



INTERIOR BOARD OF INDIAN APPEALS

Allan Cupps v. Acting Anadarko Area Director, Bureau of Indian Affairs

23 IBIA 142 (01/05/1993)

Reconsideration denied:
23 IBIA 198



United States Department of the Interior

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

ALLAN CUPPS,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 92-176-A
ACTING ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 5, 1993

This is an appeal from a May 11, 1992, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving an application for a direct loan. For the reasons discussed below, the Board affirms the Area Director's decision.

Appellant is a member of the Kickapoo Tribe of Kansas. On November 29, 1991, he applied at the Horton Agency, BIA, for a direct loan in the amount of \$300,000. He sought the loan in order to establish a business to be called "Al's Catfish Park and Excavation Company," in the Springfield, Missouri, area. The Agency Credit Committee reviewed appellant's application and found a number of problems with it. Appellant was informed of these problems in a December 27, 1991, letter from the Acting Superintendent.

On January 23, 1992, appellant submitted further information. This new information, together with appellant's original application, was transmitted to the Anadarko Area Office. On May 11, 1992, the Area Director disapproved appellant's application. The reasons he gave for disapproval were: (1) appellant's proposed project was outside the service area of the Horton Agency and the Kansas reservations, (2) a 20 percent equity requirement was not met, (3) there was insufficient collateral to secure the requested loan, (4) cash flow projections were unrealistic, (5) income projections were speculative, (6) appellant's resume did not reflect any management experience, and (7) appellant failed to submit his 1991 tax return.

The Area Director's first reason for disapproving appellant's application was that appellant's proposed project was outside the service area of the Horton Agency and the Kansas reservations. In his brief before the Board, the Area Director states that this reason was based upon 25 CFR 101.2(b), which provides:

Direct loans from the United States shall be made for the following purposes:

(1) To eligible tribes, individual Indians, Natives, or associations thereof, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the improvement of the economy of a reservation and/or the members thereon.

Appellant's proposed project would be located in southern Missouri, far removed from any Indian reservations. Although appellant states that he would hire Kickapoo Indians, he does not claim that they would be residents of the Kickapoo Reservation, and this appears unlikely because the Kickapoo Reservation is located in northeastern Kansas. Under 25 CFR 101.2(b), appellant must show that his project would benefit the economy of a reservation or tribal members living on the reservation. Cf. Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, 22 IBIA 153 (1992), concerning a similar requirement in the regulations governing the loan guaranty program. Appellant has not made such a showing here.

The Area Director's second reason for disapproving appellant's application was that appellant had failed to meet a 20 percent equity requirement. No such requirement appeared in the regulations for the revolving loan program at the time the Area Director issued his decision. ^{1/} See, e.g., S & H Concrete Construction, Inc. v. Acting Phoenix Area Director, 20 IBIA 176, 177-78 n.1 (1991).

The Area Director's next three reasons are related to the question of whether there was a reasonable prospect of repayment. 25 U.S.C. S 1463 (1988) provides that "[l]oans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment." In reviewing the discretion exercised by BIA under this statute, the Board does not substitute its judgment for that of BIA, but reviews the BIA decision only to the extent necessary to ensure that BIA properly observed all legal prerequisites to the exercise of discretion. E.g., McDonald v. Portland Area Director, 18 IBIA 399 (1990).

Appellant, while clearly in disagreement with the Area Director's analysis of his application, has not shown that the Area Director committed legal error. Indeed, a review of appellant's application shows that appellant produced no real support for his business projections. Further, appellant's resume fails to show any business experience at all. The Board finds that the Area Director reasonably concluded that there was not a reasonable prospect of repayment.

The Area Director's seventh reason for disapproving appellant's application was that appellant had not submitted his 1991 tax return. At the time the Superintendent's December 27, 1991, letter requested appellant's tax returns for the last two years, appellant would not have completed his

^{1/} The regulations now include a 20 percent equity requirement. See 25 CFR 101.3(a), as amended at 57 FR 46470, 46471 (Oct. 8, 1992).

1991 return. Appellant may not have realized, therefore, that his 1991 return was being requested. BIA should not have disapproved his application for failure to submit his 1991 tax return when it had not specifically requested that particular return. Cf. Pourier v. Acting Aberdeen Area Director, 19 IBIA 266 (1991) (It is improper to disapprove a loan application based on the lack of information that was not requested.)

The Board finds that, even when the second and seventh reasons in the Area Director's decision are disregarded, the remaining reasons are sufficient to support his decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's May 11, 1992, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge