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FORM 66 - Rule 66
FEDERAL COURT

BETWEEN:

Grigore Vetrici

Applicant

and

Attorney General of Canada

Respondent

APPLICATION UNDER RULE 300

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

30 June 2022

Issued by:

Address of local office:

TO: Attorney General of Canada

248 Wellington Street, Ottawa, Ontario, K1A 0H8

FORM 301 Rule 301

Application

This is an application for judicial review in respect of

the Canada Revenue Agency (“CRA”)

whose decision, Reference number C0048492668-001-46 dated 30 May 2022 and received on 3 June 2022, the second review of the application for the Canada Emergency Response Benefit (CERB), denied applicant's eligibility on the basis that he

“did not earn at least \$5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months before the date of [his] first application.”

The applicant makes application for:

A finding that the income requirement was met, if evident to the court on the basis of material in the certified tribunal record and out of concern for further delay and fairness in respect of the severe impact to the applicant, or, in the alternative, refer the decision back to the CRA to be reconsidered by another delegated official.

The grounds for the application are:

The decision is not transparent, intelligible or justified, and therefore not reasonable. An “otherwise reasonable outcome also cannot stand if it was reached on an improper basis”, not justified by the reasons or “arrived at on the basis of an unreasonable chain of analysis”. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras 86-87. Furthermore, the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. *Vavilov* at para 95. Where the impact of a decision on an individual’s rights and interests is severe, such as livelihood, which the benefit was meant to address, the reasons provided to that individual must demonstrate consideration of the consequences of a decision and that those consequences are justified. *Vavilov* at paras 133-135. The applicant's view that the decision is unreasonable follows.

The “initial reviewing” CRA officer processed the applicant's 2020 tax return. On the basis of that return, he assessed the applicant’s income to be in excess of \$5,000. Likewise, that CRA officer reviewed the 2019 tax assessment, also in excess of \$5,000, confirmed the bank statements throughout the year showing transfers from Genevieve Santillana and other evidence provided by the applicant, and left that tax assessment in place. That agent then arbitrarily denied that the benefit's income threshold was met. He had insisted in a phone call that the only acceptable proof of income for the benefit per his guidance was bank statements showing deposits. This contradicts the online guidance of the CRA in respect of validation of CERB applications which provides that recent pay slips, employer names and addresses, records of employment, statements of benefits, invoices for services rendered, receipts of payment for the service(s) provided and other readily available and relevant information satisfy the validation. The latter category is notably broad and appears to provide for wide discretion by a validation agent. The agent did not indicate whether he called Genevieve Santillana from whom the applicant had earned sufficient income, as payment for childcare services, to meet the benefit threshold. The agent also did not indicate whether he called British Columbia's Rental Assistance Program to which Ms. Santillana had provided a letter in February 2020 detailing her payment-in-kind arrangement with the applicant and setting out his income.

The second reviewing CRA officer who authored the decision of 30 May 2022, inappropriately relied on bank statements per “the initial reviewer on March 14, 2022”. This is problematic not only for the reasons of the bank statement requirement itself as already stated in respect of the initial reviewing agent, but that it creates a perception of the second reviewing CRA officer's predisposition to this particular result or being closed to particular issues and therefore the conclusion that there was a reasonable apprehension of bias. See *R. v. Teskey*, 2007 SCC 25 (CanLII), [2007] 2 SCR 267 at para 20. Per CRA's online guidance, “To maintain impartiality and transparency, the second review will not be done by the same CRA official who did the first review.” Consequently, the second review is not transparent on whether that CRA agent conducted an independent review of the applicant's income and whether he independently applied the guidelines, and is therefore not reasonable. A showing that the decision maker's conclusions were not based on the evidence actually before him supports a finding that a decision is unreasonable. *Vavilov* at para 126.

The applicant submits that the second reviewing CRA officer unreasonably or incorrectly failed to exercise discretion, or exercised it in an arbitrary manner, where validation of the benefit required use of discretion. The decision letter of 30 May 2022 states that the CRA “may” ask CERB applicants to provide bank statements, indicating that such a request is a discretionary decision by reviewing officers where that documentation is available. The agent decided the discretionary decision in a non-discretionary way by insisting on a strict requirement of bank statements given that the applicant had provided some bank statements supplemented by other evidence of income for 2019 to 2020 and arbitrarily disregarding the guidance that other readily available and relevant information may also satisfy the validation. Any exercise of discretion must accord with the purposes for which it was given and where a decision maker is given wide discretion, it would be unreasonable for it to fetter that discretion. *Vavilov* at para 108. Per the online guidance, other readily available and relevant information may also satisfy the validation and the second reviewer unreasonably fettered his discretion by narrowly focusing only on bank statements. It does not appear that the agent considered that a lodging benefit is designated as income under s. 6(1) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) or considered any part of the act. Refusal to accept the applicant's proof of income is not justified in light of the applicant's history in providing childcare services to Ms. Santillana. See *e.g.*, *Hayat vs Attorney General (Canada)*, 2022 FC 131.

This application will be supported by the following material:

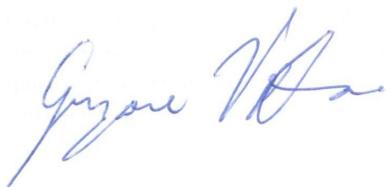
- 1) CRA decision dated 30 May 2022 denying CERB eligibility, Notices of Assessment for 2019 dated 23 July 2020 and for 2020 dated 4 April 2022, Letter to British Columbia's Rental Assistance Program for Families from Genevieve Santillana dated 24 February 2020 re: her payment-in-kind arrangement with the applicant exchanging childcare services for an equal share of the rent of Ms. Santillana's apartment, bank statements showing transfers from Genevieve Santillana in 2019, all of which are anticipated to be in the tribunal record;
- 2) Printout of CRA's online documentation for CERB validation;
- 3) Any further and other evidence as may be allowed by the court in order to amplify and clarify the record per *Canada (Justice) v. Khadr*, [2008] 2 SCR 125, 2008 SCC 28 at para 14. *Inter alia*, this evidence may include the Order to vacate dated 6 December 2019 against the applicant at his prior residence, bank

statements showing absence of rent payments during the above-stated arrangement, invoices written out by Ms. Santillana for 2018 and 2019 and signed by the applicant for her records and tax returns, and an earlier letter to British Columbia's Rental Assistance Program for Families from Ms. Santillana dated 4 August 2018 verifying her employment of the applicant for child care services.

The applicant requests Canada Revenue Agency to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the CRA to the applicant and to the Registry:

- a) certified tribunal record;
 - b) All CERB Guidelines including documents (multiple versions exist with this same title according to the jurisprudence, see *e.g.*, *Kleiman vs Attorney General (Canada)*, 2022 FC 762) entitled *Confirming CERB, CRB, CRSB or CRCB Eligibility* (used by CRA agents to guide them in determining if the Applicant was eligible to receive the benefit);
 - c) All CRA guidelines which address how agents should respond upon review of a tax assessment or audit of a tax return where that tax assessment (or return) is not fully supported by proof of income or does not correspond to the tax payer's documentation;
 - d) All CRA guidelines which address proof of income based on payment-in-kind.
- B), c) and d) above pertain to past practices and decisions of the CRA and are required to evaluate whether the decision is reasonable. See *Vavilov* at para 106.

30 June 2022



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[SOR/2021-151, s. 22](#)