



INTERIOR BOARD OF INDIAN APPEALS

Mary Anne Tullius, d.b.a. Kilimpe Supply, Inc. v. Acting Anadarko Area Director,
Bureau of Indian Affairs

28 IBIA 110 (07/12/1995)



United States Department of the Interior

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

MARY ANNE TULLIUS,	:	Order Affirming Decision
d.b.a. KILIMPE SUPPLY, INC.,	:	
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-185-A
ACTING ANADARKO AREA	:	
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	July 12, 1995

Appellant Mary Anne Tullius, d.b.a. Kilimpe Supply, Inc., seeks review of decisions issued on June 7 and November 4, 1994, by the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's initial and amended applications for an Indian Business Development Program (IBDP) expansion grant. For the reasons discussed below, the Board of Indian Appeals (Board) affirms those decisions.

Appellant applied for a \$50,000 IBDP grant in October 1993. The application was denied on January 4, 1994. Although advised of her right to do so, appellant did not appeal the denial.

Appellant submitted a second application, which was denied on June 7, 1994. The Board received an appeal from this decision on September 6, 1994. Although the appeal appeared untimely, the certified mail return receipt card showed that appellant did not receive the decision until August 12, 1994.

Based on appellant's statement that she was prepared to submit a revised application, on September 26, 1994, the Board stayed consideration of the appeal and authorized the Area Director to consider the revised application. On November 4, 1994, the Area Director again denied the application, listing nine specific reasons on which he based his decision.

After receiving the second decision, the Board reinstated the appeal, and advised the parties that they should concentrate in their briefs on the November 4 decision. Briefs were filed by appellant and the Area Director.

Appellant's briefs clearly indicate her belief that she was entitled to an IBDP grant. The Board has stated on numerous occasions that the various financial assistance programs established under the Indian Financing Act are not entitlement programs. Approval of loans, guarantees, and grants authorized by the Act is committed to BIA's sound and informed discretion. There is no "right" to receive a grant. *See, e.g., Kozak v. Aberdeen Area Director*, 27 IBIA 159, 160 (1995), *Danard House Information Services Division v. Sacramento Area Director*, 25 IBIA 212, 215 (1994).

In Honaghaahnii Marketing and Public Relations, Inc. v. Navajo Area Director, 18 IBIA 144, 148 (1990), the Board discussed the standard for reviewing BIA discretionary decisions concerning whether to approve an IBDP grant application:

In reviewing a discretionary decision, it is not the Board's responsibility to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

This standard of review has been consistently followed in all cases arising under the various Indian Financing Act programs (see, e.g., Buckles v. Acting Aberdeen Area Director, 24 IBIA 13 (1993); Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, 22 IBIA 153 (1992)), and will be followed here.

Appellant strenuously contends that this case is styled incorrectly, and that the loan applicant is, and has been, Kilimpe Supply (Kilimpe), rather than Tullius. From appellant's perspective, the identity of the applicant is related to the issue of whether her personal assets can be considered in determining the financial condition of "the applicant."

The application documents in the administrative record variously show either Tullius or Kilimpe as being the applicant. Tullius appears as the applicant more often than does Kilimpe.

The notice of appeal to the Board is identified as being "In the matter of the application for the [IBDP] by Mary Anne Tullius dba Kilimpe Supply, Inc." The first sentence begins "[w]hereas Mary Anne Tullius, dba Kilimpe Supply has been turned down as an eligible applicant for the (IMP) grant." Throughout, the notice refers to "Mary Anne Tullius, dba Kilimpe Supply, Inc." The notice is signed "Mary Anne Tullius dba Kilimpe Supply, Inc."

The Board is aware that Tullius filed her notice of appeal pro se. Tullius is, however, a qualified representative under the Department's regulations, both of herself and of Kilimpe. See 43 CFR 1.3(b)(3) and 1.3(b)(3)(iii). As such, she is bound by her statements.

The Board concludes that Tullius, d.b.a. Kilimpe Supply, was the applicant for this grant, that the case is properly styled, and that the Area Director properly considered Tullius' personal assets in determining the financial condition of the applicant. 1/

25 CFR 286.17(a) provides in pertinent part:

Prior to making any grant, the Assistant Secretary shall assure that, to the extent practical, the applicant's own resources have

1/ This conclusion does not constitute a Board holding that Tullius' personal assets could not be considered if Kilimpe were the applicant.

been invested in the proposed project. The applicant shall not be required to invest own resources to the extent that they are deemed by the Assistant Secretary to be essential to the welfare of the applicant.

Appellant has not disputed that her application shows a personal net worth of \$77,000. Instead, she contends first that her personal assets cannot be considered, and second that most of her net worth is equity in her home. The Board has rejected appellant's first contention, and concludes that she has provided no basis for a finding that it is essential to her welfare that her personal assets be left untouched. Accordingly, the Board affirms the Area Director's conclusion that appellant has not shown need for the requested grant.

The Area Director was concerned about several other issues, including, but not limited to, apparently inconsistent data relating to Kilimpe's location and the financial status of Kilimpe and appellant; the absence of evidence that Kilimpe would employ Indians in the former reservation area; and whether Kilimpe was actually controlled by Tullius, as is required by 25 CFR 286.3.

On appeal, appellant discusses each of these issues. The Board has considered all of appellant's explanations as well as the documents submitted with her application. It finds no instance in which the Area Director violated a legal requirement, and concludes that the inconsistencies and apparent discrepancies noted by the Area Director would have been sufficient in themselves to support his exercise of his discretion to disapprove this grant application.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Anadarko Area Director's June 7 and November 4, 1994, decisions are affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge