



INTERIOR BOARD OF INDIAN APPEALS

Randy Fee v. Acting Anadarko Area Director, Bureau of Indian Affairs

24 IBIA 81 (06/22/1993)



United States Department of the Interior

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

RANDY FEE, : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 93-18-A
ACTING ANADARKO AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : June 22, 1993

This is an appeal from a September 21, 1992, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for a grant under the Indian Business Development Program (IBDP).

Appellant is a member of the Iowa Tribe of Kansas and Nebraska. On November 7, 1991, he applied at the Horton Agency, BIA, for an IBDP grant in the amount of \$39,400. He sought the funds to assist in the purchase of 160-acre tract in Brown County, Kansas, which he intended to use to expand farming operation. He estimated the total cost of the project to be \$157,600 and stated that he had been approved for a loan in the amount of \$96,000 from Citizens Bank of Hiawatha, Kansas.

Because the land was to be sold at auction on November 19, 1991, appellant was required to make the purchase before his grant application could be acted upon. He therefore obtained a second, short-term, loan from Citizens Bank in the amount of \$32,000, which he planned to repay once he received an IBDP grant. He states that he was advised by a BIA employee to seek the short-term loan.

Appellant's application was forwarded to the Anadarko Area Office, apparently in late 1991. On February 11, 1992, the Area Office was notified that all unobligated FY 1992 IBDP funds had been rescinded at the order of the Office of Management and Budget and that no further obligations of IBDP funds could be made. The Area Director returned appellant's application to him on February 13, 1992, explaining the funding rescission and stating: "This will give you the opportunity to pursue other sources of financing for your project."

On August 25, 1992, appellant resubmitted his application to the Agency, requesting that a formal decision be made to grant or deny it. The resubmission was forwarded to the Area Office. On September 21, 1992, the Area Director wrote to appellant, stating:

The [IBDP] funds have not been restored and therefore, no grants will be awarded this fiscal year. We regret to inform you that we are unable to approve the request for this reason and the following.

During a meeting with you in November and correspondence/ communication thereafter, it had been determined that you received financing of 75% on a long term basis but had also acquired financing through the same lending institution of 25% on a short term basis. Grants will be made to assist in establishing new economic enterprises, or in purchasing or expanding established ones, however, a grant may be made only when the applicant is unable to obtain adequate financing from other sources. If information in an application indicates that it may be possible for the applicant to obtain financing without a grant, the application does not meet requirements. [1/] A grant may be made only to an applicant who is unable to receive 100% financing. Your financing includes the 25%, even though it is short term. Grant funds may be used to supplement loans only in cases when a project's financial need cannot be met with loans from usual commercial sources.

Also, first priorities are given to economic enterprises located on a reservation. Second priorities are given to projects located in the immediate vicinity of a reservation. This project is not located within the immediate vicinity of a reservation. To be eligible for a grant an economic enterprise must be located on an Indian reservation or located where it makes or will make an economic contribution to a nearby reservation by providing employment to tribal members residing thereon or by expending certain amounts for materials or services on the reservation.

Appellant challenges all of the Area Director grounds for denial. With respect to the withdrawal of program funding, he argues that his "application was complete, feasible, and within the intent and purpose of the program" and that therefore "the application could not be denied solely on a lack of funding [sic]." Appellant's Opening Brief at 5. He argues further that, because his application was complete, it could easily have been approved and funds could have been allocated before the program funds were withdrawn. Id.

Appellant's argument suggests that he believes he was entitled to receive an IBDP grant as long as his application met certain conditions. This is clearly not the case. The IBDP program is not an entitlement program. As the Board has stated on a number of occasions, BIA's authority to grant or deny IBDP grant applications is discretionary. Among other things, BIA has the discretion to deny a meritorious application where it assigns higher priorities to other applications for the same limited funds.

1/ 25 CFR 286.17(a) provides:

"[A] grant may be made only when in the opinion of the Assistant Secretary the applicant is unable to obtain adequate financing from other sources. * * * If the information in a grant application * * * indicates that it might be possible for the applicant to obtain financing without a grant, the Assistant Secretary will require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar purposes, showing whether or not they will make a loan to the applicant for the total financing needed without a grant."

E.g., Stone Trucking v. Portland Area Director, 22 IBIA 52 (1992). And even an applicant with the most meritorious application cannot expect to be approved for a grant when no funds are available for the program.

Appellant evidently believes that, if BIA had acted more promptly on his application, the application would have been approved. However, it appears from correspondence in the record that BIA had a problem with his application prior to February 11, 1992, when the IBDP funding was withdrawn, and that the problem had been discussed with appellant. The Board finds no reason to conclude either that BIA was dilatory in reviewing appellant's application or that appellant's application would have been approved if it had been acted upon before February 11, 1992.

Presumably, BIA ordinarily does not issue formal denials of grant requests on the grounds that funds are not available but, instead, simply returns pending applications, as it did initially in this case, or advises applicants that their applications cannot be considered until funds are available. Under the circumstances here, where appellant specifically requested that a formal decision be issued on his application at a time when no funds were available, the Board finds that BIA properly denied the application on that basis.

Having found that the Area Director's decision should be affirmed, the Board declines, with one exception, to address appellant's arguments concerning the two remaining grounds for denial. Appellant appears to argue that BIA is estopped from denying him a grant because of advice given by a BIA employee that he seek a short-term loan. Implicit in this argument is the suggestion that the employee represented to appellant that his grant application would be approved. Even assuming the BIA employee made such a representation, that fact would not entitle appellant to receive a grant. Authority to approve grants was vested in the Area Director, not the employee. The Board has held on several occasions that unauthorized acts of BIA employees cannot serve as the basis for conferring rights not authorized by law. E.g., D.G. & D. Logging Co. v. Billings Area Director, 20 IBIA 229, 235 (1991), and cases cited therein.

Appellant states that he believes funding for the IBDP has now been reinstated. If this is the case, he may wish to update his application and resubmit it. 2/ If and when he does so, appellant should submit to BIA the remaining arguments he made to the Board, revised as necessary to address his present financial situation.

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 September 21, 1992, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

2/ The Board assumes that appellant's financial situation has changed since this appeal was filed, inasmuch as his short-term loan was required to be repaid no later than Nov. 1, 1992.