not before the administrative decision maker (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98 [*Tsleil-Waututh*]; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]; *Lapointe v Canada (Attorney General)*, 2024 FC 172 at para 12 [*Lapointe*]; *Fortier v Canada (Attorney General)*, 2022 FC 374 at para 17). Indeed, "[t]he essential purpose of judicial review is the review of decisions, not the determination, by trial de novo, of questions that were not adequately canvassed in evidence at the tribunal or trial court" (*Access Copyright* at para 19).

[28] However, there are some exceptions to this principle. Those limited exceptions extend to materials that: (1) provide general background assisting the reviewing court in understanding the issues; (2) demonstrate procedural defects or a breach of procedural fairness in the administrative process; or (3) highlight the complete absence of evidence before the decision maker (*Tsleil-Waututh* at para 98; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23–25; *Access*

Copyright at paras 19–20; *Lapointe* at para 12; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at paras 16–18).

[29] In this case, the specific evidence identified by the AGC was indeed not before the Agent, and none of the exceptions apply. I will consequently disregard this evidence in my decision.

[30] In any event, I point out that admitting it would not have changed the outcome of this judicial review.

(2) Mr. Tcherkas' unsupported allegations

[31] The AGC also contends that Mr. Tcherkas' Memorandum of Fact and Law contains allegations of fact that were not put into evidence before this Court. Specifically, the AGC objects to the following allegations at paragraphs 22 and 24: (i) "[...] and his support person who usually is present during any official conversation was out of the country for a few weeks"; and (ii) "[a]t this time, his support person has returned from the trip and was present during the conversation. […] He also did not re-state other requirements that he listed in the previous conversation on May 6, 2024, even though the Applicant asked for this." Once again, I agree.

[32] A party cannot introduce facts in their memorandum. The submissions contained in a memorandum serve to provide the legal basis for the conclusions sought, and cannot replace the requirement for proper affidavit evidence (*Mailloux c Canada (Procureur général)*, 2025 CF 583 at para 29). Conversely, the purpose of an affidavit is to present facts relevant to a claim

"without gloss or explanation" (*Yeager v Canada (Attorney General)*, 2018 FCA 187 at para 20; *Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18; *Duyvenbode v Canada (Attorney General)*, 2009 FCA 120 at para 2).

[33] In this case, the AGC correctly underlines that the above allegations in Mr. Tcherkas' memorandum are not supported by his affidavit or by any evidence in the Certified Tribunal Record. They therefore cannot form part of my analysis in this judicial review.

[34] However, as was the case for the previous procedural objection, these allegations, even if accepted, would not have altered the outcome of this judicial review.

B. *The Decisions are reasonable*

[35] Regarding the $5,000 minimum income threshold, Mr. Tcherkas argues that the CRA committed a reviewable error in classifying his Airbnb income as rental income, rather than self-employment income. He believes that the Agent failed to properly consider the detailed letter he submitted on September 10, 2023, in which he explained why his income should be classified as business income and provided a list of his business activities.

[36] Respectfully, I am not persuaded by Mr. Tcherkas' submissions. On the contrary, I find that the Decisions are reasonable. That said, I underline that this does not mean that Mr. Tcherkas was dishonest in claiming the Benefits. It simply means that Mr. Tcherkas has not convinced me that the Agent misapprehended the evidence or issued irrational Decisions.

[37] As explained by the AGC, the onus was on Mr. Tcherkas to establish that he met, on a balance of probabilities, the eligibility criteria to receive the Benefits (*Grandmont v Canada (Attorney General)*, 2023 FC 1765 at para 38 [*Grandmont*]; *Lavigne v Canada (Attorney General)*, 2023 FC 1182 at para 44; *Cantin v Canada (Attorney General)*, 2022 FC 939 at para 15; *Walker v Canada (Attorney General)*, 2022 FC 381 at paras 37, 55). Indeed, applicants for programs such as CERB, CRB, and CWLB must provide sufficient evidence to support their claim, and the CRA may ask them to provide additional documents or information to prove their eligibility (*Paquin c Canada (Procureur général)*, 2024 CF 1430 at para 17).

[38] In Mr. Tcherkas' case, a review of the Agent's notes — which form part of the CRA's reasons (*Grandmont* at para 30, citing *He* at para 30 and *Aryan* at para 22) — reveals that the CRA's analysis possesses all the requisite attributes of transparency, justification, and intelligibility (*Vavilov* at para 99). The Agent's notes enable me to understand the rationale behind the Decisions, and confirm that no relevant facts have been omitted. In particular, they demonstrate that the CRA carefully reviewed Mr. Tcherkas' documentation and gave him the opportunity to respond and provide relevant evidence.

[39] Further to my assessment, I find that it was reasonable for the Agent to conclude that Mr. Tcherkas' Airbnb income did not qualify as self-employment income. Notably, during the May 2024 call, Mr. Tcherkas himself admitted that the majority of his services consisted of cleaning and preparing for the next guests. In other words, most of his services related to the maintenance of his property and of its furnishing, which are basic rental services according to the CRA Guidelines, not "additional services." Mr. Tcherkas' Form T2125 also did not list any expenses associated with his alleged additional services. In fact, the vast majority of his services — 90%

according to counsel for the AGC — was associated with basic rental services. In consequence, the Agent cannot be faulted for concluding that Mr. Tcherkas' Airbnb income mainly stemmed from the pure rental cost rather than the range of his services.

[40] I also observe that, although the facts were slightly different, this Court has previously found that a CRA agent's determination that Airbnb income was not eligible income for CRB was reasonable (*Smeele v Canada (Attorney General)*, 2023 FC 21 at para 18, citing *McInnes v Canada*, 2014 TCC 247; see also *Orcheson v Canada*, 2004 TCC 247 at paras 30–31).

[41] I understand that most taxpayers would not have read the Benefits' enabling legislation or the CRA Guidelines when they submitted their application(s). Nevertheless, CRA agents are bound by the legislative framework, and by the applicable case law, which may reasonably be interpreted in light of the CRA Guidelines. Administrative guidelines are never legally binding, but they may be "useful in indicating what constitutes a reasonable interpretation" of the applicable laws (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32). This is why the Court has repeatedly found that decisions made according to the CRA Guidelines were reasonable (*Drinkwalter v Canada (Attorney General)*, 2025 FC 913 at para 6; *Li v Canada (Attorney General)*, 2025 FC 346 at para 18; *Singh v Canada (Attorney General)*, 2024 FC 51 at para 38; *Sjogren v Canada (Attorney General)*, 2023 FC 24 at paras 17–19, 33–48; *He* at paras 29, 33; *Mathelier-Jeanty v Canada (Attorney General)*, 2022 FC 1188 at para 24).

[42] Contrary to what Mr. Tcherkas argues, there is no indication that the Agent had a material misapprehension or failed to account for any relevant part of the evidentiary record. In fact, the record shows the Agent properly considered all of Mr. Tcherkas' evidence and

submissions before determining that he did not qualify for the Benefits. Mr. Tcherkas was unable to point to any particular evidence that would have been overlooked by the Agent.

[43] In his submissions, Mr. Tcherkas also challenges the Agent's determination that he did not stop working due to COVID-19. However, the eligibility criteria for the Benefits are cumulative, meaning that the failure to meet any one of them is sufficient to render the Decisions reasonable (*Roussel v Canada (Attorney General)*, 2024 FC 809 at para 38; *Grandmont* at para 37; *Ntuer v Canada (Attorney General)*, 2022 FC 1596 at para 24). Since I have already found that the Agent's conclusion as to the minimum income threshold is reasonable, there is therefore no need to address Mr. Tcherkas' other arguments on the reasonableness of the Decisions, and more specifically his complaints regarding the Agent's finding that he stopped working for reasons unrelated to COVID-19.

C. *The Decisions are procedurally fair*

[44] Mr. Tcherkas also claims that the CRA contravened his right to procedural fairness when rendering the Decisions. He alleges various procedural fairness violations that the Agent would have committed during his review: (i) the failure to accommodate for his limited English proficiency during key communications; (ii) the imposition of an unreasonably short deadline for the submission of additional documents; (iii) the failure to clarify and repeat requirements upon his request; and (iv) the failure to provide adequate notice that his eligibility for the Benefits would also be assessed on whether his cessation of work was related to COVID-19.

[45] Based on the record before the Court, I agree with the AGC that Mr. Tcherkas' procedural fairness arguments are all without merit.

[46] First, it was up to Mr. Tcherkas to inform the Agent of his struggles with the English language and to request accommodations. Nowhere does he mention in his affidavit that he raised this concern with the Agent. On the contrary, the Agent stated in his affidavit that Mr. Tcherkas never made any such accommodation request and that he did not perceive that Mr. Tcherkas had difficulty understanding the information provided.

[47] Second, it was Mr. Tcherkas himself who requested an extension until "mid-June" in order to submit his additional documents. He made this request during a voicemail to the Agent on May 21, 2024. The next day, the Agent granted the extension to June 14, 2024 and informed Mr. Tcherkas. Mr. Tcherkas cannot complain that the deadline was too tight when he himself asked for it. He could have asked for a more generous deadline than mid-June and perhaps the Agent would have accepted. In short, Mr. Tcherkas is the author of his own misfortune on this issue.

[48] Finally, Mr. Tcherkas' third and fourth procedural fairness arguments exclusively relate to the Agent's conclusion that he did not stop working due to COVID-19, which is not a determinative issue in this matter. They do not challenge the fairness of the Agent's conclusion that Mr. Tcherkas had not satisfied the Benefits' minimum income threshold. Mr. Tcherkas' final alleged procedural fairness breaches would therefore have no impact on the outcome of the Decisions (*Sun v Canada (Attorney General)*, 2023 FC 1225 at para 43 *in fine* [*Sun*]).

[49] In any event, the AGC is correct that there are no such breaches. The Agent was responsible for ensuring that Mr. Tcherkas had met all criteria for the Benefits, even if the refusal in the first CRA review was solely based on the $5,000 threshold. It is well established that a CRA agent's identification of a new ground for denying an applicant's eligibility does not constitute a breach of procedural fairness, provided the applicant was given notice and an opportunity to respond (*Kourouclis v Canada (Attorney General)*, 2025 FC 930 at paras 27–28 [*Kourouclis*]; *Tremblay c Canada (Procureur général)*, 2025 CF 17 at para 75; *Benakezouh c Canada (Procureur général)*, 2024 CF 1883 at para 48; *Rashidian v Canada (Attorney General)*, 2024 FC 327 at paras 42–61; *Sun* at para 43; *Lussier v Canada (Attorney General)*, 2022 FC 935 at para 24).

[50] In support of his final arguments, Mr. Tcherkas relies on my decision in *Baron v Canada (Attorney General)*, 2023 FC 1177 [*Baron*]. However, I agree with my colleague, Justice Anne M. Turley, that *Baron* is distinguishable in cases such as these (*Kourouclis* at para 29). In *Baron*, the CRA failed to notify the applicant that the second review was based on different eligibility criteria, distinct from those relied on in the first review. It is only because of this failure that I concluded that the applicant was denied a full and fair opportunity to respond (see, *a contrario*, *Baron* at paras 27–49). This is not the case here.

[51] Here, Mr. Tcherkas was properly given notice of the new ground and had an opportunity to respond to it. During the June 6, 2024 call, the Agent requested additional evidence that Mr. Tcherkas stopped working due to the pandemic, and Mr. Tcherkas responded to this request. If Mr. Tcherkas was confused and had further questions, he could have followed up with the Agent in another phone call. There is no procedural fairness breach in these circumstances.

IV. Conclusion

[52] For the reasons set forth above, Mr. Tcherkas' applications for judicial review are dismissed. The Decisions are based on an internally coherent and rational analysis, and possess the requisite attributes of transparency, justification, and intelligibility. Based on the CRA Guidelines and the available evidence, it was reasonable for the Agent to conclude that Mr. Tcherkas' Airbnb income did not qualify as self-employment income. Mr. Tcherkas consequently failed to satisfy the minimum threshold income for the Benefits, and there is no need to discuss the second ineligibility criterion due to the Benefits' criteria being cumulative. Furthermore, the alleged procedural fairness breaches raised by Mr. Tcherkas are without merit.

[53] At the hearing, counsel for the AGC informed the Court that both parties had agreed not to seek costs. No costs will therefore be awarded.

JUDGMENT in T-1784-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No costs are awarded.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1784-24
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APPEARANCES:

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David Lu	FOR THE RESPONDENT

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