



INTERIOR BOARD OF INDIAN APPEALS

Estate of Roger Mogue Tosee

7 IBIA 7 (01/13/1978)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF ROGER MOQUE TOSEE

IBIA 77-53

Decided January 13, 1978

Appeal from an order denying petition for rehearing.

Affirmed.

1. Indian Probate: Rehearing: Timely Filing

A petition for rehearing mailed on the 60th day but not received in the Department of the Interior on or before the 60th day has not been timely filed.

APPEARANCES: Patsy Karen Tosee Forsythe, appellant, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

Under date of March 4, 1977, an order determining heirs was entered in the above-entitled matter by an administrative law judge. Copies of the decision were mailed on the same date by the judge to all interested parties, including the appellant herein, Patsy Karen Tosee Forsythe. Thereafter, on May 4, 1977, the judge received a letter from the appellant bearing the date of May 3, 1977, which the judge treated as a petition for rehearing of the order determining heirs issued on March 4, 1977.

The judge on May 13, 1977, denied the petition for the reason that it had not been timely filed within the 60-day period required by the regulations contained in 43 CFR 4.241. The appellant's appeal from the denial followed on July 11, 1977.

Clearly, the petition was not filed within the time required by 43 CFR 4.241 and the judge properly denied the petition in accordance with the provisions of 43 CFR 4.241(b).

[1] The Department has long strictly adhered to the time requirements for filing petitions for rehearing. See Estate of Inez (Agnes) Gayton King, IA-D-1 (July 11, 1966), where the Department held that a petition for rehearing mailed on the 60th day but not received in the Department of the Interior on or before the 60th day has not been timely filed.

We see no compelling reason for deviating from the strict interpretation of the regulations regarding petitions for rehearing as enunciated in the case of Inez Gayton King, supra. Accordingly, the Judge's order of May 13, 1977, should be affirmed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order denying petition for rehearing issued by Administrative Law Judge Jack M. Short on May 13, 1977, is hereby AFFIRMED and the appeal herein is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Chief Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge