



INTERIOR BOARD OF INDIAN APPEALS

Bertha Leavitt v. Bureau of Land Management

39 IBIA 138 (09/17/2003)



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

BERTHA LEAVITT,
Appellant

v.

BUREAU OF LAND MANAGEMENT,
Appellee

: Order Docketing and Dismissing Appeal
: and Referring Matter to the Bureau
: of Land Management
:
: Docket No. IBIA 03-145-A
:
: September 17, 2003

On September 15, 2003, the Board of Indian Appeals (Board) received a packet of documents from the Realty Director, Native Village of Barrow Inupiat Traditional Government (Director). The materials were transmitted to the Board on behalf of Bertha Leavitt, widow of Jonah Leavitt. According to the Director, Mrs. Leavitt, who does not speak English, seeks clarification of the amount of land included in Mr. Leavitt's Native allotment. For purposes of this order, the Board treats the filings as a notice of appeal from Mrs. Leavitt. For the reasons discussed below, the Board docketes the appeal, but dismisses it for lack of jurisdiction. However, it refers the matter to the Northern Field Office of the Bureau of Land Management (BLM) for further response.

The Director indicated that Mrs. Leavitt sought clarification of the acreage in her late husband's Native allotment. The Director states that Mrs. Leavitt believed the allotment contained approximately 160 acres, but that she is apparently now being told that it contains only approximately 18.48 acres.

The materials transmitted to the Board include information relating to Mr. Leavitt's Native allotment application as well as to the probate of his trust estate.

Administrative Law Judge William E. Hammett issued a decision in Mr. Leavitt's estate on November 30, 1993. Under that decision, Mrs. Leavitt succeeded to her late husband's entire trust estate. There is no evidence that she objected either to Judge Hammett's decision, or to the inventory of Mr. Leavitt's trust assets, when the decision was issued. The Director's letter does not suggest that Mrs. Leavitt now has a problem with the probate itself. Instead it indicates that Mrs. Leavitt's sole concern is about the acreage in the allotment. Based on this information, the Board finds that this appeal does not involve a request to reopen the probate of Mr. Leavitt's estate.

The materials provided to the Board show that Mr. Leavitt's Native allotment application was identified as #F-14622, U.S. Survey 8171, Alaska. BLM denied the application on July 28, 1972, on the grounds that the land sought was part of Naval Petroleum Reserve No. 4. Based on later enacted legislation, BLM reinstated Mr. Leavitt's application around May 29, 1981. The letter notifying Mr. Leavitt of the reinstatement of his application stated that he had applied for approximately 160 acres. A decision, also dated May 29, 1981, notified Mr. Leavitt that, if granted, the Native allotment would not include the minerals, which would be reserved to the United States. The materials do not include a final decision on the application. However, they do include a BLM field report, which indicates the location and dimensions of the tract that was inspected in regard to Mr. Leavitt's application. The following comment appears under a section entitled "Survey Instructions:" "The Northeast and Southeast corners may be adjusted to include 18.5 acres, which was the applicant's intent." This comment suggests the possibility that Mr. Leavitt may have modified his application to include only 18.5 acres, rather than the initially requested 160 acres. More information is needed, however, to understand what ultimately happened in regard to this application.

That said, this Board does not have jurisdiction to review Alaska Native allotment decisions issued by BLM. Review authority over those decisions is delegated to the Board of Land Appeals (IBLA). The Board has consulted with IBLA about this appeal, and was advised that BLM's Northern Field Office in Fairbanks, Alaska, is the office which should have further information about this particular Native allotment application.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board concludes that this appeal does not raise issues relating to the probate of an estate, but does raise issues relating to the ultimate determination on Native allotment application #F-14622. For these reasons, the Board docketed the appeal, but dismisses it for lack of jurisdiction. It refers this matter to the Bureau of Land Management, Northern Field Office, 1150 University Avenue, Fairbanks, Alaska 99709, for further response.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

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Kathleen R. Supernaw
Acting Administrative Judge