

BETWEEN:

ADRIAN TEREK,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on November 28, 2008 at Calgary, Alberta

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Applicant: Cate Terek

Counsel for the Respondent: Robert Neilson

ORDER

UPON application for an Order extending the time within which a notice of objection in respect of an assessment made under the *Income Tax Act* for the 2005 taxation year may be served, the application is denied.

Signed at Ottawa, Canada this 3rd day of December 2008.

"J. Woods"

Woods J.

Citation: 2008TCC665
Date: 20081203
Dockets: 2008-1536(IT)APP

BETWEEN:

ADRIAN TEREK,
Applicant,
and
HER MAJESTY THE QUEEN,
Respondent.

REASONS FOR ORDER

(Delivered orally from the Bench on November 28, 2008)

Woods J.

[1] Adrian Terek seeks an extension to file a notice of objection where he has received a nil assessment for the relevant taxation year. The purpose for the objection is to enable a proper determination of tuition and education tax credits to be determined. The credit cannot be used by Mr. Terek in the relevant year but it can be used by his father and himself in later years.

[2] Unfortunately for Mr. Terek, my hands are tied on this matter. In the past few years some judges on this court have been sympathetic to circumstances similar to this and they have allowed an appeal of a nil assessment to go forward. More recently the Federal Court of Appeal has said that it is not proper to do this in the case of *Interior Savings Credit Union v. The Queen*.

[3] Unlike the case before the Federal Court of Appeal, Mr. Terek is not seeking to appeal but is seeking the right to file a notice of objection. The issue though is the same. One can only file a notice of objection to an assessment and a nil assessment is not an assessment for these purposes.

[4] I am going to have to deny the application for an extension of time on this basis.

[5] Before concluding, I would say that I am very hopeful that Mr. Terek will not be barred from having this issue properly considered in respect to his father's assessment and in respect to his own assessments for later years. If the Minister sees it otherwise, I urge you to come back to this Court.

Signed at Ottawa, Canada this 3rd day of December 2008.

"J. Woods"

Woods J.

CITATION: 2008TCC665

COURT FILE NO.: 2008-1536(IT)APP

STYLE OF CAUSE: ADRIAN TEREK AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: November 28, 2008

REASONS FOR ORDER BY: The Honourable Justice J. Woods

DATE OF ORDER: December 3, 2008

APPEARANCES:

Agent for the Applicant: Cate Terek

Counsel for the Respondent: Robert Neilson

COUNSEL OF RECORD:

For the Applicant:

Name: n/a

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada