INTERIOR BOARD OF INDIAN APPEALS

Debra Louriero v. Acting Pacific Regional Director, Bureau of Indian Affairs

37 IBIA 158 (02/27/2002)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

DEBRA LOURIERO, Appellant	:	Order Docketing and Dismissing Appeal
v.	:	Docket No. IBIA 02-61-A
ACTING PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	February 27, 2002

Appellant Debra Louriero seeks review of a January 16, 2002, decision issued by the Acting Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), denying burial benefits for Appellant's mother, Emma Rose Mitchell. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

Appellant apparently sought burial benefits for her mother under 25 C.F.R. §§ 20.324-20.326. Section 20.324 provides: "In the absence of other resources, [BIA] can provide Burial Assistance for eligible indigent Indians meeting the requirements prescribed in § 20.300." Section 20.300 provides the eligibility requirements for direct assistance from BIA. The Regional Director's January 16, 2002, decision did not reach the question of whether Appellant's mother was otherwise eligible for assistance under 25 C.F.R. § 20.300, because it found that she did not meet the definition of "Indian" set forth in 25 C.F.R. § 20.100. As relevant to this appeal, "Indian" is defined in section 20.100 as "a member of an Indian tribe." "Indian tribe" is defined to mean "an Indian or Alaska Native tribe, band, nation, pueblo, village, or community which is recognized as eligible for the special programs and services provided by the United States because of their status as Indians." According to Appellant, her mother was a member of the Yokayo Tribe of California, which is not Federally recognized.

In her notice of appeal, Appellant contends that the definition of "Indian" in 25 C.F.R. § 20.100 violates the Snyder Act, 25 U.S.C. § 13. The Snyder Act provides in pertinent part:

> The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:
>
> [List of purposes omitted.]

Appellant argues at page 2 of her Notice of Appeal:

> [T]he Snyder Act contemplates the provision of [BIA] social services for *all* Indians throughout the country and does not restrict eligibility for welfare assistance to members of federally recognized tribes. * * *
>
> Since an administrative agency has no power to create a rule or regulation that is "out of harmony with the statutory grant of its authority" (Ruiz v. Morton[, 462 F.2d 818, 822 (9th Cir. 1972), aff'd, 415 U.S. 199 (1974)]), [BIA] lacks authority to restrict the eligibility for its Welfare Assistance program to only members of federally recognized tribes listed in [25 C.F.R.] Part 83. [1/]

Appellant requests that the Board order BIA to ignore the regulatory definitions: "The [BIA] should grant the burial benefits to Appellant because Emma Rose Mitchell, the deceased, was a California Indian. The [BIA] should also adopt the definition of California Indian used by the Indian Health Service at 25 U.S.C. Section 1679." Notice of Appeal at 2.

As the Board has previously held, it has no authority to disregard a duly promulgated Departmental regulation or to declare such a regulation invalid. Neither can it order BIA to ignore a regulation. See, e.g., Shoshone-Bannock Tribes v. Portland Area Director, 35 IBIA 242, 247 (2000), and cases cited there.

If Appellant believes that the regulatory definition of "Indian" in 25 C.F.R. § 20.100 should be changed, she may file a petition for rulemaking with BIA under 5 U.S.C. § 553(e).

Because it lacks authority to grant the relief which Appellant seeks, the Board sees no reason to delay final Departmental resolution of this appeal.

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 from the Regional Director's January 16, 2002, decision is docketed but is dismissed.

//original signed	//original signed
Kathryn A. Lynn	Anita Vogt
Chief Administrative Judge	Administrative Judge

1/ 25 C.F.R. Part 83 does not contain a list of Federally recognized tribes. However, 25 C.F.R. § 83.5(a) requires that a list of tribes entitled to receive services from BIA be published in the Federal Register at least once every three years.