



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Jooya v Canada Border Services Agency*, 2023 CART 01

Docket: CART-2022-BNOV-029

BETWEEN:

LAILY JOOYA

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

WITH: Ms. Laily Jooya, representing herself; and
Ms. Cassandra Ianni-Lucio, representing the Respondent

DECISION DATE: January 11, 2023

1. INTRODUCTION

[1] This matter concerns the request for review of a Notice of Violation #8212-22-1199 (Notice), pursuant to paragraph 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act).

[2] On October 17, 2022, Ms. Jooya was served with the Notice at the Vancouver International Airport for having allegedly failing to present “Kersh” upon entering the country. This contravened subsection 16(1) of the [Health of Animals Act](#)¹ (HA Act). This violation is classified as “Very serious” and was issued with a \$1,300 monetary penalty.

[3] The issue is to determine the admissibility of this request. I must evaluate whether or not Ms. Jooya satisfies the admissibility threshold established by the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)² (AAAMP Act), the [Agriculture and Agri Food Administrative Monetary Penalties Regulations](#)³ (AAAMP Regulations) and the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#)⁴ (Tribunal Rules).

[4] For the following reasons, in accordance with section 32 of the [Tribunal Rules](#), I find Ms. Jooya’s request for review is inadmissible because it was not sent by registered mail within the 30-day limit prescribed by subsection 11(2) of the [AAAMP Regulations](#). As confirmed by the Federal Court of Appeal in [Clare](#), this is a strict deadline which the Canada Agricultural Review Tribunal (Tribunal) does not hold jurisdiction “to deviate from”.⁵ Therefore, Ms. Jooya is deemed to have committed the violation in accordance with subsection 9(3) of the [AAAMP Act](#).

¹ [Health of Animals Act](#) (S.C. 1990, c. 21).

² [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (S.C. 1995, c. 40).

³ [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (SOR/2000-187).

⁴ [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (SOR/2015-103).

⁵ [Clare v. Canada \(Attorney General\)](#), 2013 FCA 265 at para 24.

2. BACKGROUND

[5] On October 21, 2022, Ms. Jooya submitted via email a request for review of the Notice to the Tribunal.

[6] On October 27, 2022, the Tribunal sent a first acknowledgement letter to Ms. Jooya requesting her to comply with rules 31 of the [Tribunal Rules](#) on or before November 7, 2022. In the letter, Ms. Jooya was urged to comply with subsection 11(2) and section 14 of the [AAAMP Regulations](#) and with Rule 13 of the [Tribunal Rules](#) by sending the request via registered mail to the Tribunal in order to allow her request for review to be considered for admissibility.

[7] On October 27, 2022, the Tribunal sent a first acknowledgement letter to the Canada Border Services Agency (Agency) requesting that they comply with rules 30 of the [Tribunal Rules](#) on or before November 14, 2022.

[8] On November 9, 2022, the Agency complied with rule 30 of the [Tribunal Rules](#), by filing a copy of the Notice with the Tribunal via email.

[9] As of November 7, 2022, the Tribunal has not received a request for review from Ms. Jooya by registered mail.

3. ISSUE

[10] Does Ms. Jooya meet the admissibility threshold established in the [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#)? The threshold consists of three requirements:

1. filing the request for review in the prescribed time and manner;
2. the non-payment of the penalty associated to the notice of violation, if applicable; and

3. providing the required information and motives of the request for review in accordance with the [Tribunal Rules](#).

4. ANALYSIS

[11] The legislative scheme encompassed in the [AAAMP Act](#) provides a review mechanism whereby a Notice can be reviewed either by the Minister of Public Safety and Emergency Preparedness or by the Tribunal. The legislation further provides Ms. Jooya an opportunity to have a Minister's decision reviewed by the Tribunal if she first elected for a Ministerial review. In this case, she has elected to proceed by way of direct review by the Tribunal.

[12] The [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#) require that the Tribunal, before it proceeds to a full hearing of a matter, makes a decision on the admissibility of an applicant's request for review. Absolute bars to admissibility arise when an applicant has already paid the penalty attached to the Notice, or has failed to file a request for review within the prescribed time and manner as set out in the [AAAMP Act](#) and the [AAAMP Regulations](#).

[13] Subsections 11(2), 14(1) and 14(2) of the [AAAMP Regulations](#) outline the required statutory period and the permitted modes of delivery for the filing of a request for review of the facts of a violation before the Tribunal. Additionally, subsection 14(3) of the [AAAMP Regulations](#) sets out how and when the request for review must be sent by registered mail following an electronic transmission.

[14] Under the above-mentioned provisions, Ms. Jooya had the responsibility to file the request for review by a permitted method of transmission within 30 days after having been served the Notice, according to subsections 11(2) and 14(1) of the [AAAMP Regulations](#).

[15] On October 21, 2022, Ms. Jooya sent her request for review by email. Email is not a valid way to make a request for review under subsection 14(1) of the [AAAMP Regulations](#). Because she

failed to send her request for review in the prescribed manner and time limit, there is no valid request for review before the Tribunal.

[16] Given my findings with regards to the first threshold requirement, it is not necessary to consider the other two requirements.

5. ORDER

[17] For the above-mentioned reasons, I **ORDER** that the request for review is **inadmissible**.

[18] Finally, I wish to inform Ms. Jooya that this violation is not a criminal offence. After five years, Ms. Jooya is entitled to apply to the Minister of Agriculture and Agri-Food to have the Notice removed from the records, in accordance with section 23 of the [AAAMP Act](#).



Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal