



INTERIOR BOARD OF INDIAN APPEALS

Hamaatsa, Inc. v. Southwest Regional Director, Bureau of Indian Affairs

55 IBIA 132 (06/22/2012)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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| HAMAATSA, INC., |) | Order Vacating Decisions and |
| Appellant, |) | Dismissing Appeal |
| |) | |
| v. |) | |
| |) | Docket No. IBIA 12-037 |
| SOUTHWEST REGIONAL |) | |
| DIRECTOR, BUREAU OF |) | |
| INDIAN AFFAIRS, |) | |
| Appellee. |) | June 22, 2012 |

Hamaatsa, Inc. (Appellant), appealed to the Board of Indian Affairs (Board) from a September 27, 2011, decision (2011 Decision), which was superseded and replaced by a January 25, 2012, decision (2012 Decision), by the Southwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA).¹ Both decisions address a proposal from the Pueblo of San Felipe (Pueblo) for the United States to accept a 159.12-acre parcel of land in trust for the Pueblo.² Appellant claims that it is entitled to the use of a road that crosses the parcel. Although the Regional Director concluded—favorably to Appellant—that BIA would not take the parcel in trust until the dispute over the road was resolved, and although Appellant agreed with much of the Regional Director’s analysis, Appellant appealed to the Board, arguing that the 2011 Decision was flawed in a critical respect. Appellant continued to pursue the appeal by objecting to the 2012 Decision.

While the appeal was pending, the Pueblo withdrew its trust application for this parcel. The Regional Director moved to dismiss the appeal as moot and for an order vacating the underlying BIA decisions regarding the parcel to make clear that if the matter

¹ The Regional Director issued the 2012 Decision after the Board granted his request for a limited remand to address ambiguities in the 2011 Decision.

² The parcel at issue is described as Lots 1, 2, 3, and 4 of Section 3, Township 13 North, Range 6 East, New Mexico Principal Meridian, Sandoval County, New Mexico, containing 159.12 acres, more or less. The parcel was among the lands included in a decision by BIA’s Southern Pueblos Agency Superintendent (Superintendent) to accept into trust 11,484.14 acres, more or less. *See* 2011 Decision at 3-4. With the exception of the 159.12-acre parcel, the Regional Director allowed the trust acquisition to be completed. *See id.* at 4.

were ever to arise again, BIA would begin with a clean slate.³ Appellant agrees that the appeal should be dismissed as moot, but opposes the motion to vacate the Regional Director's decisions. Appellant contends that because it is possible that the Pueblo would resubmit its trust application for the parcel, it is important that the Regional Director's decisions "stand." Appellant's Response to Motion to Dismiss at 3.

We grant the Regional Director's motion, vacate the decisions, and dismiss the appeal, because Appellant has no legal right or interest in having a BIA decision, which has never become effective, and which pertains to a trust acquisition request that has been withdrawn and is now moot, somehow "stand." A BIA official has a broad right to seek vacatur of his or her discretionary decision while an appeal is pending before the Board. The fact that the underlying dispute over the Pueblo's now-withdrawn trust acquisition request has become moot only weighs against Appellant's arguments. Moreover, Appellant mistakenly presumes that if the Board does not vacate the Regional Director's decisions, the matter would simply pick up where it left off, should the Pueblo reapply to have the parcel taken into trust. That is not the case.

Background

The underlying dispute in this case involves Appellant's claim that it has a right to use a road that crosses the 159.12-acre parcel. Appellant contends that any decision by BIA to accept the parcel in trust should recognize and protect Appellant's claimed right of use. In the 2011 Decision, the Regional Director decided that BIA would *not* accept the parcel in trust pending resolution of the dispute over use of the road, and remanded the matter to the Superintendent. Appellant agreed with much of the 2011 Decision, but appealed to the Board because Appellant believed that the decision contained contradictions and fell short of providing Appellant with the assurances and protection that it seeks. The Regional Director amended the 2011 Decision to address certain ambiguities, but Appellant objected to the 2012 Decision as still flawed, and as improperly amending portions of the 2011 Decision by deleting certain statements with which Appellant agreed.

On May 14, 2012, the Board received a motion from the Regional Director to dismiss this appeal as moot on the ground that the Pueblo has withdrawn its trust application for the parcel. The Regional Director also asked that the Board vacate the underlying BIA decisions to ensure that it is clear that dismissal of this appeal will return

³ Although not expressly stated by the Regional Director, the Board construed the motion to request vacatur of both Regional Director decisions and the Superintendent's underlying decision, as those decisions applied to the 159.12-acre parcel.

the matter to the status quo as it existed before the Pueblo applied to have the parcel taken into trust.

As noted above, Appellant agrees that the appeal is moot, but objects to the Regional Director's request that the Board vacate the Regional Director's decisions. Appellant argues that the Pueblo may resubmit the application, and that if it does, the Pueblo "should not be given a 'clean slate' on which to begin (again) all aspects of this process at great expense to the appellant in the hope of receiving a better result." Appellant's Response to Motion to Dismiss at 3.

Discussion

A BIA regional director has a broad, and possibly absolute, right to have his or her discretionary decision that is the subject of an appeal—and which, because an appeal was filed, has never become effective—vacated and remanded for further consideration. *See United Keetoowah Band of Cherokee Indians in Oklahoma v. Eastern Oklahoma Regional Director*, 47 IBIA 87, 89 (2008) (questioning whether a party has standing to oppose a remand request from BIA); *see also City of Minnewaukan, North Dakota v. Great Plains Regional Director*, 54 IBIA 34, 34 (2011) (a party opposing a motion by BIA for a voluntary remand has the burden to provide compelling reasons why the Board should not grant the request).⁴ The Board has rejected the argument that the time and effort expended by an appellant during an appeal provides a basis to deny a request from BIA to vacate a decision and remand a matter. *See Roberts County, South Dakota v. Acting Great Plains Regional Director*, 48 IBIA 304, 306 (2009). Similarly, the Board has rejected the argument that judicial economy and efficiency serve as grounds for denying a motion by BIA to vacate a decision and remand for further proceedings. *See United Keetoowah Band*, 47 IBIA at 89.

The fact that this appeal, the underlying BIA decisions, and the Tribe's request to have the parcel taken into trust, have all been rendered moot by the Tribe's withdrawal of its request, can hardly serve as a basis for us to conclude that the Regional Director has less of a right to ask for an order of vacatur, or that Appellant bears less of a burden to show why the Regional Director's request should not be granted. *Cf. Del Rosa v. Acting Pacific Regional Director*, 51 IBIA 317, 319 (2010) (vacating a BIA decision, with the concurrence of the Regional Director, but over the opposition of the appellants, even though there was no matter to remand).

⁴ By operation of law, a BIA regional director's decision that is timely appealed automatically remains without effect, unless made effective by the Board. *See* 25 C.F.R. § 2.6; 43 C.F.R. § 4.314.

Appellant argues that the Regional Director's decisions should be left to "stand" because nothing precludes the Pueblo from submitting a new trust application for the parcel. In that event, according to Appellant, if we decline to vacate BIA's decisions, there will be no need or basis for the Regional Director to analyze the issue anew, and no need for Appellant to undergo the expense of a new appeal. Appellant is mistaken. Even if the Pueblo again applies to have the parcel taken into trust, and if the Board had declined to vacate the BIA decisions that were the subject of the present appeal, BIA would still be required to issue a new decision on that new request. BIA would have full authority to reanalyze the issues addressed in the decisions that were the subject of this appeal. The 2011 and 2012 decisions, to which the Board never gave effect, would have no binding or precedential effect on BIA's future decision making.⁵ Thus, although an order of vacatur under the circumstances of the present case serves to make absolutely clear that if the controversy re-emerges, BIA will begin with a "clean slate," an order of vacatur is not legally required to serve that result. *See Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 275 (2005); *see also Paul Spicer v. Eastern Oklahoma Regional Director*, 50 IBIA 328, 333 (2009) (noting that the Board has vacated an underlying decision when parties "appear to desire to attach continuing significance to an admittedly moot decision").⁶

In summary, Appellant has presented no arguments that would convince us that it is appropriate to deny the Regional Director's motion to vacate BIA's decisions regarding the now-withdrawn trust application for the 159.12-acre parcel, as part of an order of dismissal of the appeal as moot.

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 dismisses this appeal as moot, and vacates the Regional Director's September 27, 2011, decision, as amended and replaced on

⁵ This is not a situation in which an appeal has become moot because of an *appellant's* changed circumstances, in which case dismissal of the appeal by the Board might leave in place an underlying BIA decision that affected other interested parties who did not appeal. In this case, the Tribe withdrew its request for trust acquisition of the parcel, and thus BIA's decisions regarding that now-withdrawn request are entirely moot as to all parties.

⁶ Appellant argues that *Tesuque* is distinguishable because the controversy in *Tesuque* that had become moot was less capable of re-emerging than is the case here. But Appellant agrees that the current appeal is moot, and our decision in *Tesuque* to vacate BIA's decision, for purposes of clarification, did not turn on some notion of varying "degrees" of mootness.

January 25, 2012, and the Superintendent's October 22, 2010, decision, as those decisions applied to the 159.12-acre parcel.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Debora G. Luther
Administrative Judge