



INTERIOR BOARD OF INDIAN APPEALS

Leo and Lucille Jeffers v. Portland Area Director, Bureau of Indian Affairs

26 IBIA 134 (07/25/1994)



United States Department of the Interior

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

LEO AND LUCILE JEFFERS, Appellants	: Order Vacating Decision : and Remanding Case : : : : Docket No. IBIA 94-64-A : : : July 25, 1994
v.	
PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	

This is an appeal from a January 18, 1994, decision of the Portland Area Director, Bureau of Indian Affairs, disapproving an application for a U.S. direct loan. Appellants sought a loan in the amount of \$35,000 for the purpose of making a balloon mortgage payment, adding a foundation to their house, installing a wood stove, repairing the chimney, and making other minor repairs. Appellant Leo Jeffers is an enrolled member of the Confederated Tribes of the Grande Ronde Community.

Appellants purchased their house and a 24-acre tract in 1989 after renting the house for 29 years. 1/ They purchased the property from Weyerhaeuser, which still holds the mortgage. A balloon payment on the mortgage will come due in September 1994.

The Area Director's January 18, 1994, letter states:

The Bureau has carefully reviewed your home loan application. We regret that we will not be able to approve your loan for the following reasons:

1. The home has been without a foundation for a number of years which means there is a very good [likelihood] that there is other structural damage to the home.
2. A check has indicated that you have had problems meeting obligations with other lenders, and there is not reasonable assurance that the loan can be repaid.

1/ The Board assumes, for purposes of this decision, that the property is located on an Indian reservation, although that is not clear from the record. 25 CFR Part 101 authorizes loans to individual Indians for housing purposes only with respect to housing located on reservations. See 25 CFR 101.2(b): "Direct loans from the United States shall be made for the following purposes: * * * (2) To individual Indians and Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower."

We would recommend that you consider the sale of a portion of the 24 acres that your home is located on to secure funds. This would help you to reduce your debt rather than increase it by borrowing additional funds. [2/]

On appeal, appellants first contend that one of the purposes for which they seek the loan is to have a foundation put under the house, and that the company which will do the work believes the house will be sound once the foundation is in place.

Appellants concede that they declared bankruptcy in 1990, but state that they had no choice at the time, because they were faced with health problems and overwhelming medical bills. They continue:

As you can see from our credit report * * *, we have successfully met our obligations in the past. We feel strongly about meeting our commitments, and it was a painful decision to file bankruptcy--it was our last resort. Over the period of the mortgage agreement with Weyerhaeuser Credit we have consistently paid the \$500 monthly payment--in fact we have reduced our mortgage balance from \$46,000 to \$26,000 over the period of the loan. * * * **The BIA loan payment would be \$100 less than the current payments we are making and have consistently made to our mortgage holder** [Emphasis in original].

(Notice of Appeal at 2).

Concerning the Area Director's suggestion that they sell part of their property, appellants respond that they are legally unable to subdivide the property. They attach a letter from a county planner supporting that statement. Appellants further state that all timber on the property has already been logged, so they are unable to obtain funds by selling timber.

The Board has carefully reviewed the record in this matter. Appellants' credit report shows that they have generally been prompt at paying off their debts. The record includes proof of appellants' present retirement income, which is clearly stable, and indicates that they have no debts other than their present mortgage. Appellants apparently have had no problem in making their monthly mortgage payment of \$500 despite their bankruptcy. If the BIA loan were to be approved, their monthly payment would apparently be reduced, even though their overall debt would increase. 3/

2/ A second recommendation was made in the BIA credit memorandum upon which the Area Director's decision was based, but was not incorporated into the decision. The credit memorandum suggested that appellants inquire about a Farmers' Home Administration grant program for which they might qualify. The record does not show whether appellants were informed of this program.

3/ Appellants estimate their monthly loan payments to BIA at \$397.42, based upon a \$35,000 loan for 10 years at 6-1/5 percent interest.

The record includes an October 2, 1993, note from appellants indicating that they “filed bankruptcy in the later months of 1990 because of ill health and having to retire.” The note continues:

Since retiring we have a good income and no bills except our property payment and of course utilities. We are both doing well health-wise and feel fully confident of paying off the amount of this loan in 10 years. Our daughter and son-in-law * * * will be retiring from the Army in a little over a year and will live here on our property. They intend to put a home here and the amount they pay each month will cover any payment we will be making.

The BIA credit memorandum states: “[A]ppellants have had problems in meeting their loan obligations in the past. There is no reason provided of why they were in bankruptcy.” This statement suggests that the credit officer who prepared the memorandum had not seen appellants’ October 2, 1993, note. The credit memorandum includes no further discussion about appellants’ ability to repay a loan.

Clearly, BIA was justified in its concern about appellants’ 1990 bankruptcy. However, neither the Area Director’s decision nor the credit memorandum shows that BIA took the reason for the bankruptcy into account or attempted to assess, in light of appellants’ present circumstances, the likelihood that financial problems could recur. Under these circumstances, the Board finds that the Area Director’s decision is not supported by the administrative record.

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 January 18, 1994, decision is vacated, and this matter is remanded to him for further consideration.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge