



INTERIOR BOARD OF INDIAN APPEALS

Baltimore American Indian Center v. Eastern Area Director, Bureau of Indian Affairs

26 IBIA 189 (08/15/1994)



United States Department of the Interior

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

BALTIMORE AMERICAN INDIAN CENTER,	:	Order Docketing Appeal and
	:	Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-164-A
EASTERN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 15, 1994

Appellant Baltimore American Indian Center seeks review of a July 8, 1994, decision issued by the Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to accept and review appellant's application for a FY 1994 Indian Child Welfare Act (ICWA) grant as an off-reservation organization. Appellant's application was filed pursuant to a notice of availability of funds published in the Federal Register. See 59 FR 25542 (May 16, 1994). Appellant's notice of appeal and statement of reasons, which were received by the Board of Indian Appeals (Board) on August 8, 1994, do not indicate that copies of the documents were filed with the Area Director as required under the program announcement. Nevertheless, for the reasons discussed below, the Board addresses the appeal and affirms the Area Director's decision. 1/

The Area Director's decision states that appellant's application was not accepted for two reasons: (1) the application failed to include an official request for an ICWA grant from appellant's board of directors, in violation of 25 CFR 23.33(b)(1); and (2) the application did not contain a specific outline of current written assurances that the requirements of Circular A-128 for fiscal management, accounting, and recordkeeping were met, in violation of 25 CFR 23.33(b)(8). These requirements were repeated in the program announcement. See Parts III.C(1) and III.C(8). Either of these reasons standing alone would be sufficient to affirm the Area Director's decision.

Concerning the first reason given by the Area Director, appellant contends that Article V, apparently of its Articles of Incorporation, provides that:

1/ Both the Area Director's decision and the program announcement informed appellant that it could file a statement of reasons in support of its appeal either with the notice of appeal or within 30 days after the notice of appeal was filed. See Part III.G. The Board concludes that appellant's statement of reasons, which was included with its notice of appeal, is the filing to which appellant was entitled under the program announcement, and that this appeal can be decided on the materials presently before it.

The Executive Director shall serve at the pleasure of the Board of Directors. He/She shall report to the Board of Directors and at the meeting of the membership, at the Board of Director's request.

The Executive Director shall sign all contracts and agreements in the name of the corporation after the Board of Directors has passed and approved the resolution engaging the Corporation.

Appellant argues that it

believed that [its] Executive Director's signature on the request was indeed an official request from our Board of Directors. To support the request an additional document signed by the chairman of the board of directors * * * is attached. We realize that this is data that you will receive after the close date and send this only as evidence that indeed the board is 1. aware of the request, 2. in favor of the request, and 3. making the request.

(Statement of Reasons at 1) .

Although it is listed as an enclosure, the, referenced document was not included with the materials submitted to the Board. In any case, as appellant acknowledges, any information submitted at this time would be untimely under the June 30, 1994, deadline for submission of grant applications. In reviewing decisions under competitive BIA grant programs, the Board has consistently held that consideration of information presented after the date for filing an application would violate BIA's and the Board's duty to give fair and equitable consideration to all applications, by giving some applicants two opportunities to submit an acceptable application. See Native American Service Agency v. Eastern Area Director, 26 IBIA 186 (1994) (ICWA Title II program); cf. Upper Sioux Community v. Acting Director, Office of Tribal Services, 25 IBIA 246 (1994) (Special Tribal Court program); Hughes Village Council v. Acting Juneau Area Director, 24 IBIA 192 (1993) (Small Tribes program); Chippewa Cree Tribe of the Rocky Boy's Reservation v. Acting Billings Area Director, 23 IBIA 129 (1992) (Planning grant program). Accordingly, any document appellant might have submitted could not have been considered.

Appellant argues that the signature of the chairman of its board of directors on the grant application constituted an official request from the board. The regulations and the program announcement required both a completed Application for Federal Assistance form, Standard Form 424 (25 CFR 23.33(b)(2), Part III.C(2)), and "[a]n official request" from the board of directors (25 CFR 23.33(b)(1), Part III.C(l)). The Board concludes that the Area Director did not abuse his discretion in determining that the regulations and program announcement required a separate official document from the board of directors in order to demonstrate the commitment to the entire board to the program. The Board affirms this reason for not accepting appellant's grant application.

The Area Director's second reason for concluding that appellant's application did not meet the program eligibility requirements cannot be addressed without reference to the administrative record. However, because the Board has held that the first reason is well-founded, it concludes that the Area Director's decision can be affirmed on the basis of that reason, and sees no purpose in delaying final resolution of this matter in order to address another issue that will not affect the ultimate result in the appeal. The Board expresses no opinion concerning the second reason for the Area Director's decision. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1. the Eastern Area Director's July 8, 1994, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

2/ In the interest of improving any possible future applications for BIA grants, appellant might, however, be well-advised to discuss this issue with the Eastern Area Office.