

Court File No.: T-731-23

FEDERAL COURT

BETWEEN:

LEI ZHANG

FEDERAL COURT COUR FÉDÉRALE		D É P O S É
F I L E D	AVR APR 11 2023	
	EMILY ESTEVEZ	
OTTAWA, ON		

Applicant

and

ATTORNEY GENERAL OF CANADA

LEI ZHANG  
LEI ZHANG  
LEI ZHANG

Respondent

(Court seal)

**APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT***

## NOTICE OF APPLICATION

### TO THE RESPONDENT:

**A PROCEEDING HAS BEEN COMMENCED** by the applicant. The relief claimed by the applicant appears on the following page.

**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 Ottawa.

**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 prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where 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.**

April 11, 2023

Issued by: Emily Estevez  
(Registry Officer)

Address of local office: Thomas D'Arcy McGee Building  
90 Sparks Street, 5th floor  
Ottawa, Ontario K1A 0H9

TO: **ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8

**EMILY ESTEVEZ**  
**REGISTRY OFFICER**  
**AGENT DU GREFFE**

**Counsel for the Respondent**

## APPLICATION

This is an application for judicial review in respect of:

**Canada Revenue Agency (CRA)'s 2<sup>nd</sup> reassessment decision (the "Decision") on Applicant's Canada Emergency Response Benefit (CERB) (Reference Number C0055011764-001-45) dated March 10, 2023.** The Decision alleged that the applicant did not meet the eligibility criteria for CERB as follows

- 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 first application; and
- did not stop working or have hours reduced for reasons related to COVID-19.

**The Applicant disputes this determination.**

**The Decision was communicated to the Applicant on or about:** March 10, 2023.

**The applicant makes application for:**

1. A Declaration that the Canada Revenue Agency ("CRA") erred in failing to apply a standard of reasonableness in assessing Applicant's CERB eligibility;
2. The Decision be set aside, quashed or otherwise declared to be null and void;
3. In the alternative, an Order that the matter be referred back to CRA for redetermination by a different decision maker in light of the reasons to be released by this Honourable Court;
4. Compensation for costs of this Application, including but not limited to application fees and associated legal fees; and

5. Such further and other relief as the Honourable Court may permit.

### **Grounds for the Application**

1. The Applicant was at all times material times resident in Canada with a home address at 3632 Downpatrick Rd in Ottawa, Ontario during the period from March 15, 2020 and ending on September 26, 2020.
2. Prior to the onset of the global COVID-19 pandemic, the Applicant provided services as an independent contractor to Jinan Jingkong Electrical Equipment Co. Ltd. for technical/patent drafting and prosecution consulting.
3. During the period from December, 2019 to January, 2020, the Applicant earned \$6,200USD (approximately \$8,000CAD) in self-employment income.
4. Following her initial project with Jinan Jingkong, her self-employment ended due to the global COVID-19 pandemic and her efforts to secure another employment were unsuccessful due to the onset of the pandemic.
5. The Applicant made an application for COVID-related benefits available through the Canada Revenue Agency (“CRA”) as follows:
  - a. an initial CERB application was made on April 7, 2020 for the consecutive periods starting March 15, 2020, and subsequently for the consecutive periods ending September 26, 2020;
6. The Applicant met the eligibility criteria as she had earned at least \$5,000 after deducting expenses during the twelve month period prior to her first application and she was unable to work due to the COVID-19 pandemic.

7. By a decision letter dated December 2, 2022, CRA advised the Applicant that she was not eligible to receive CERB for the period from March 15, 2020 to September 26, 2020.
8. The Applicant sought a second review from CRA.
9. On December 22, 2022, February 15, 2023, and March 7, 2023 the Applicant submitted additional materials in support of her eligibility for benefits.
10. At the time of the second review, CRA had all of the necessary information in order to reassess the Applicant's eligibility for benefits.
11. Furthermore, CRA had accepted as fact the amount of self-employment income earned and assessed/reassessed her income tax liability for the 2020 tax year accordingly.
12. After multiple conversations with CRA, the Applicant was advised on March 10, 2023 that CRA had concluded that she was not eligible for CERB benefits. This is the decision under review.
13. According to the Decision letters, it appears that the second review decision-maker was the same CRA agent who rendered the first decision dated December 2, 2022.
14. The Applicant submits that the decision of CRA was unreasonable in that:
  - (a) CRA failed to observe principles of natural justice and procedural fairness in allowing the same decision-maker to review both the first and second Decisions of the Applicant's CERB application;
  - (b) the CRA officer based her decision on erroneous findings of fact that were made without regard to the material in front of her and ignored the fact that the Applicant had earned self-employment income in excess \$5,000 which was duly reported in her income tax return filed for the 2020 taxation year, clearly indicated in her invoice issued on January 6, 2020 to her client Jinan Jingkong Electrical Equipment Co. Ltd., further supported by a letter of agreement between the

Applicant and Jinan JingKong that was signed on December 1, 2019 which outlined the engagement and compensation range, and further supported by confirmation letters from CEO of Jinan JingKong confirming the payment;

- (c) the CRA officer based her decision on erroneous findings of fact that were made without regard to the material in front of her and ignored the fact that Applicant's engagement with Jinan Jingkong was suspended due to the global COVID-19 pandemic and her efforts to secure another employment with Duane Morris were unsuccessful due to the global COVID-19 pandemic, which were supported by the submitted letter from CEO and president of Jinan Jingkong and email communication with partner and HR from Duane Morris.
- (d) the CRA officer accepted the submitted facts and evidence, and removed the statement of "did not stop working or have hours reduced for reasons related to COVID-19" from the 2<sup>nd</sup> review of Applicant's Canada Recovery Benefit (CRB). But the same statement was still retained in the 2<sup>nd</sup> review of Applicant's CERB.
- (e) the CRA officer failed to give any or adequate reasons for her decision including relevant findings of fact and the standards CRA purportedly applied; and
- (f) the CRA officer erred in law in making her decision.

**This Application relies on the following statutory provisions, rules and laws:**

1. Government document *Canada Emergency Response Benefit (CERB) - Canada.ca*;
2. Government document *Self-employment income (net vs. gross)\_ CERB with CRA - Canada.ca*;
3. CRA guideline *Validating your applications\_ COVID-19 benefits from the CRA - Canada.ca*;
4. Federal Court case law *Moncada v. Canada (Attorney General), 2023 FC 114*;
5. Sections 4, 5, 6, of the *Canada Emergency Response Benefit Act* (S.C. 2020, c. 5, s. 8);
6. Section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7; and

7. *Federal Courts Rules* (Rules 300-319)

**This Application will be supported by the following material:**

1. The Affidavit of the Applicant, Lei Zhang, to be sworn and all exhibits thereto, which will include but is not limited to the following documents:

- a letter of agreement signed on December 1, 2019;
- an invoice to Jinan Jingkong issued on January 6, 2020;
- a confirmation of payment letter from Mr. Zhao, president & CEO of Jinan Jingkong Electrical Equipment Co. Ltd., dated February 12, 2023;
- an updated confirmation of payment letter from Mr. Zhao, president & CEO of Jinan Jingkong Electrical Equipment Co. Ltd., dated March 7, 2023;
- Applicant's original 2020 income tax return dated April 26, 2021, including T2125 Statement of Business or Professional Activities;
- Applicant's "*Change my return – Confirmation*" dated March 1, 2023;
- Applicant's "*Notice of reassessment - 2020 tax return*" dated March 3, 2023;
- the government document "*Canada Emergency Response Benefit (CERB) - Canada.ca*";
- the government document "*Self-employment income (net vs. gross)\_ CERB with CRA - Canada.ca*";
- the CRA guidelines "*Validating your applications\_ COVID-19 benefits from the CRA - Canada.ca*";
- the Federal Court's recent decision on *Moncada v. Canada (Attorney General)*, 2023 FC 114;

- a work confirmation letter from Mr. Zhao, president & CEO of Jinan Jingkong Electrical Equipment Co. Ltd., dated December 16, 2022;
- email communication in March, 2020 with Richard Kim and Peggy Simoncini Pasquay, partner and HR from Duane Morris which is a top U.S. firm;
- Decision\_letter\_CERB\_LeiZhang\_2nd reassessment; and
- Decision\_letter\_CERB\_LeiZhang\_1st reassessment; and

2. Any further affidavit evidence which the Applicant should submit and this Honourable Court may permit.

**The Applicant requests** that the Canada Revenue Agency send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Canada Revenue Agency to the Applicant and to the Registry: Notes and Records pertaining to the Applicant's application for CERB benefits.

All of which is respectfully submitted.

Dated at Ottawa, Ontario this 10th day of April, 2023



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**The Applicant**