



INTERIOR BOARD OF INDIAN APPEALS

Estates of Russell Edward Whitewolf and Annie Topappy Blackstar

35 IBIA 53 (05/16/2000)



United States Department of the Interior

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

ESTATES OF RUSSELL EDWARD : Order Docketing Appeal and
WHITEWOLF and ANNIE TOPAPPY : Affirming Decision
BLACKSTAR :
: Docket No. IBIA 00-67
:
: May 16, 2000

On May 8, 2000, the Board of Indian Appeals received a notice of appeal from Eunice Seago Blackstar Whitewolf (Appellant). Appellant states that she is "appealing for a Certificate of Blood." However, it appears from further statements in her notice of appeal and from documents attached thereto that she is actually appealing from an April 12, 2000, Order Denying Petitions to Reopen issued by Administrative Law Judge Richard L. Reeh in the Estates of Russell Edward Whitewolf and Annie Topappy Blackstar.

Judge Reeh's order states:

[Appellant's] Petitions for Reopening were submitted 23 years after issuance of the Russell Whitewolf ("Russell") decision and 7 years after the Annie Blackstar ("Annie") decision. Pursuant to 43 CFR § 4.242, they do not appear to be timely.

More importantly, [Appellant's] Petitions appear to be for the purpose of assisting her establish her degree of Indian blood. Pursuant to 43 CFR 4.206, an ALJ may reopen a closed Indian estate to determine the Indian status of an heir, "where the right and duty of the Government to hold property [in trust] depends thereon." Neither this provision nor any other provision in 43 CFR Part 4 authorizes ALJs to make determinations concerning the Indian status of individuals in cases where such determinations are sought only for purposes of eligibility for tribal membership. Estate of Duke Hawley Tsoodle, Sr., 32 IBIA 108 (1998).

Even if [Appellant] could establish that she is a natural child of either decedent, and it appears that she has substantial evidence in support of these claims, the estates' distributions would not change because both Russell and Annie made wills which were carefully considered during will contests in each of the original proceedings, and both wills were approved.

Appellant's filing with the Board confirms Judge Reeh's conclusion as to her motivation for seeking reopening. In an April 28, 2000, statement attached to her notice of appeal, she says:

I am appealing * * * for the purpose of obtaining my degree of Indian blood. There is no other reason that I am requesting this. I do not want or ask for any inheritance from my father, Russell Edward Whitewolf, or his estate. I do not ask for any inheritance from my mother, Annie Toappy [sic] Blackstar, or her estate, or anything from the Blackstar or Whitewolf families. I do not want or ask for anything from the Comanche tribe. I am only appealing for my degree of Indian blood or my enrollment card or both.

In Estate of Duke Hawley Tsoodle, Sr., cited by Judge Reeh, an individual had sought reopening of a closed probate "for blood quantum degree only" so that her grandchildren would be eligible for enrollment in the Kiowa Tribe. As Judge Reeh noted, the Board held in that case that the Department's probate regulations do not authorize Administrative Law Judges to make determinations concerning the Indian status of individuals in cases where such determinations are sought only for purposes of eligibility for tribal membership.

Appellant is not seeking reopening of these estates for the purpose of obtaining tribal membership for herself or her descendants. 1/ However, she is seeking reopening for a purpose equally removed from the Department's probate responsibilities. The principle underlying the holding in Estate of Duke Hawley Tsoodle, Sr. is that the probate authority of Administrative Law Judges does not include authority to make determinations concerning the Indian status of individuals where no probate function of the Department of the Interior is served thereby. This principle is applicable here as well. No probate function of the Department is served by the reopening of these long-closed estates for the sole purpose of assisting Appellant obtain a CDIB. Therefore, Judge Reeh's decision must be affirmed.

The authority and responsibility for issuing Certificates of Degree of Indian Blood (CDIBs) rest with the Bureau of Indian Affairs (BIA). 2/ There are presently no regulations governing the issuance of CDIBs, except for appeal procedures (see 25 C.F.R. Part 62). However, BIA has recently published proposed regulations which will, when finalized, establish procedures and standards for issuance of CDIBs. Proposed 25 C.F.R. Part 70, 65 Fed. Reg.

1/ The materials submitted by Appellant show that she is a member of the Comanche Tribe.

2/ The materials submitted by Appellant show that she wrote to BIA on Apr. 29, 1999, to request a CDIB and that she filed her petitions to reopen these estates on June 16, 1999.

20775 (Apr. 18, 2000). These proposed regulations might be helpful to Appellant in determining what other kinds of evidence she can submit to BIA to show that she is entitled to a CDIB. ^{3/} However, because the regulations are not presently in effect, she should consult BIA for further information.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed and Judge Reeh's April 12, 2000, order is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

^{3/} A copy of these proposed regulations is enclosed with Appellant's copy of this order.