

Court File No. T-2697-23

FEDERAL COURT

BETWEEN:



AZIZA ASHUROVA

and

ATTORNEY GENERAL OF CANADA

Respondent

FEDERAL COURT COUR FÉDÉRALE	
FILED	DEC 19 2023
	Applicant
	John Cornice
	CHERLIN-McCOLMAN
TORONTO, ON	

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7

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 (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

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.

Date: DEC 19 2023

Issued by:

"John Bernick"

(Registry Officer)

Address of local office: 180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

TO: THE ADMINISTRATOR
Federal Court

AND TO: THE ATTORNEY GENERAL OF CANADA
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

APPLICATION

This is an application for judicial review in respect of the Canada Revenue Agency's decision to deny the Applicant's eligibility for the Canada Recovery Caregiving Benefit (CRCB). On behalf of the Minister of Employment and Social Development ("**the Minister**"), and by letter dated November 20, 2023, and bearing reference number C0059422711-001-45, the CRA informed the Applicant that she is not eligible to have received CRCB (the "Decision") because: a) her scheduled work week was not reduced by at least 50% because she was caring for a family member for reasons related to COVID-19; b) she was not employed or self-employed on the day before her first application period.

The Applicant makes application for:

1. An Order setting aside the decision of the CRA dated November 20, 2023 that the Applicant is ineligible for the CRCB;
2. An Order directing the Minister to find that the Applicant is eligible for CRCB;
3. In the alternative, an Order referring the matter back to a different agent of the Minister for reconsideration of the Applicant's eligibility for the CRCB, with such directions as this Honourable Court considers just and appropriate;
4. An Order setting an expedited hearing date for the hearing of the within application for judicial review;
5. Such further or other relief as the representative may advise and this Honourable Court may permit.

The grounds for the application are:

- (a) Between January 2017 and March 2020, the Applicant worked as an independent

contractor for an employment agency, the Fron Group ("Fron Group"). The Applicant received payment for her hours of work by cash.

(b) During 2019, the Applicant earned approximately \$17,377 in net self-employment income working for Fron Group. The Applicant filed her 2019 income taxes, declaring this income. She has a Notice of Assessment showing this income in 2019.

(c) During 2020, the Applicant earned \$5,844 in net self-employment income working for Fron Group. The Applicant filed her 2020 income taxes, declaring this income. She has a Notice of Assessment showing this income in 2020.

(d) In February 2021, the Applicant became pregnant and gave birth to her son, Adelard Strati, on October 28, 2021. She subsequently applied for CRCB from November 2021 to February 2022.

(e) In or around January 14, 2022, the CRA requested additional information from the Applicant. The Applicant submitted a letter to the CRA in response in or around February 6, 2022. This letter of February 6, 2022 was resubmitted to the CRA as part of her second review application.

(f) Despite the Applicant's response letter on February 6, 2022, with supporting documentation, the CRA issued the first decision regarding the Applicant's application for CRCB on or about March 9, 2022 stating among others "We did not receive a reply to our letter of January 14, 2022, for more information." and determined her ineligible on the basis that the Applicant was not caring for a child under 12 years old or a family member because they were unable to attend their school, daycare, or care facility, for reasons related to Covid-19 or because the individual who usually provided care was not available for reasons related to covid-19.

(g) Following this decision of March 9, 2022 from the CRA, the Applicant called and with her verbal authorization due to a language barrier, her husband Alvaro Strati, spoke to a

CRA agent who advised them that no reviewing officer had been assigned to their file and once an officer is assigned they will review the Applicant's letter of February 6, 2022 and supporting documentation. They further advised that the decision of March 9, 2022 was an automated letter and she can disregard that until an assigned officer reviews her file, letter of February 6, 2022, and supporting documentation.

(h) This statement comes in contradiction with the statement "We have carefully reviewed your CRCB eligibility" in the Decision letter.

(i) On or about September 14, 2022, the CRA issued another decision that the Applicant did not meet the following three criteria to receive CRCB benefits:

1. She did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, 2021, or in the 12 months before the date of her first application.
2. Her scheduled work week was not reduced by at least 50% because she was caring for a family member for reasons related to COVID-19.
3. She was not caring for your child under 12 years old or a family member because they were unable to attend their school, daycare, or care facility for reasons related to COVID-19. Or, the individual who usually provided care was not available for reasons related to COVID-19.

(j) The CRA subsequently issued a Notice of Redetermination for Covid-19 benefits holding that the Applicant needed to pay \$9,000 in overpayments of CRCB.

(k) In or around October 7, 2022, the Applicant requested a second review via letter to the CRA which included but was not limited to the following supporting documents:

Personal letter, second personal letter with questions, child birth certificate, doctor's letter regarding child's high risk of covid-19, email correspondence with three daycare centres, and letters of employment from Fron Group for 2019 and 2020. These documents were mailed with a tracking number and uploaded on the CRA portal. The

Applicant confirmed that these documents were received by the CRA with the tracking number.

(l) Despite submitting a second review application (i.e. via letter sent on or around October 7, 2022) and supporting documents in objecting to the CRA's decision of September 14, 2022, the CRA issued its Decision on January 23, 2023, advising that "Further to our conversation on January 19, 2023, we did not receive the documents requested to confirm your CRCB eligibility", and the Applicant was not eligible to receive CRCB because she did not meet the following criteria:

1. She did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, 2021, or in the 12 months before the date of her first application.
2. Your scheduled work week was not reduced by at least 50% because you were caring for a family member for reasons related to COVID-19.
3. You were not employed or self-employed on the day before your first application period.

(m) The "documents requested" by the CRA officer on January 19, 2023, was one document, a 2019 bank deposit statement which according to the officer would prove an income over \$5000 and this was the only question and/or request that wasn't fulfilled immediately because neither the CRCB act nor the CRA guidelines mandates bank statements as the only permissible proof of income and there were sufficient evidence (i.e. letters of employment for 2019 and 2020, income statements that reflect those letters) to prove this eligibility criteria.

(n) The CRA officer who was speaking with the Applicant's husband after a verbal authorization, Alvaro Strati, was asked to submit this request in writing (email) by the applicant's husband on her behalf and the officer refused to do so and concluded the approximately a one-hour phone call immediately stating that he will make a decision based on the information that he has. The Applicant received and reviewed this letter by

mail on or about February 2, 2023.

(o) Following this decision, the Applicant called multiple times to inquire about another review by another officer, and different person was giving her different information which led her to the decision to apply for a Judicial Review for both benefits, CRB and CRCB, that she was requested to make a repayment for.

(p) The Applicant submitted a Notice of Application for a Judicial Review via her Counsel, Revikka Balachandran, an Employment Lawyer from CLCYR, on or around March 03, 2023, and CRA proposed a settlement to take back the file for another review by another officer. The Counsel was also present during the meetings with CRA and did all the communication prior to that.

(q) The Counsel informed the Applicant on or around August 02, 2023, that CRA had requested for her husband not to represent her in the meeting with CRA on August 23, 2023, as he had done all the time in the past due to a language barrier and that she is required to answer the questions on her own with the help of an interpreter.

(r) The meeting occurred without an interpreter and almost all the questions were irrelevant, immaterial, and/or incompetent and the Applicant couldn't understand the questions. Many of the questions were answered multiple times in the past by her husband under her authorization, and/or they could not prove a point about the case, and/or they bear no relation to the case, and/or had no logical connection with the case either. For example, CRA included the Applicant's expenses mistake in the 2020 income statement, which is both irrelevant and potentially inflammatory to the detriment of the defendant. The Applicant was requested by CRA to provide bank account statements not only for 2019 and one bank, but for 2 banks and all the statements from 2019, 2020, 2021, and 2022 and when she objected that, the officer's reason for this request was "I'm satisfied with the \$5000 and the fact that she was caring for her child but we're conducting full review now and the \$14000 expenses in 2020 was a red flag to us".

(s) The Applicant uploaded all the statements requested by CRA, including other relevant documents to help CRA with the decision. On a later request, CRA demanded explanations for all the bank deposits which the applicant provided but on a second meeting on or around November 13, 2023, CRA requested her to confirm one more time that the deposits were not employment income.

(t) During this meeting, CRA stated that the Applicant was being investigated for “working for cash money under the table” and the applicant requested and authorized verbally her husband, Alvaro Strati, to represent her to address her concerns, but the officer refused to do so and stopped talking.

(u) The Applicant received the Decisions of CRA for her CRB and CRCB on November 20, 2023, via the CRA online portal. While she welcomes the CRA’s decision to adjust the CRB benefits to \$0 repayment and deem her eligible, she was disappointed to see that CRA didn’t make the right decision for her CRCB.

(v) Due to the discrepancies of the eligibility criteria included in the four different Decisions made by CRA from March 09, 2022 until November 20, 2023, the various statements written or spoken, and the serious allegations during this process, the Applicant is confused and doesn’t know the case to be met, and didn’t have a full and fair chance to respond, therefore has reason to believe that there is a breach of procedural fairness.

(w) Such further and other grounds as the representative may advise and this Honourable Court may permit.

(l) In making the Decision, the CRA erred by

i. making a perverse finding of fact by determining that the Applicant's work week was not reduced by at least 50% because she was caring for a family member for reasons related to covid-19; and/or

ii. making a perverse finding of fact by determining that the Applicant was not employed or self-employed on the day before her first application period;

iii. issuing a decision that was not transparent, intelligible and justified; and/or

iv. breaching the duty of fairness and the principles of natural justice by failing to consider the evidence provided by the Applicant.

(x) It is just and appropriate that the hearing of this application for judicial review regarding CRCB overpayment be heard with a second judicial review brought to this Court by the Applicant regarding the Canada Recovery Benefit;

(y) It is just and appropriate that the hearing of this application for judicial review be expedited;

(z) *Canada Recovery Benefits Act*, S.C. 2020, c. 12, s. 2;

(aa) Rules 3, 55 and Part 5 of the *Federal Courts Rules*;

(ab) Sections 18.1 and 18.4 of the *Federal Courts Act*;

(ac) The further and other grounds set out in the affidavit and memorandum to be filed in support of this application; and

(ad) Such further and other grounds as Counsel may advise and this Honourable Court may permit.

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THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

(a) The Affidavit of Aziza Ashurova to be filed in support of the within application, and the exhibits thereto, including:

- i. the Applicant's Notices of Assessment for 2019, 2020, and 2021;
- ii. letters from Fron Group confirming the Applicant's self-employment and income for the years 2019 and 2020;
- iii. the CRA's letter to the Applicant dated January 14, 2022, requesting additional information;
- iv. the Applicant's response letter to the CRA dated February 6, 2022 and supporting documents;
- v. the CRA's decision letter dated March 9, 2022;
- vi. the CRA's decision letter dated September 14, 2022;
- vii. the Applicant's response letter requesting second review to the CRA sent on or about October 7, 2022 with supporting documents;
- viii. screenshot of documents submission to the CRA portal;
- ix. Birth Certificate for Applicant's son Adelard Strati;
- x. emails sent between the Applicant and daycare centres between January 2022 and February 2022;
- xi the CRA's decision letter dated November 20, 2023 notifying her that she's ineligible;
- xii the Family Doctor's, Kate Chung, letter dated February 04, 2022;
- xiii the letter from Orsjon Beqari who used her cleaning services on October 22, 2021, and November 12, 2021; and

(b) such further and other material as the representative may advise and this Honourable Court admits.

The Applicant requests the Minister of National Revenue 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 Minister of National Revenue to the Applicant and to the Registry:

(a) All materials created or considered by the Minister of National Revenue or by any person or entity acting on behalf of the Minister of National Revenue, and including all documentation and communication, pertaining or relevant to the decision to deny the Applicant CRCB benefits.

December _19_, 2023



~~Alvaro Strati, Representative for the Applicant~~ AZIZA ASHUROVA

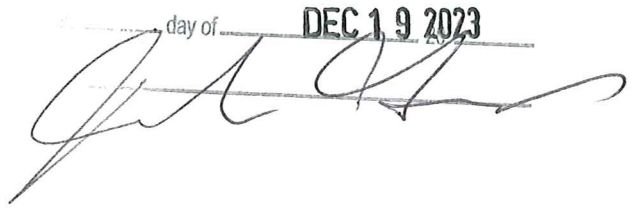
1002, 309 Major McKenzie Dr East
Richmond Hill, On L4C9V5
T.: 647 667 7033
E.: alvarostrati@gmail.com

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EXIBIT CERTIFY that the above document is a true copy of the
presented out of / filed in the Court on the _____

DEC 19 2023

_____ day of **DEC 19 2023**

A handwritten signature in black ink, appearing to be a stylized name, is written over the signature line.