



INTERIOR BOARD OF INDIAN APPEALS

Connie Allen Moore v. Portland Area Director, Bureau of Indian Affairs

25 IBIA 243 (03/16/1994)



United States Department of the Interior

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

CONNIE ALLEN MOORE, : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 93-109-A
PORTLAND AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : March 16, 1994

This is an appeal from a June 4, 1993, decision denying a request for a U.S. direct loan. The initial decision was signed by the Portland Assistant Area Director (Program Services), Bureau of Indian Affairs. On August 9, 1993, the Portland Area Director concurred in the Assistant Area Director's decision. Accordingly, the decision is deemed to have been made by the Area Director.

Appellant is an enrolled member of the Nez Perce Tribe. In 1986, she and her husband purchased a cocktail lounge in Winchester, Idaho, which they operated together until their recent divorce. Appellant is now the sole proprietor of the lounge.

Appellant sought a direct loan in the amount of \$39,700 for the purpose of refinancing two escrow accounts (purchase contracts) and remodeling the building in which the lounge is located. Her initial application was denied in February 1993. She was given an opportunity to revise and resubmit the application, which she did on April 6, 1993. After reviewing the revised application, the Area Director again denied it. His June 4, 1993, decision states:

The primary reasons that we must withhold our approval are as follows:

1. Review and analysis of the revised application indicates that deficiencies noted on the previous loan declination have not been corrected, more specifically:

a) Lack of profitable operations for the business. Operating losses are shown for 1990, 1991, and for 9 months during 1992.

b) Defaults on payments on the purchase contracts for the existing business. The application indicates many payments which are past due or have not been paid as agreed.

c) Overstated sales and profit projections. Projections for revenues to increase over the previous high of \$40,000 is based primarily on projected increases from food sales and from tourists. Food sales could increase revenue if properly managed but it appears unlikely that tourists would visit the lounge to any significant extent. With a town population of approximately 300 and one other lounge, the potential for expansion would be quite limited. Also, there is no data to support projections to reduce cost of sales to 30 percent on a consistent basis as historical data reflects much higher cost of sales.

d) The majority of the request is for refinancing of existing contracts which have not been paid as agreed. The contracts are in a state of default and the property is awaiting foreclosure proceedings (subject to temporary forbearance).

2. Current business operation is not generating a positive cash flow or positive cash balance to meet current obligations. For example, funds for temporary forbearance were obtained from sources other than the business, and current state tax obligations which are past due are unpaid.

3. Needed repairs to the property have not been made during the past years when the business was in operation under present ownership. This has resulted in a request for repairs to be financed through debt financing. It is our opinion that the source of financing for repairs should have been through internally generated financing from cash flow of the business.

4. Outstanding state taxes are past due and unpaid.

5. Reasonable prospects for profitable operations or adequate cash flow cash to pay expenses and service the debt payments do not exist.

6. On the basis of the factors described above, there does not appear to be adequate cash flow for servicing of the debt. Reasonable prospects do not exist for repayment of the loan as required before a loan can be approved.

(Area Director's Decision at 1-2).

25 U.S.C. § 1466 (1988) provides: "Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment." The Board's decisions in appeals from loan denials establish that (1) BIA's decision to approve or deny a loan is discretionary; (2) the Board will not substitute its judgment for BIA's; (3) the Board's role in such cases is to ensure that BIA gave consideration to all legal prerequisites to the exercise of discretion; (4) an appellant bears the burden of proving that BIA's discretion was not properly exercised; and (5) where there is no procedural error, and the decision and/or administrative record show how BIA reached

its conclusions, the BIA decision will be affirmed. See, e.g., Power Fuel Producers, Inc. v. Acting Anadarko Area Director, 20 IBIA 190 (1991), and cases cited therein.

Appellant concedes that her business was not profitable in 1990, 1991, or 1992. She further concedes that she is presently in default on her purchase contracts. She contends, however, that the financial condition of the business is improving under her management. In particular, she states that the delinquent state taxes have now been paid.

Appellant clearly has a more optimistic view of her prospects than does the Area Director. She disagrees with much of the Area Director's analysis of her application. She does not, however, identify any procedural error or show that the Area Director failed to exercise his discretion properly.

The administrative record shows that BIA gave appellant's application thorough consideration. ^{1/} The Board finds that the record supports 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 June 4, 1993, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

^{1/} In fact, as noted above, BIA reviewed appellant's application not once but twice. Following an initial denial, BIA accepted and considered appellant's revised application.

In cases arising under Indian Financing Act programs, the Board has specifically encouraged BIA to employ a procedure which allows applicants to respond to BIA's concerns with their applications while they are still pending before BIA. E.g., Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, 22 IBIA 153, 157-58 (1992). The procedure followed here gave appellant such an opportunity.