



INTERIOR BOARD OF INDIAN APPEALS

Bernice G. Muskrat, et al. v. Acting Albuquerque Area Director,
Bureau of Indian Affairs

12 IBIA 128 (01/04/1984)



United States Department of the Interior

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

<p>BERNICE G. MUSKRAT, MARY V. BICENTI, and LUCRETIA BRYCELEA, for herself and her minor children, SONYA MONTOYA and ANTHONY BRYCELEA, Appellants</p> <p>v.</p> <p>ACTING AREA DIRECTOR, ALBUQUERQUE AREA OFFICE, BUREAU OF INDIAN AFFAIRS, Appellee</p>	<p>: Order Dismissing Appeal Without Prejudice and Referring Case to Albuquerque Area Director</p> <p>:</p> <p>:</p> <p>:</p> <p>: Docket No. IBIA 83-55-A</p> <p>:</p> <p>:</p> <p>: January 4, 1984</p>
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On September 26, 1983, the Board of Indian Appeals (Board) received a notice of appeal from appellants, who are or were members of the Jicarilla Apache Tribe, and who seek review of the December 8, 1981, approval by the Bureau of Indian Affairs (BIA) of Tribal Ordinance No. 82-0-089, enacted by the tribal council on October 9, 1981. The ordinance at issue apparently pertains to the establishment of criteria for membership in the Jicarilla Apache Tribe and of procedures for the timely registration of births and deaths.

Appellants stated that they had received no response to their appeals filed with BIA under the provisions of 25 CFR Part 2. Accordingly, they sought review by the Board in accordance with 25 CFR 2.19. Noting several potential jurisdictional problems in the case, the Board issued an order providing for briefing on the question of its jurisdiction on October 3, 1983.

On November 1, 1983, the Board received from appellee a motion to dismiss this appeal without prejudice. In its motion, appellee acknowledged and apologized for the administrative delays in the consideration of appellants' appeal, but suggested that it was appropriate for the Board to refrain from consideration of the appeal until BIA had an opportunity to consider the matter. Appellee stated that the BIA officials who would be involved in consideration of the appeal had agreed to expedite their review. The Board issued an order on November 15, 1983, requesting appellants to show cause why the matter should not be dismissed and referred in accordance with appellee's suggestion. Appellants objected to dismissal in a response received on December 12, 1983.

Despite appellants' objections, the Board finds that this appeal should be dismissed without prejudice upon appellee's representation that BIA will expeditiously consider the matter in accordance with the procedures set forth in 25 CFR Part 2. These procedures contemplate that BIA shall have an opportunity to review, and correct if necessary, matters within its jurisdiction prior to the Board's review. Although BIA failed to follow these procedures properly in this case, the reasons for allowing BIA to consider the matter first are still of primary importance.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is referred to the Albuquerque Area Director for his consideration in accordance with the procedures set forth in 25 CFR Part 2 and in accordance with the representation that such consideration shall be expedited, and it is dismissed from the Board's docket without prejudice to appellants' rights to seek further review of BIA's subsequent decision in the matter.

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Bernard V. Parrette
Chief Administrative Judge

//original signed

Franklin D. Arness
Administrative Judge