



INTERIOR BOARD OF INDIAN APPEALS

Ute Mountain Ute Tribe v. Southwest Regional Director, Bureau of Indian Affairs

36 IBIA 218 (07/23/2001)



United States Department of the Interior

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

UTE MOUNTAIN UTE TRIBE,
Appellant

v.

SOUTHWEST REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing, Dismissing,
: and Transferring Appeal to
: the Assistant Secretary -
: Indian Affairs
:
:
: Docket No. IBIA 01-150-A
:
:
: July 23, 2001

This is an appeal from a June 14, 2001, decision issued by the Southwest Regional Director, Bureau of Indian Affairs, concerning the enrollment of three minors in the Ute Mountain Ute Tribe (Tribe). The Regional Director's decision stated:

[I]t has been determined by this office that the three individuals * * * approved for enrollment in accordance with Tribal Council Resolution No 2000-162, enacted November 8, 2000, are not eligible for Federal benefits if enrolled outside the requirements of the current Tribal Constitution and Enrollment Ordinance. * * * [W]hen trust assets are being distributed, the Secretary of the Interior has supervisory authority over the membership actions of the tribe and any individuals not meeting the requirements of the Constitution and the Enrollment Ordinance, can become members of the Ute Mountain Ute Tribe but will be ineligible to receive per capita payments from trust funds.

The Regional Director advised the Tribe that it could appeal his decision to the Board. The Tribe did so. It argues, however, that this appeal properly falls under 25 C.F.R. Part 62, "Enrollment appeals," and that the Board lacks jurisdiction here in light of 43 C.F.R. § 4.330(b), which provides: "Except as otherwise permitted by the Secretary or the Assistant Secretary - Indian Affairs * * *, the Board shall not adjudicate: (1) Tribal enrollment disputes."

The Board agrees with the Tribe on both points.

Under 25 C.F.R. § 62.10(b), an adverse enrollment action taken by a Regional Director is appealable to the Assistant Secretary - Indian Affairs.

Therefore, 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, dismissed, and transferred to the Assistant Secretary - Indian Affairs for consideration under 25 C.F.R. Part 62.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge