

BOY DEXTER OGLE

IBLA 94-332

Decided October 8, 1997

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment application AA-73249.

Affirmed.

1. Alaska: Alaska Native Claims Settlement Act--Alaska: Native Allotments--Alaska Native Claims Settlement Act: Generally--Applications and Entries: Filing

The Alaska Native Allotment Act (formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970)) was repealed by sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1994), subject to applications pending before the Department of the Interior on Dec. 18, 1971. Under the language of the repeal statute, the Department has no authority to consider any application not filed with a bureau, division, or agency of the Department on or before that date.

2. Alaska: Native Allotments--Applications and Entries: Filing

The ALSC is not an agency of the Department of the Interior. Leaving a Native allotment application in the custody of ALSC attorneys who provided assistance in completing the application in 1971 does not establish timely filing with the Department in 1971. A decision rejecting an application which was initially filed with the Department in 1990 will be affirmed even though counsel for the applicant first received the application in March 1971.

3. Alaska: Native Allotments—Applications and Entries: Filing

An assertion that the ALSC attorneys who assisted Appellant in completing his Native allotment application and in whose custody Appellant left his application were the agents of the Department for purposes of receipt of Native allotment applications is properly rejected in the absence of evidence of the Department's right to control the actions of ALSC attorneys and consent to such control by ALSC.

4. Alaska: Native Allotments—Applications and Entries: Filing

A Native allotment application left in the custody of applicant's ALSC attorneys in March 1971 which was not filed with the Department before 1990 is properly rejected. An assertion that ALSC had the apparent authority to receive the application as an agent of the Department must be rejected in the absence of a communication clearly creating such authority, since the Department lacks authority to consider any Native allotment application not pending before the Department on or before Dec. 18, 1971.

5. Administrative Procedure: Hearings—Alaska: Native Allotments—Hearings—Rules of Practice: Hearings

An evidentiary hearing is properly ordered when a case on appeal discloses an issue of fact which is material to the case that can be resolved only by introduction of evidence not found in the record before the Board. A hearing is not required, however, where there is no material issue of fact and resolution of the case hinges on a conclusion of law to be drawn from an accepted set of facts. Thus, when it is determined that an application must be rejected as a matter of law, assuming the truth of relevant matters set forth in support of the application, the application may be rejected without a hearing.

APPEARANCES: Michael W. Flanigan, Esq., and Eric Cossman, Esq., Anchorage, Alaska, for the Appellant; Carlene Faithful, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management; Jenifer A. Kahout, Esq., Assistant Attorney General, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Boy Dexter Ogle has appealed from a Decision of the Alaska State Office, Bureau of Land Management (BLM), dated January 18, 1994, rejecting his Alaska Native allotment application, AA-73249. The reason for rejection was that the application was not pending before the Department of the Interior on December 18, 1971, as required by the savings provision of the repeal statute. Section 18(a), Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617(a) (1994).

Ogle prepared this application pursuant to the Alaska Native Allotment Act (Allotment Act), 34 Stat. 197 (1906), as amended, 1/ (formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970)), which authorized the Secretary of the Interior to allot "in his discretion and under such rules as he may prescribe" up to 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska to any Indian, Aleut, or Eskimo of full or mixed blood, who resided in and was a Native of Alaska and was the head of a family or 21 years of age, 43 U.S.C. § 270-1 (1970). Section 18(a) of ANCSA, 43 U.S.C. § 1617(a) (1994), repealed the Allotment Act, but contained a savings clause, allowing continued processing of those Native allotment applications which were "pending before the Department of the Interior on December 18, 1971."

Ogle's Native allotment application bears his signature and the date March 30, 1971. He applied for approximately 160 acres of unsurveyed land in protracted fractional sec. 5, T. 7 N., R. 14 W., Seward Meridian, along the Kustatan River near where it enters Redoubt Bay in south-central Alaska. He claimed seasonal use and occupancy of the land from May to August of each year since May 1942, except for his time in the U.S. Army from February 1964 to February 1966. During the winter, he was employed in Seldovia, Alaska. He stated that he had lived on the land most of his life. He had a small cabin, valued at \$400, built in 1962. He used the allotment for commercial fishing from May 1953.

Prior to issuance of the BLM Decision under appeal, it became apparent that the timeliness of the filing of Ogle's application with the Department of the Interior was a threshold issue. Accordingly, Ogle was allowed to supplement the record with documentation addressing this issue. The resulting supplemental documentation consists of two basic categories. First, an indexed series of documentary exhibits identified by numbered tabs compiled with the assistance of the Bureau of Indian Affairs (BIA) comprising in large part transcripts of depositions and documentary exhibits produced at those depositions in conjunction with litigation between

1/ Repealed Dec. 18, 1971, section 18(a), ANCSA, 43 U.S.C. § 1617(a) (1994).

Ogle and Alaska Legal Services Corporation (ALSC). ^{2/} Additionally, Ogle submitted a series of numbered attachments generally consisting of transcripts, documents, and exhibits from the litigation in Fanny Barr v. United States of America, Civ. No. A76-160 (D. Alaska Aug. 3, 1982) (dismissed per stipulated settlement). ^{3/}

Appellant, along with other allotment applicants, attended a meeting with ALSC attorneys in Seldovia, Alaska, at which application forms were filled out with the understanding that ALSC would forward the applications on behalf of the applicants to the Department of the Interior, (Tab 10, Deposition of Fred Elvsaaas at 23-26, 43-44). By letter dated April 5, 1971, ALSC attorney Alan Sherry returned Ogle's application to his stepfather's address, asking that the application be more fully completed and returned to ALSC, (Tab 12, Deposition of Alan Sherry at Ex. 1). Referring to several Native allotment applications that were prepared together, he stated: "[T]he others I am processing and will send them all in to the BIA when they are done." Id. Thereafter, by letter dated April 13, 1971, Sherry informed Appellant's stepfather, Fred Elvsaaas, that, due to a conveyance to the State of Alaska, allotment applications filed by Appellant and his mother and stepfather could not be successful, (Tab 12, Ex. 4 to Deposition of Alan Sherry). ^{4/}

In May 1986, Ogle inquired of ALSC about his application. By letter dated September 11, 1986, ALSC allotment paralegal John Brower informed Ogle that he had searched unsuccessfully for any record of a Native allotment application filed for Ogle, (Tab 7, Ex. 12 to Deposition of Mark Butterfield). Subsequently in 1987, a legal secretary for ALSC discovered Ogle's "original application documents" for his Native allotment in the ALSC file for an adjoining Native allotment application submitted by Ogle's stepfather, Fred Elvsaaas. (Tab 7, Deposition of Mark Butterfield at 5-7; Ex. 1 to Butterfield Deposition (memorandum to the file dated Feb. 26,

^{2/} Appellant received the assistance of the ALSC in preparing his allotment application and subsequently sued ALSC. Appellant has indicated on appeal that his suit against ALSC for malpractice "was ultimately dismissed without prejudice to Ogle's right to pursue his allotment with the U.S. Government." (Statement of Reasons (SOR) for appeal at 3 n.4).

^{3/} Appellant seeks to analogize his situation to that of the plaintiffs in Barr, a class action suit filed on behalf of Natives who had timely submitted their applications to employees of the Rural Alaska Community Action Program (Ruralcap) which in turn had failed to file the applications with either BIA or BLM by the statutory deadline.

^{4/} As noted by counsel for Appellant, this was consistent with the position of the Department of the Interior regarding applications for lands which had been previously patented to the State prior to the court decision in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), rev'g. Ethel Aguilar, 15 IBLA 30 (1974).

1987, by John Brower.) Butterfield and other ALSC personnel investigated, but found no record that ALSC filed the Ogle application with either BLM or BIA, (Tab 7, Butterfield Deposition at 14; Ex. 4 to Butterfield Deposition (memorandum to the file dated Sept. 21, 1988)). By letter dated October 5, 1988, Carol H. Daniel, then Chief Counsel of ALSC, informed Ogle that ALSC "recently found your Native Allotment application. Since our records do not reflect that the application was ever filed with BIA, you may wish to consult with a private attorney to discuss what, if any, claims you may have against [ALSC]." (Tab 8, Ex. 1 to Deposition of Carol H. Daniel.)

Subsequently, BIA received Ogle's application from ALSC and date-stamped it on June 11, 1990. A BIA representative certified Ogle's status as an eligible Native on June 13, 1990. Then, BIA forwarded the application to BLM with a memorandum from the Agency Superintendent, Anchorage Agency, BIA, dated June 13, 1990, informing BLM that "[a]t this time, we are not able to determine if this application was timely filed." Thus, BLM first received Ogle's application on June 14, 1990. On January 18, 1991, BLM rejected the application because there was no evidence that it had been filed with any bureau, division, or agency of the Department on or before December 18, 1971. However, BLM vacated this Decision on February 1, 1991, to allow submission of additional evidence as noted above.

On January 18, 1994, BLM rejected Ogle's application again, after determining that the application was not pending before the Department on December 18, 1971, and, therefore, that the savings clause in section 18(a) of ANCSA, 43 U.S.C. § 1617(a) (1994), did not apply to Ogle's application. In making this determination, BLM applied the guidelines outlined in a memorandum to the Director, BLM, dated October 18, 1973, from Jack O. Horton, Assistant Secretary for Land and Water Resources. ^{5/} The Ogle application was not time-stamped by a bureau, agency, or division of the Department

^{5/} The Horton memorandum stated:

"This phrase [pending before the Department on December 18, 1971] is interpreted as meaning that an application for a Native allotment must have been on file in any bureau, division, or agency of the Department of the Interior on or before December 18, 1971. The Department has no authority to consider any application not filed with any bureau, division, or agency of the Department of the Interior on or before said date. Evidence of pendency before the Department of the Interior on or before December 18, 1971, shall be satisfied by any bureau, agency or division time stamp, the affidavit of any bureau, division or agency officer that he received said application on or before December 18, 1971, and may also include an affidavit executed by the area director of BIA stating that all applications transferred to BLM from BIA were filed with BIA on or before December 18, 1971."

The Board has affirmed BLM decisions applying this interpretation. See, e.g., Ouzinkie Native Corp. v. Opheim, 83 IBLA 225, 228-29 (1984); Katmailand, Inc., 77 IBLA 347, 354 (1983).

on or before December 18, 1971, and no Departmental officer attested to receipt on or before that date. Instead, when forwarding the application to BLM, BIA pointedly stated that it could not determine whether the application was timely filed. Therefore, under the Horton memorandum guidelines, the application was not considered to be pending before the Department on the critical date. The BLM Decision also rejected the argument that ALSC should have been considered an agent of the Department of the Interior for purposes of receiving Ogle's application, (Decision at 2). Ogle brought this appeal from BLM's January 18, 1994, Decision.

On appeal, Ogle contends that his application should be deemed pending before the Department as of December 18, 1971, because he gave the application to ALSC before that date, and ALSC should be considered an agent of the Department for receipt of the application. Noting the duty of BIA to assist Natives in filing allotment applications, Ogle asserts that an agency relationship is reasonably inferred between ALSC and BIA due to the assistance ALSC provided to Alaska Natives in filling out allotment applications and forwarding the applications to the Department. Ogle argues that BIA delegated official duties to ALSC, making ALSC its agent for receipt of Native allotment applications. Ogle contends that even if ALSC was not an actual agent, it was at least an apparent agent of the Department because BIA permitted ALSC to collect Native allotment applications to forward to BIA so that BIA could finalize, certify, and file the applications with BLM. ^{6/} Ogle asserts that BIA is bound by ALSC's acceptance of the application under the doctrine of apparent authority. A hearing before an Administrative Law Judge is requested to take evidence on the question of the agency of ALSC. Alternatively, Ogle asks that, even if the Board concludes that his application was not pending before the Department on December 18, 1971, it should consider the Government's trust relationship to the Alaska Natives, find that he substantially complied with the requirements of the Act of May 17, 1906, despite any failing, and permit equitable adjudication of his application, pursuant to 43 U.S.C. §§ 1161 and 1164 (1994) and 43 C.F.R. § 1871.1-1.

In its answer, BLM contends that there was no actual or apparent agency relationship between BIA and ALSC. Hence, ALSC's receipt of the application could not be deemed receipt on behalf of the Department on or before December 18, 1971. The BLM contends that ALSC is precluded from being considered BIA's agent for purposes of receipt of Ogle's allotment application because acting as an agent of the United States is beyond ALSC's corporate authority. Further, BLM contends that Ogle is not entitled to equitable adjudication pursuant to 43 C.F.R. § 1871.1-1 because the land is no longer in Federal ownership and there are competing claims to it.

^{6/} Seeking to relate his situation to the plaintiffs in the Barr litigation, Appellant argues that ALSC participated with Ruralcap and BIA in a joint outreach program to assist Natives in filing applications.

By order dated July 26, 1994, the Board granted a motion to intervene filed by the State of Alaska. The State supports BLM's rejection of Ogle's application and seeks to protect land patented to the State included in this allotment application. In particular, the State asserts that this application would adversely affect "access to State-owned tidelands and the Redoubt Bay State Critical Habitat Area within Sec. 5, T. 7 N., R. 14 W., Seward Meridian, Alaska." (Motion to Intervene at 1.)

As a threshold matter, we note that the land at issue in this case has been conveyed out of Federal ownership. All of sec. 5, T. 7 N., R. 14 W., Seward Meridian, including the land covered by Ogle's application, was patented to the State of Alaska on February 17, 1966, patent No. 50-66-0360, in satisfaction of State selection Anchorage 052955, made August 29, 1960, and tentatively approved June 18, 1963. On March 21, 1985, the State of Alaska reconveyed approximately 140 acres of the land in the Ogle application to the United States so that the reconveyed land could be included in Interim Conveyance No. 1048 to the Cook Inlet Region, Inc. (CIRI) on May 28, 1985, in satisfaction of Native Regional Corporation selection AA-55482. By quitclaim deed dated July 2, 1985, CIRI conveyed the surface estate in this portion of sec. 5 to Salamatof Native Association, Inc. The remaining 33 acres in the Ogle application are still subject to the State patent. See Memorandum from the Chief, Branch of Cook Inlet and Ahtna Adjudication, Alaska, BLM, to the Acting Regional Solicitor, dated Nov. 29, 1988, at 1.

Upon issuance of an interim conveyance, which conveys land out of Federal ownership, the Department loses jurisdiction to adjudicate Native allotment applications as interests in the land conveyed. City of Klawock, 94 IBLA 107, 111-12 (1986); Kenai Natives Association, Inc., 87 IBLA 58, 61 (1985). ^{7/} Conveyance of the land out of Federal ownership also precludes equitable adjudication pursuant to the terms of 43 U.S.C. §§ 1161, 1164 (1994) and the implementing regulation, 43 C.F.R. § 1871.1-1, as 43 U.S.C. § 1164 authorizes such action only "where there is no adverse claim." However, the Department has a fiduciary duty to Alaskan Natives under the Act of May 17, 1906, to determine the validity of Native allotment applications and to pursue recovery of the land through negotiation or litigation in the case of valid applications. Heirs of Linda Anelon, supra, at 336; see Aguilar v. United States, 474 F. Supp. at 846-47. Hence, this appeal will not be dismissed for lack of jurisdiction over the tract of land at issue.

[1, 2] The issue in this case is whether Ogle's application, which was left in the custody of the ALSC attorney after it was filled out

^{7/} Prior conveyance of the land out of Federal ownership also precluded legislative approval of the Native allotment application pursuant to section 905(a) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a) (1994), assuming the application was pending before the Department on or before December 18, 1971, and satisfied the other statutory criteria. Heirs of Linda Anelon, 101 IBLA 333, 336 n.5 (1988).

in March 1971, may be considered to be pending before the Department on December 18, 1971, on the ground that ALSC was the agent of BIA for purposes of receipt of Native allotment applications. For the reasons outlined below, we conclude that ALSC cannot reasonably be considered to be an agent of the Department for purposes of receipt of a Native allotment application.

The language of the savings proviso of section 18(a) of ANCSA expressly limited the exception to repeal of the Native Allotment Act to applications "pending before the Department of the Interior on December 18, 1971." 43 U.S.C. § 1617(a) (1994). In numerous cases, this Board has upheld the application of the guidelines found in the memorandum of Assistant Secretary Horton ^{8/} in construing the savings proviso to determine whether a Native allotment application was pending before the Department on December 18, 1971. *See, e.g., Ouzinkie Native Corp. v. Opheim, supra*, at 228-29; *Katmailand, Inc., supra*, at 354; *Nora L. Sanford (On Reconsideration)*, 63 IBLA 335, 337 (1982). The Horton memorandum recites a critical point with respect to whether an allotment application may be considered: "The Department has no authority to consider any application not filed with any bureau, division, or agency of the Department of the Interior on or before said date." Thus, we find that the language of the statute itself is properly construed to preclude approval of an allotment which was left in the custody of the attorneys for Ogle, but not filed with a subdivision of the Department of the Interior by the statutory deadline. The conclusion that ALSC was not an agency of the Department finds further support from the statute establishing the national Legal Services Corporation (LSC), which provides funding to local and regional legal assistance organizations. Pursuant to section 1005 of the Legal Services Corporation Act, the LSC is not considered a department, agency, or instrumentality of the Federal Government, and LSC officers and employees are not officers or employees of the Federal Government. 42 U.S.C. § 2996d(e) (1994); *Spokane County Legal Services v. Legal Services Corp.*, 614 F.2d 662, 669 (9th Cir. 1980).

[3] The assertion by Ogle that the attorneys at ALSC are agents of the Department for receipt of Native allotment applications ignores the fundamental function and purpose of ALSC, i.e., the provision of legal services by a corporation consisting of attorneys (and support staff) to "all citizens of Alaska who lack the economic resources to obtain private legal representation," (Ex. B to BLM Answer at 2). ^{9/} The role of ALSC as an advocate on behalf of Native allotment applicants and an adversary challenging Departmental decisions adjudicating allotment applications is established beyond doubt. *See, e.g., Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976). A finding that ALSC was an agent of the Department

^{8/} See note 5, *supra*.

^{9/} Attorney Mark Butterfield, an employee of ALSC, noted in his deposition that ALSC has represented all the Native allotment claimants who BLM has rejected, (Ex. 7, Deposition of Mark Butterfield at 30).

would be inconsistent with this well-established role and raise conflict of interest problems. As noted in the BLM Answer at page 3, the right of the principal to control the actions of the agent (whether that right is exercised or not) is a key element generally required to establish agency. Restatement (Second) of Agency § 1 (1958). Further, the agent must agree to be subject to the control of the principal. Id.

The record simply does not support a finding that BIA either exercised or had any right of control over ALSC. The deposition of Audrey Tucker, BIA realty specialist from 1969 to 1973, given in connection with the Barr litigation indicates that BIA neither employed nor supervised the work of ALSC attorneys in assisting Native allotment applicants, (Attachment 6, Audrey Tuck Deposition, at 140-43), nor does the record indicate that ALSC consented to submit to the control of BIA with respect to the filing of allotment applications. Attorney Alan Sherry, in his deposition, could recall no contract with BIA for collection of Native allotment applications, noting that ALSC's funding was for the purpose of providing legal services to qualifying individuals, (Tab 12, Deposition of Alan Sherry at 6, 64-65).

[4] In the absence of evidence that ALSC was the agent of BIA for receipt of allotment applications, Ogle argues that ALSC had "apparent authority" to act as an agent for BIA. This concept of agency has been explained as follows: "Apparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons." Restatement (Second) of Agency § 8 (1958).

Appellant contends on appeal that certain general BIA announcements regarding Native allotment applications, (Attachment 2, Barr Exs. 18, 19, and 20), created the "impression" that ALSC was working for BIA when its personnel assisted with the preparation of Appellant's application, (SOR at 26). Regardless of Ogle's impression, review of the documents discloses no support for the apparent authority of ALSC attorneys to receive Native allotment applications as an agent of the Department. The notice issued by the Juneau Area Office of BIA encouraged Natives to route their applications through BIA in order to file with the BLM, (Attachment 2, Barr Ex. 18). Another cited information bulletin noted that a representative of BIA "will help you in filing an application for an allotment" with BLM, (Attachment 2, Barr Ex. 19). Another BIA notice speaks of sending a representative to Native villages to help Natives with their applications, (Attachment 2, Barr Ex. 20). None of the documents presented indicate that a Native allotment application may be filed with BIA (or BLM) by leaving it in the custody of ALSC attorneys.

Appellant's brief on appeal also cites his deposition in the ALSC litigation, (Ex. 11), in arguing that he was under the "impression" that ALSC attorneys who assisted him in completing his application were affiliated with BIA, (SOR at 26). However, as noted by BLM, reference to his

deposition discloses no communication from BIA or any other agency of the Department on which this impression was based. Similarly, with regard to the Elvsaas deposition, it appears that there was an understanding that "they took the forms and would submit them," (Ex. 10, Deposition of Fred Elvsaas at 44, see pp. 95, 98). Again, there is no evidence of any representation that the ALSC attorneys were authorized by the Department to receive the applications on behalf of BIA, BLM, or any other Interior Department agency. Rather, the evidence is that the ALSC attorneys indicated they would file the applications on behalf of the allotment applicants.

The court in Barr recognized the Department's consistent holding that "pending" applications were limited to those filed with BIA or BLM (agencies of the Department) by the statutory deadline. Fanny Barr v. United States of America, Civ. No. A76-160 (D. Alaska, Jan. 18, 1980, Memorandum Order at 10). In finding that "applications filed or accepted by Ruralcap may be considered 'pending' in the event an agency is established between Ruralcap and the Bureau of Indian Affairs," the court held that "any applications or writings not submitted to a government agency or Ruralcap cannot be considered 'pending' within the meaning of the statute." Id. at 11 (emphasis added). In this context, given the clear language of the repeal statute limiting authority to consider Native allotment applications to those pending before an agency of the Department and the consistent history in Departmental adjudication of applying this language strictly to require actual receipt of the application by an agency of the Department, we find that the ALSC attorneys cannot be considered to be the agents of the Department for receipt of Native allotment applications in the absence of evidence of a communication clearly creating such authority. 10/ No such communication has been established on the record before us.

[5] Appellant has requested an evidentiary hearing on the issue of the agency of ALSC. An evidentiary hearing is properly ordered when a case on appeal discloses an issue of fact which is material to the case that can be resolved only by introduction of evidence not found in the record before the Board. Commission for the Preservation of Wild Horses, 133 IBLA 97, 100 (1995); Mobil Oil Corp., 115 IBLA 304, 311 (1990); see Woods Petroleum Co., 86 IBLA 46, 55 (1985). This principal has frequently been applied to Native allotment applications when the record discloses an issue of fact with respect to when the application was actually filed with an agency of the Department. See, e.g., Heirs of Linda Anelon, supra, at 337-38; Eleanor H. Wood, 46 IBLA 373, 377-79 (1980). 11/ It has long been held, however, that a hearing is not required where there is no

10/ "Apparent authority exists only to the extent it is reasonable for the third person dealing with the agent to believe that the agent is authorized." Restatement (Second) of Agency § 8, cmt. c (1958).

11/ Indeed, with respect to Native allotment applications, due process has been held to require a fact-finding hearing when issues of material fact are in dispute. Pence v. Kleppe, supra, at 143.

material issue of fact, and resolution of the case hinges on a conclusion of law to be drawn from an accepted set of facts. See, e.g., James N. Tibbals, 58 IBLA 42, 45 (1981); John J. Schnable, 50 IBLA 201, 204 (1980). This same principle applies to Native allotment cases. Thus, when it is determined that an application must be rejected as a matter of law, assuming the truth of relevant matters set forth in support of the application, the application may be rejected without a hearing. Donald Peters, 26 IBLA 235, 241 n.1, 83 Interior Dec. 308, 311 n.1, reaffirmed, Donald Peters (On Reconsideration), 28 IBLA 153, 83 Interior Dec. 564 (1976); see Pence v. Andrus, 586 F.2d 733, 743 (9th Cir. 1978) (finding that procedures set forth in the Peters decisions comply at least facially with the due process requirements set forth in Pence v. Kleppe, supra). We find that accepting the truth of the extensive evidentiary record compiled by Appellant with the assistance of counsel and BIA, the decision in this case hinges on an issue of law: whether ALSC may be considered to be an agent of the Department for purposes of receipt of Native allotment applications. For the reasons set forth above, that question must be answered in the negative. Accordingly, Ogle's request for an evidentiary hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision of the Alaska State Office is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur.

T. Britt Price
Administrative Judge

