



INTERIOR BOARD OF INDIAN APPEALS

Alvin Atencio v. Albuquerque Area Director, Bureau of Indian Affairs

18 IBIA 126 (01/31/1990)



United States Department of the Interior

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

ALVIN ATENCIO

v.

ALBUQUERQUE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-3-A

Decided January 31, 1990

Appeal from a decision denying general assistance payments.

Vacated and remanded.

1. Bureau of Indian Affairs: Administrative Appeals: Generally

The Bureau of Indian Affairs is required to set forth the grounds upon which its decisions are based. Those grounds, which include, but are not limited to, the identification of relevant factual issues with an explanation of the legal significance of those facts, should normally appear in the decision below and be supported by the administrative record.

APPEARANCES: Mary Lou Carson, Esq., San Juan Pueblo, New Mexico, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Alvin Atencio seeks review of a March 21, 1988, decision of the Albuquerque Area Director, Bureau of Indian Affairs (BIA; appellee), denying his request for BIA general assistance payments. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision and remands this case to appellee for further consideration.

Background

The administrative record in this matter indicates that on or about November 20, 1987, appellant, an enrolled member of the Pueblo of San Juan (San Juan), applied for general assistance from the Northern Pueblos Agency (Agency), BIA. The Agency initially determined that appellant was not eligible for BIA assistance.

An informal hearing was held at the Agency concerning appellant's eligibility for BIA financial assistance on January 19, 1988. By letter dated January 26, 1988, the Agency Superintendent (Superintendent) informed appellant that he was not eligible for assistance because although he lived within the exterior boundaries of the Pueblo of Santa Clara (Santa Clara),

he resided on a private land claim. The tract is located within the city limits of Espanola, New Mexico. The Superintendent noted that neither San Juan nor Santa Clara had designated private land claims in Espanola as "near reservation." He concluded that appellant was not eligible for assistance because of his place of residence.

Appellant appealed this decision to appellee, who, by letter dated March 21, 1988, affirmed the Superintendent's decision. Appellee stated at pages 1-2 of that letter:

The Bureau's regulations, 25 CFR [Part] 20, Financial Assistance and Social Services Program, only speak to residency on reservation (25 CFR 20.20(a)(2)) and residency on a designated "near reservation" [area] (25 CFR 20.20(a)(3)). The near reservation area must be officially designated according to 25 CFR 20.1(r). The Superintendent's citation of 25 CFR 20.20(a)(3) is correct as the primary question was whether Mr. Atencio lived on the reservation, or on an officially designated near reservation area.

As the Superintendent informed Mr. Atencio in his January 26, 1988, letter, neither San Juan or Santa Clara Pueblos has ever designated "near reservation" areas as defined in 25 CFR 20.1(r). In addition, Santa Clara Pueblo has never officially designated "near reservation" status for the private land identified in Mr. Atencio's appeal. Therefore, we conclude that Mr. Atencio's claim/appeal is not meritorious because his residence is outside the Pueblo proper and is not on a designated "near reservation" area. [1/]

Appellant appealed appellee's decision to the Washington, D.C., BIA office. By memorandum dated November 1, 1988, the appeal was transferred

^{1/} Appellant's submissions in this appeal include San Juan Tribal Resolution 88-413-18, Feb. 9, 1988. This resolution requests designation of certain areas, including "[t]he entire area encompassed by the city limits of Espanola, New Mexico," as "near reservation." The resolution was transmitted to the Superintendent by the Governor of the Pueblo on Feb. 10, 1988, with the request that the requirement for Federal Register publication be waived until such time as the designation could be published so that the tribal members residing in the areas to be designated could receive services prior to the publication. In a telephone inquiry made on Nov. 15, 1989, the Board was informed by Agency social services personnel that the "near reservation" designation request had been sent to the Albuquerque Area Office and perhaps had reached the Washington, D.C., BIA office, but no final action concerning the requested designation had yet been taken.

Although the designation of Espanola as a "near reservation" area would solve appellant's future problems, it would not address his contention that he has been and remains eligible for BIA social and financial services because of his residence within the exterior boundaries of a Pueblo.

to the Board under the provisions of 25 CFR 2.19(a)(2) (1988). ^{2/} Only appellant filed a brief with the Board.

Discussion and Conclusions

General eligibility requirements for the receipt of BIA financial assistance and/or social services are set forth in 25 CFR 20.20(a):

- (1) The applicant must be an Indian, except that in the States of Alaska and Oklahoma a one-fourth degree or more Indian or Native blood quantum will be an additional eligibility requirement; and
- (2) The applicant must reside on a reservation; or
- (3) The applicant must reside near reservation as specifically defined in § 20.1(r) and be a member of the tribe that requested designation of the near reservation service area.

Section 20.1(v) defines "reservation" to mean in pertinent part, "any federally recognized Indian tribe's reservation, Pueblo, or Colony." Section 20.1(r) provides criteria for designating areas adjacent or contiguous to reservations as areas in which services will be available as though those areas were part of the reservation.

There is no dispute in this case that appellant meets the eligibility criterion set forth in 25 CFR 20.20(a)(1), or that he resides within the exterior boundaries of Santa Clara. There is apparently also no dispute about the ownership of the tract of land upon which appellant lives, although the only description of that tract in the administrative record is appellee's characterization of it as a "private land claim."

Appellee does not define in his decision what constitutes a "private land claim" or indicate why such status is relevant to a decision in this case. ^{3/} The administrative record does not independently contain this information. Because appellee also did not file a brief in this appeal, his reasoning is not explained anywhere. In order to reach his decision,

^{2/} Section 2.19 (1988) provided in relevant part:

“(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or Bureau of Indian Affairs official exercising the administrative review authority of the Commissioner] shall:

“(1) Render a written decision on the appeal, or

“(2) Refer the appeal to the Board of Indian Appeals for decision.”

The appeals regulations in 25 CFR Part 2 were substantially revised by notice published at 54 FR 6478 (Feb. 10, 1989).

^{3/} It is possible that the tract was determined to be validly claimed by a non-Indian settler pursuant to the Pueblo Lands Act, Act of June 7, 1924, ch. 331, 43 Stat. 636, as amended by the Act of May 31, 1933, ch. 45, 48 Stat. 108.

however, appellee must have concluded that "private land claims" within the exterior boundaries of a Pueblo are not part of the Pueblo for the purpose of receiving BIA financial assistance and/or social services.

Appellant argues that his eligibility for BIA services is not determined by the status of the individual tract of land upon which he happens to reside, but rather by the fact that the tract is located within the exterior boundaries of a Pueblo. He contends that, under New Mexico State law, fee lands within the exterior boundaries of the Pueblo are "Indian country," citing, inter alia, State v. Ortiz, 105 N.M. 308, 731 P.2d 1352 (1986). ^{4/}

[1] It is BIA's responsibility to set forth the grounds upon which its decisions are based. Those grounds, which include, but are not limited to, the identification of relevant factual issues with an explanation of the legal significance of those facts, should normally appear in the decision below and be supported by the administrative record. See, e.g., Delaware Tribe of Western Oklahoma v. Acting Anadarko Area Director, 18 IBIA 98, 102 (1989), and cases cited therein. In the present case, BIA has failed both to identify the exact nature of the ownership of the tract upon which appellant resides and to explain its understanding of the legal significance of that form of ownership.

The Board declines to engage in speculation as to the basis for BIA's decision. Instead, it notes the "first and governing principle * * * that * * * [o]nce a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise. See United States v. Celestine, 215 U.S. 278, 285 (1909)." Solem v. Bartlett, 465 U.S. 463, 470 (1984). See also Rosebud Sioux Tribe v. Kneip, 430 U.S. 584, 587 (1977); DeCoteau, supra; Mattz v.

^{4/} In Ortiz, a case involving state criminal jurisdiction over fee lands within Santa Clara, the New Mexico Supreme Court stated that, for purposes of the definition of "Indian country" under 18 U.S.C. §§ 1151 and 1153 (1982):

"[W]e see no reason why the Pueblo should not enjoy the same sovereignty over its formally designated land as an Indian tribe occupying lands formally designated as a reservation. * * * Our cases have equated the sovereignty of the Pueblo Indians over lands owned or occupied by them with that of Indians living on a reservation over lands within the boundaries of the reservation. * * * Thus, the underlying rationale for limiting state jurisdiction supports our conclusion that, for purposes of Section 1153, land lying within the exterior boundaries of a Pueblo is indistinguishable from land lying within the exterior boundaries of an Indian reservation" (731 P.2d at 1355-56).

It has long been recognized that the definition of "Indian country" can and should be used for purposes other than merely the determination of criminal jurisdiction under sections 1151 and 1153. See, e.g., DeCoteau v. District County Court for the Tenth Judicial District, 420 U.S. 425, 427 n.2, rehearing denied, 421 U.S. 939 (1975).

Arnett, 412 U.S. 481 (1973); Seymour v. Superintendent, 368 U.S. 351 (1962); Colorado River Indian Tribe v. Town of Parker, 705 F. Supp. 473 (1989); Keweenaw Bay Indian Community v. State of Michigan, File No. M87-278-CA2 (W.D. Mich. Nov. 14, 1989).

Under this “first and governing principle,” all lands within the Pueblo boundaries remain part of the Pueblo unless explicitly removed by Congress. Appellee has failed to offer any evidence that the Pueblos should be treated differently from other Indian reservations in this regard. Furthermore, he has offered no evidence in support of his position that a “private land claim” within the exterior boundaries of a Pueblo is not part of the Pueblo within the meaning of 25 CFR 20.1(v), and that residence on such a “private land claim” renders appellant ineligible for receipt of BIA financial and social services.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 21, 1988, decision of the Albuquerque Area Director is vacated and this case is remanded to him for further consideration.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge