

INTERIOR BOARD OF LAND APPEALS

Serfean Alexie

147 IBLA 137 (January 4, 1999)

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SERFEAN ALEXIE

IBLA 97-384

Decided January 4, 1999

Appeal from a decision of the Alaska State Office, Bureau of Land Management, reinstating Native allotment application A-052572 and rejecting it due to a legal defect.

Appeal dismissed.

1. Administrative Authority: Generally--Alaska: Native Allotments--Rules of Practice: Jurisdiction

When BLM adjudicates a Native allotment application for land patented to a Native corporation in accordance with Stipulation 1 of the stipulated procedures for implementation of the order in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), and by decision rejects the application because it terminated as a matter of law upon the failure of the applicant to submit evidence of use and occupancy within 6 years of the filing of the application, an appeal of that decision is properly dismissed. Stipulation 1 provides that legally defective Native allotment applications, which are incapable of being corrected, will be rejected by BLM, and such rejection "shall be final for the Department."

APPEARANCES: Serfean Alexie, Nondalton, Alaska, *pro se*; Regina L. Sleater, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On July 8, 1960, the Alaska State Office, Bureau of Land Management (BLM), received a Native allotment application (A-052572) from Serfean Alexie claiming use and occupancy of 160 acres of land on the shores of Lake Clark approximately 21 miles from the Native village of Nondalton. The application did not include any date for commencement of his use and occupancy. In a letter dated October 28, 1960, BLM informed Alexie that unless he filed proof of his use and occupancy of the land by July 7, 1966, his application would terminate without prejudice to his filing a new application. A certified mail return receipt card signed by Alexie and returned to BLM in February 1966 is affixed to a letter to Alexie notifying him that he had until July 7, 1966, to file his evidence.

By memorandum dated October 12, 1966, BLM provided the Bureau of Indian Affairs (BIA) with a list of Native allotment applications "being closed on the records of this office. The statutory life of these claims has expired and the evidence of occupancy has not been filed." The list included Alexie's application.

A copy of a case file abstract included in the case record states that Alexie's application was "REINSTATED/REOPENED" on May 1, 1982, and closed on July 26, 1982. Nevertheless, on August 17, 1982, BLM conducted a field examination of the lands described in Alexie's Native allotment application. Alexie accompanied the BLM field examiner. In his report dated November 23, 1982, the examiner stated: "The applicant did not claim to have used the land since he filed for it." (Report at 3.) He stated further: "The applicant said that he understood that George Koktelash (AA-991) had filed for the same land. He (the applicant) had not used the land since then. AA-991 is approximately a mile to the east." Id. In conclusion, he stated that Alexie "did not claim any use of the land during the field exam." Id. at 5.

In a decision dated April 2, 1997, BLM notified Alexie that it was reinstating his Native allotment application A-052572 based on this Board's decisions in Andrew Balluta, 122 IBLA 30 (1992), and Michael Gloko, 116 IBLA 145 (1990). ^{1/} It also stated that on March 10, 1980, the lands in question had been transferred out of Federal ownership by interim conveyances of the surface estate to Kijik Corporation (formerly Nondalton Native Corporation) and the subsurface estate to the Bristol Bay Native Corporation. However, it also rejected the application stating:

Because Serfean Alexie did not submit evidence of five years use and occupancy during the six-year "statutory life" period of July 8, 1960 to July 7, 1966, his application terminated as a matter of law and is therefore legally defective. Since the time period for submitting proof of use and occupancy for this application has closed, the legal defect cannot be corrected.

Serfean Alexie's application contains a legal defect which cannot be corrected and is, therefore, rejected pursuant to Stipulation No. 1 of Aguilar. ^[2/] This decision is final for the United States Department of the Interior.

^{1/} In each of those decisions, the Board vacated and remanded a BLM decision denying a request to reopen and reinstate a Native allotment application pending before the Department on or before Dec. 18, 1971, which had terminated for failure to provide evidence of use and occupancy.

^{2/} Stipulation No. 1 of the stipulated procedures for implementation of the Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), provides: "The Bureau of Land Management (BLM) will review each allotment application file to determine whether there are any legal defects in the application. Legally defective applications which are incapable of being

On May 16, 1997, BLM received a May 9, 1997, "letter of protest," signed by Alexie. That letter was also signed by one Martin A. Gasper, who represented that he was a longtime friend of Alexie's and a teacher at the Nondalton School and that he was writing the letter at Alexie's "request and direction." The letter stated:

Records indicate that Mr. Alexie signed a certified letter with the necessary paperwork he was to fill out. Mr. Alexie is totally illiterate and believed the certified letter to be title to the land in question. Because Mr. Alexie is a very proud, intelligent man, he is embarrassed to seek assistance from literate persons.

By letter dated May 22, 1997, BLM acknowledged receipt of the May 9, 1997, letter stating that it was "reviewing the issues raised" in the protest, and it suggested that Alexie contact the BIA "for further help with your claim." In a letter to Alexie, dated May 29, 1997, BLM informed him that it was treating the May 9, 1997, letter as an appeal and forwarding the case file to this Board. BLM served copies of its May 29, 1997, letter on, inter alia, Alaska Legal Services Corporation and the BIA.

On August 25, 1997, counsel for BLM filed a motion to dismiss the appeal alleging that Alexie failed to file a statement of reasons in support of the appeal. The filing of a statement of reasons is governed by 43 C.F.R. § 4.412(a), which provides that "[i]f the notice of appeal did not include a statement of reasons for the appeal, the appellant shall file such a statement with the Board * * * within 30 days after the notice of appeal was filed." The failure to file a statement of reasons subjects an appeal to summary dismissal. 43 C.F.R. § 4.412(c).

We need not consider whether the statement in the May 9, 1997, letter constitutes a reason for appeal, because the Board lacks jurisdiction to consider the appeal in this case, and the appeal must be dismissed.

[1] In order to be entitled to an allotment, a Native claimant was required to engage in "substantially continuous use and occupancy of the land for a period of five years," and to submit satisfactory proof thereof. 43 U.S.C. § 270-3 (1970); see also 43 C.F.R. § 2561.2(a). Use and occupancy was to consist of the "customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family." 43 C.F.R. § 2561.0-5(a). It was also to be "substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use." Id. The required proof was to be filed within 6 years of the filing of an application by the claimant. 43 C.F.R. § 2561.1(f).

fn. 2 (continued)

corrected will be rejected, and rejection by the authorized BLM official shall be final for the Department." The Aguilar procedures were to be utilized where there was a Native allotment claim to lands patented to the State of Alaska; however, those procedures were extended to Native allotment claims in conflict with all types of conveyed lands.

In Jacqueline Dilts, 145 IBLA 109 (1998), we overruled Gloko and Balluta, as had been suggested by Administrative Judge Burski in his concurrence in William Demoski, 143 IBLA 90, 116 (1998), and reaffirmed our holding in Heirs of Edward Peter, 122 IBLA 109 (1992).

In Edward Peter, the heirs appealed a BLM decision confirming approval of a Native allotment application filed by Peter in 1968. The heirs sought to show that an earlier application filed by Peter in 1962, embracing more land, should have been reinstated and approved. The Board found, however, that the 1962 application did not, on its face, allege compliance with the requirement that qualifying use and occupancy be shown for 5 years and that the application had terminated in accordance with 43 C.F.R. § 2561.1(f), which provides that the failure to file evidence of use and occupancy within 6 years of filing the application itself causes the application to terminate.

In Dilts, we stated at 116: "Because the applicant in this case failed to provide any evidence of 5 years of use and occupancy, our decision in Peter is controlling and we find that the application is properly rejected without a hearing for failure to provide any evidence of the statutorily required use and occupancy."

Alexie filed his application in July 1960. In the application, he did not provide a date for commencement of use and occupancy of the land. His application terminated in accordance with 43 C.F.R. § 2561.1(f) in July 1966 upon a failure to provide any evidence of use and occupancy within 6 years of the filing of the application. In 1980, BLM conveyed both the surface and the subsurface of the lands in question to Native corporations.

In this case, BLM reinstated Alexie's Native allotment application. Therefore, Alexie is not challenging a failure of BLM to reinstate, a matter which would be appealable to this Board. See William Demoski, *supra* at 94. What he is appealing is BLM's adjudication of his Native allotment application pursuant to Stipulation 1 of the Aguilar procedures. See note 2, *supra*.^{3/} That stipulation provides that a legally defective Native allotment application, which is incapable of being corrected, will be rejected by BLM and that BLM's adjudication "shall be final for the Department." As a final Departmental adjudication, BLM's decision is not appealable to this Board.

^{3/} In the Dilts case, BLM issued a decision concluding that the Native allotment application of Harry W. Nickoli (A-063985) terminated as a matter of law for failure to file proof of 5 years of substantially continuous use and occupancy within 6 years of the filing of his application, as required by 43 C.F.R. § 2561.1(f). Our decision stated that part of the land described in the application had been approved as part of a conflicting Native allotment application (A-062349) and that the balance had been conveyed to a Native corporation. However, there is no indication that BLM's adjudication was expressly undertaken pursuant to Stipulation 1 of the Aguilar procedures.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal is dismissed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

C. Randall Grant, Jr.
Administrative Judge