



INTERIOR BOARD OF INDIAN APPEALS

Henry Sam Littlefield, Jr.

7 IBIA 128 (03/30/1979)

Also published at 86 Interior Decisions 217



United States Department of the Interior

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

HENRY SAM LITTLEFIELD, JR.

IBIA 79-2-DE

Decided March 30, 1979

Appeal from decision of Administrative Law Judge declaring that contestee was ineligible for enrollment under certain provisions of the Alaska Native Claims Settlement Act.

Reversed.

1. Alaska Native Claims Settlement Act: Disenrollment:
Computation of Time for Filing and Service

Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day.

2. Alaska Native Claims Settlement Act: Enrollment: Metlakatla Natives

No person enrolled in the Metlakatla Indian Community of the Annette Islands Reserve as

of Apr. 1, 1970, shall be eligible for enrollment under the Act.

3. Alaska Native Claims Settlement Act: Renunciation of Enrollment in Metlakatla Indian Community

The right of renunciation or expatriation is the natural and inherent right of the individual.

4. Alaska Native Claims Settlement Act: Renunciation of Enrollment in Metlakatla Indian Community

Any member of any Indian tribe is at full liberty to terminate his tribal relationship whenever he so chooses, although it has been said that such termination will not be inferred "from light and trifling circumstances."

APPEARANCES: Diane F. Thompson, Esq., Legal Services Program, Seattle Indian Center, Inc., Seattle, Washington, for appellants; Bruce E. Schultheis, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for appellee.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

The Enrollment Coordinator, Alaska Native Enrollment Office, Bureau of Indian Affairs, filed a complaint on April 1, 1977, alleging that contestee Henry Sam Littlefield, Jr., was improperly enrolled under sections 3, 5, and 19 of the Alaska Native Claims Settlement Act December 18, 1971 85 Stat. 688 (43 U.S.C. § 1601 et seq. (1976)), and further that the contestee is enrolled as a member of the Metlakatla Indian Community of Annette Islands Reserve.

The contestee applied for membership in the Metlakatla Indian Community on August 9, 1958, and his application was accepted on October 22, 1963. He married Carolyn Haldane on July 2, 1959, in Metlakatla, Alaska. They had two children. In October 1968, Carolyn Haldane Littlefield and the children left Metlakatla and went to live in Seattle, Washington. The contestee joined his family in Seattle in November 1968. The contestee lived with his family in Seattle from November 1968 to January 1970, then went to Los Angeles, California, where he stayed for 8 or 9 months. From Los Angeles the contestee went to Sitka, Alaska, where he stayed for approximately 1 year and thence returned to Seattle, Washington, where he remained until sometime after Thanksgiving 1972. The contestee returned to Metlakatla on or about December 1972 to visit his parents. He died at the Ketchikan General Hospital, Ketchikan, Alaska, on January 5, 1973. Prior to his death and on May 10, 1972, Mr. Littlefield (contestee) applied for enrollment as an Alaskan Native and was subsequently enrolled.

On April 4, 1977, the Enrollment Coordinator, Alaska Native Enrollment Office, Bureau of Indian Affairs, Anchorage, Alaska, filed a complaint with the Office of Hearings and Appeals, alleging in substance the contestee was not eligible for enrollment under sections 3, 5, and 19 of the Alaska Native Claims Settlement Act, supra, because he was an enrolled member of the Metlakatla Indian Community on April 1, 1970. The matter was referred to Administrative Law Judge E. Kendall Clarke at Sacramento, California, for hearing.

After the hearing held on November 29, 1977, Administrative Law Judge E. Kendall Clarke found on September 8, 1978, that the contestee was enrolled in the Metlakatla Indian Community as of April 1, 1970; that his continued absence did not result in the termination of his membership in said community until November 1, 1970; and that therefore he was enrolled in the Metlakatla Indian Community as of April 1, 1970. Judge Clarke concluded that the contestee was not eligible for enrollment under sections 3, 5, and 19 of the Alaska Claims Settlement Act.

An appeal was filed on October 10, 1978, with the Director, Office of Hearings and Appeals. Under authority of 43 CFR 4.1010 and 43 CFR 4.704, the Director ordered the Board of Indian Appeals to decide this case on an ad hoc basis.

The appellant contestee alleges that:

(1) The enrollment coordinator did not meet its burden of proof of showing that contestee was ever a member of the Metlakatla Indian Community.

(2) The administrative law judge was in error in concluding that contestee was a member of the Metlakatla Indian Community on April 1, 1970.

(3) Even if the contestee had been a member of the Metlakatla Indian Community on April 1, 1970, he was entitled to enrollment under the Alaska Native Claims Settlement Act if he was not a member of the Metlakatla Community on December 18, 1971, the date on which the Act was passed by Congress.

(4) The administrative law judge was incorrect in concluding that membership in the Metlakatla Community on an alleged ineligible date subjects an individual automatically to disenrollment proceedings.

The appellee, enrollment coordinator alleges:

(1) The appeal was not timely filed.

(2) The appellant (contestee) was ineligible under the Alaska Native Claims Settlement Act because he was an enrolled member of the Metlakatla Indian Community on April 1, 1970.

[1] Section 4.22(e) of Title 43 of the Code of Federal Regulations provides that:

Computation of time for filing and service. Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a

Saturday, Sunday, Federal legal holiday, or other non-business day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day * * *.

The record shows that Judge Clarke rendered his decision on September 8, 1978, and that the appeal was received on October 10, 1978.

Ordinarily October 9, 1978, would have constituted the cutoff date for filing under Departmental regulations. However, October 9 was a Federal legal holiday (Columbus Day celebrated) making the end of the next day October 10, 1978, the next business day, the cutoff date for filing an appeal.

We, therefore, find the appeal to have been timely filed.

Remaining is the issue of whether or not the contestee is entitled to enrollment under the Alaska Native Claims Settlement Act.

[2] At the outset we hold that membership in the Metlakatla Indian Community on April 1, 1970, presents a bar to enrollment under the Alaska Native Claims Settlement Act. See P.L. 92-203, approved December 18, 1971, section 5(b); 25 CFR 43h.11 (41 FR 32423 August 3, 1976); U.S. v. James Edward Scott & Robert Charles Scott, Docket No. AL 77-135 D and AL 77-136 D, decided December 4, 1978.

The Metlakatla Indian Community Constitution and By-Laws which was approved August 23, 1944, provides in section 6, page 2, that "Continuous absence from Annette Islands Reserve for two years or longer, unless the member so absent shall notify the Council in writing, within such two year period, of his intention to return, shall constitute forfeiture of membership in the Community. Such person may be readmitted to membership in the Community, as provided in Section 4 of this Article."

Were we to conclude that forfeiture is the only way to terminate a tribal relationship, the Board would be constrained to find the contestee ineligible for enrollment under the Alaska Native Claims Settlement Act since he was not absent from Metlakatla for a period of 2 years on April 1, 1970.

[3, 4] However, forfeiture is not the only way that a tribal relationship may be terminated. As noted by the eminent Indian law scholar, Felix S. Cohen, an Indian may terminate a tribal relationship through renunciation of membership or expatriation. ^{1/} Mr. Cohen states:

^{1/} Cohen defines expatriation in Indian law as "the giving up of membership in a tribe." Handbook of Federal Indian Law at p. 177, n. 356. Historically, Cohen notes that the term was associated with the flight of oppressed Indians from belligerent tribes. See Handbook at 177-178 citing the landmark Federal case of United States ex rel. Standing Bear v. Crook, 25 Fed. Cas. No. 14891 (c.c. Neb. 1879). In his concluding analysis, however, Cohen observes:

"The right of expatriation established by the Standing Bear case remains a significant human right, even where Indian tribes are moving

It is of course recognized throughout the cases that tribal membership is a bilateral relation, depending for its existence not only upon the action of the tribe but also upon the action of the individual concerned. Any member of any Indian tribe is at full liberty to terminate his tribal relationship whenever he so chooses, although it has been said that such termination will not be inferred "from light and trifling circumstances." Handbook of Federal Indian Law by F. Cohen at p. 135.

An Indian's right to withdraw from tribal membership was upheld in Reed v. U.S. National Bank of Portland, 213 F. Supp. 919 (D. Ore. 1963). See also 42 CJS Indians § 10 (1978 Supp. at p. 155).

In the case at bar, the facts point to the conclusion that the contestee left Metlakatla in November 1968 with the intent to make Seattle, Washington, his permanent place of abode and his actual home or domicile. 2/

The contestee's family left Metlakatla in October 1968 and moved to Seattle, Washington. One month later the contestee followed his family to Seattle. The family continued to remain in Seattle, Washington. In or about January 1970 the contestee went

fn. 1 (continued)

in an organized way toward the ideal of freedom from Indian Bureau supervision--- It would be remarkable if the development of Indian self-government failed to give rise to dissatisfied individuals and minority groups who considered their tribal status a misfortune. History shows that nations lose in strength when they seek to prevent such unwitting subjects from renouncing allegiance." At p. 178.

2/ Section 43h.1(k) of Title 25, Code of Federal Regulations in part defines "permanent residence" as the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home.

to Los Angeles where he remained for 8 or 9 months. From Los Angeles he went to Sitka, Alaska, where he stayed for approximately 1 year and returned to Seattle, Washington, where his family was still living, and remained in Seattle until shortly after Thanksgiving 1972 when he decided to go back to Metlakatla to visit his parents. He died on January 5, 1973, at the Ketchikan General Hospital, Ketchikan, Alaska. At the time of his death the contestee was still married to Carolyn Haldane Littlefield and she and the family still resided in Seattle, Washington. Prior to his death, the contestee on May 10, 1972, applied for enrollment as an Alaska Native and was subsequently enrolled.

Based on the foregoing and other facts of record in this case, we hold that the contestee renounced his membership in the Metlakatla Indian Community prior to April 1, 1970.

NOW, THEREFORE, by virtue of the authority delegated to the Board and pursuant to 43 CFR 4.704, IT IS HEREBY ORDERED that the determination made by Administrative Law Judge E. Kendall Clarke, to the effect that the contestee is not eligible for enrollment under section 3, 5, and 19 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq. (1976)) be, and the same is REVERSED.

IT IS FURTHER ORDERED and adjudged that the contestee Henry Sam Littlefield, Jr., is properly enrolled under the Alaska Native Claims

Settlement Act and thus entitled to all benefits thereunder. The Bureau of Indian Affairs is directed, within 30 days of the issuance of this decision, to restore all benefits to which the contestee and/or his heirs at law may be entitled. This decision is final for the Department.

//original signed
Mitchell J. Sabagh
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Administrative Judge

//original signed
Alexander H. Wilson
Chief Administrative Judge