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F I L E D	FEDERAL COURT COUR FÉDÉRALE August 25, 2023 25 août 2023 Julia Tang
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FORM 301 Rule 301 Notice of Application

FEDERAL COURT

BETWEEN:

Applicant

Aurora Zhang

and

Respondent

ATTORNEY GENERAL OF CANADA

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 Toronto Ontario.

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.

Issued by:

Address of local office:

TO: The Admintrator
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

(Service to be effected by filing duplicate copies in the
registry pursuant to s 133 of the *Federal Courts Rules*
and s 48 of the *Federal Courts Act*).

Application

This is an application for judicial review pursuant to s. 18.1 of the *Federal Courts Act*, RSC 1985 c F-7 in respect of: a decision of the Canada Revenue Agency ("**CRA**") Benefits Compliance Officer on behalf of the Minister of National Revenue ("**the Minister**"). By letter dated August 1, 2023, and bearing reference number C0056650566-001-45, CRA Manager S. Constantin informed the Applicant that she is not eligible to receive the Canada Emergency Response Benefit ("**CERB**") as she did not receive \$5,000 in income in 2019 or the 12 months prior to her first application for that benefit.

By letter dated August 1, 2023, and bearing reference number C0056650566-001-45, CRA Manager S. Constantin informed the Applicant that she is not eligible to receive the Canada Worker Lockdown Benefit ("**CWLB**") as she did not receive \$5,000 in income in 2020, 2021 or the 12 months prior to her first application for that benefit.

The Applicant makes application for:

1. An Order setting aside the decision of the CRA dated August 1, 2023, that the Applicant is ineligible for the CERB and CWLB;
2. An Order directing the Minister to find that the Applicant did earn at least \$5,000 in income from March 2019 to March 2020, therefore eligible for CERB;
3. An Order directing the Minister to find that the Applicant did earn at least \$5000 in income in 2021, therefore eligible for CWLB;
4. 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 CERB, the CWLB, with such directions as this Honourable Court considers just and appropriate; and,
5. Such further or other relief as counsel may advise and this Honourable Court may permit.

The grounds for the application are:

6. The Applicant, Aurora Zhang is third year of university student;
7. Aurora started her first job as a restaurant waitress when she was 16 years old.
8. Beside the part time work, Aurora has talent to sell her art piece through friends and social media.

Aurora earned at least \$5,971.72 in income from March 2019 to March 2020

9. Aurora worked as part time waitress in Ajisai Japanese Restaurant located in 467 Queen St. West, Toronto ON M5V 2A9 from July 9, 2019, to November 24, 2019, the rate is \$15 per hour plus tips, Aurora received tips in cash on every shifts and tips about \$8-\$10 per hour;
10. Aurora quitted from Ajisai Japanese Restaurant in November 2019 due to the changes of the ownership;
11. Aurora worked as cashier at Panera – Hwy 7 location in Unionville Ontario from October 1, 2019 to March 20, 2020.
12. Aurora sold some of her paintings to individuals and logo/character design for a company from March 2019 to March 2020, and these sums up \$1249 self employment income.

Aurora applies for the CERB

13. Aurora was Grade 12 student and applying for university in 2020;
14. In or around April 14, 2020, Aurora was not able to work at Panera due to pandemic, she called CRA, asking if she qualified for CERB, She explained how she conducted her employer and self employment and earned more than \$5,000 in March 2019 to March 2020, The CRA agent recommended that she apply as she had earned more than \$5,000 in income.

15. From April 14, 2020, to September 26, 2020, Aurora received the CERB for a total of \$14,000.00.

Aurora applies for Canada Worker Lockdown Benefit ("CWLB")

16. Aurora went to university and kept part time work and self employment
17. Aurora worked as full-time waitress in Ajisai Japanese Restaurant located in 359 Bayfield St. Barrie Ontario L4M 3C3. Aurora worked total 240 hours from June 28 2021, to August 22 2021.
18. Aurora is dedicated and hardworking to completing store design for 5036159 Ontario Ltd. Working period from August 2021 to November 2021. she received \$4000 on December 1 2021 for the project.
19. From December 19 2021 to January 8 2022, Aurora received \$810 CWLB.

The CRA determines Aurora is ineligible for the CERB and CWLB

20. On September 15, 2022, the CRA notified Aurora via CRA account mail, her CERB eligibility was redetermination. There is not any reasons mention on the mail.
21. On September 15, 2022, the CRA notified Aurora via CRA account mail, her CWLB eligibility was redetermination. There is not any reasons mention on the mail.
22. Aurora did not check her CRA account until March 2023, she found the 2 letters and the account statement indicated that she is owing \$14810.
23. Aurora was shocked and called CRA agent, the CRA refer her the reference number C0045361414-001-45, asked Aurora to provide documents to showing she earned \$5,000 in 2019, 2020, or in the 12 months before the date she applied for the benefit, and earned \$5000 in 2021.
24. On March 15, Aurora submitted her paystubs, bank statements, direct deposit of self employment income through CRA account.
25. On July 4, 2023, Aurora received a call from CRA agent indicated that need to submit additional documents in two weeks for second review, the new reference number was given as C0056650566-001-45.
26. On July 17, 2023, Aurora submitted her addition documents including 2021 paystubs, confirmation of self employment payment, 2021 bank statements.
27. Aurora believed that the submission of the addition information would address the eligibility issue for both CERB and CWLB.
28. On August 1, 2023, Aurora received the letter from S. Constantin, Manager of Canada Emergency Benefits Validation stating that the second review for both CERB and CWLB are no adjustment.

29. Aurora was terrified and called CRA on August 2, 2023, the agent made a long note on her files and encourage her to contact Canada Emergency Benefits Validation team for further information.
30. Aurora contact Canada Emergency Benefits Validation agent on August 2, 2023, and the agent asking her to file the Notice of Application.

The Decision lacks procedural fairness and is unreasonable

31. The Decision that Aurora is ineligible for the CERB is unfair and unreasonable.

In particular:

- a. The CRA breached Aurora's right to procedural fairness by failing to provide Aurora an explanation as to how and why she did not meet the \$5,000 income eligibility requirement for the CERB and CWLB and thereby denied her a fair opportunity to respond;
- b. The CRA breached Aurora's right to procedural fairness by failing to advise Aurora the documents she provided the CRA did not meet the standard of proof and thereby denied her a fair opportunity to prove her income;
- c. The CRA breached Aurora's right to procedural fairness by failing to advise Aurora of the deadline to provide documents confirming she met the \$5,000 income eligibility requirement and then issuing the Decision without warning;
- d. The CRA's decision lacks transparency, justifiability and intelligibility for the following reasons:
 - i. The CRA ignored and failed to address relevant evidence, including Aurora's evidence of her income and self employment activities.
 - ii. The CRA failed to properly interpret and apply the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 including s. 6 of that Act. In doing so, the CRA fettered its discretion by mechanically applying its delegated authority without adequate consideration of the circumstances before it;
 - iii. The CRA failed to provide adequate reasons for the denial of Aurora's eligibility for the CERB and CWLB. The CRA has a heightened responsibility to justify decisions with significant consequences on vulnerable people. The CRA was aware Aurora is a hard-working university student who would have to repay \$14,000.00 to the CRA if she were ineligible for the CERB. The reasons it provided in the Decision fail to meet the standard of justification required in Aurora's case, and in fact provide no justification at all;
- e. The *Federal Courts Act*, RSC 1985, c F-7, including section 18.1;
- f. The *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, including sections 4, 6, and 7; and,

- g. Such further and other grounds as counsel may advise and this Honourable Court may permit.

This application will be supported by the following material:

32. The CRA's letter dated September 15, 2022, notifying Aurora that her eligibility for the CERB and CWLB was redetermination.
33. The CRA's letter dated March 14, 2023, notifying Aurora that her owing \$14,810.00
34. The CRA's letter dated July 11, 2023, notifying Aurora that her owing \$14,247.41
35. The CRA's letter dated August 1, 2023, notifying Aurora that second review for her ineligible for the CERB and CWLB;
36. Written submissions and documentary evidence submitted by Aurora to the CRA, dated March 15, 2023;
37. Additional documentary evidence submitted by Aurora to the CRA on July 17, 2023;
38. Such further and other material as counsel may advise and this Honourable Court may permit.

The Applicant requests that the Minister 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 to the Applicant and to the Registry:

- Any and all records pertaining to the Applicant's receipt of the CERB and CWLB and determinations about her eligibility for it;
- Any and all records considered by the decision-maker(s).

The Applicant requests that this Application be heard together with the Applicant's Application for Judicial Review of the decision of the CRA dated August 1, 2023, that the Applicant is ineligible for the CWLB.

August 25, 2023


Aurora Zhang

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