

LILLIAN PITKA  
HEIRS OF ALFRED JACOBS

IBLA 2002-27

Decided November 17, 2004

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting a Native Allotment application due to a legal defect. Fairbanks 026054.

Motion to dismiss granted.

1. Administrative Authority: Generally--Alaska: Native Allotments--Rules of Practice: Jurisdiction

The Department of the Interior has no jurisdiction to adjudicate questions concerning title to land conveyed out of United States' ownership. The Department may, however, investigate to determine whether to recommend litigation to recover the land, and such investigation may be conducted in such manner as suits its own convenience.

2. Administrative Authority: Generally--Alaska: Native Allotment--Rules of Practice: Jurisdiction

The Aguilar Stipulations define the limited administrative mechanism used to conduct investigations of Native allotment applications involving lands conveyed out of United States' ownership.

3. Administrative Authority: Generally--Alaska: Native Allotments--Rules of Practice: Jurisdiction

When BLM investigates a Native allotment application for land patented to a Native corporation and rejects the application because it was legally defective and incapable

of being corrected, pursuant to Aguilar Stipulation No. 1, the Board has no role in that process and an appeal of BLM's decision is properly dismissed.

APPEARANCES: Carol Yeatman, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant; James R. Mothershead, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

#### OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Lillian Jacobs Pitka, heir of Alfred Jacobs, has appealed a September 18, 2001, decision (Decision) of the Alaska State Office, Bureau of Land Management (BLM), rejecting Jacobs' Native allotment application, reinstated by BLM on July 10, 1992.<sup>1/</sup> The application was originally filed with BLM on June 29, 1960, by the Bureau of Indian Affairs (BIA), on behalf of Alfred Jacobs. The lands for which Jacobs applied were conveyed out of Federal ownership to the Dinyea Native Corporation in September 1982. BLM's Decision rejected the application on grounds that Jacobs' application did not contain evidence of 5 years of substantially continuous use and occupancy of the lands applied for and such evidence was not filed within 6 years of the date he filed his application.<sup>2/</sup> The Decision held that the application contained a legal defect incapable of correction, and was properly dismissed pursuant to Stipulation No. 1 of the settlement agreement arising from Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979). Pitka timely appealed.

BLM has filed a motion to dismiss the appeal on grounds that the Board lacks subject matter jurisdiction to consider it. Appellant opposes the motion.

[1] The Aguilar litigation arose from circumstances in which Alaska Natives applied for Native allotments under the Native Allotment Act of 1906, 34 Stat. 197, as amended by 70 Stat. 954, on lands that had been conveyed to the State of Alaska. Prior to that litigation, BLM and the Department of the Interior (Department) consistently had asserted that even if patent had been issued by the United States inadvertently or by mistake, "[t]he effect of the issuance of a patent is to remove from the jurisdiction of this Department the inquiry into and consideration of all

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<sup>1/</sup> BLM reinstated Jacobs' allotment application pursuant to this Board's decision in Heirs of Alexander Williams, 121 IBLA 224 (1991).

<sup>2/</sup> The 6-year period after filing the application has been referred to as the "statutory life" period, because under 43 CFR 2561.1(f), if proof of use and occupancy is not submitted within that time period, the application terminates. See Jacqueline Dilts, 145 IBLA 109, 110 (1998).

disputed questions of fact, including the determination of questions concerning rights to land.” Clarence March, 3 IBLA 261, 264 (1971); see also Germania Iron Co. v. United States, 165 U.S. 379, 383 (1897); Everett Elvin Tibbets, 61 I.D. 397, 399 (1954); United States v. Central Pacific Railway Co., 51 L.D. 403, 405 (1926).

However, the Department also recognized that under certain circumstances

it might institute such further investigation as it deemed necessary for the ascertainment of facts to support a recommendation to the Department of Justice that suit be instituted to cancel said patent, because that would be a matter within the necessary administrative duty of the Department and within its jurisdiction.

Central Pacific Railway Co., 51 L.D. at 405. Such further investigation would not be adjudicatory in nature, “but is an administrative proceeding for information of the Department and may be conducted in such manner as suits its own convenience, and as is, in its own judgment, best calculated to attain its object.” Heirs of C.H. Creciat, 40 L.D. 623, 624-25 (1912) (cited with approval in State of Alaska, 45 IBLA 318, 326 (1980)).

The Aguilar litigation began with BLM’s rejection of Native allotment applications submitted by Ethel Aguilar and others, because the lands claimed under the applications had been conveyed to the State of Alaska. This Board agreed that the Department had no jurisdiction over the lands, and that the applications were rightly rejected. Ethel Aguilar, 15 IBLA 30 (1974).<sup>3/</sup> The applicants pursued relief in Federal District Court, first requesting and receiving class certification for all Alaska Native allotment applicants who commenced use of the lands identified in their applications prior to the Department’s receipt of an application for conveyance of those lands to the State of Alaska, and whose allotment applications were rejected because the land was conveyed before adjudication of those applications. Aguilar v. United States, 840 F. Supp. at 842.

The Court found that the Native Allotment Act granted such applicants a “preference right” to the lands, and that the United States had no right to convey the lands to the State. Id. at 843. Considering this Congressional grant, together with the trust responsibility owed by the United States to Alaska Natives, the Court held that the Department’s decision to reject the applications and not seek recovery of the conveyed lands, without first holding an investigatory fact-finding hearing, violated the applicants’ rights to due process. Accordingly, the Court found in favor of the

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<sup>3/</sup> Reconsideration of that decision was denied by order dated June 18, 1974.

applicants and remanded the matter to the Department with instructions to adjudicate the applicants' claims. Id. at 847.

After substantial negotiation, the Aguilar applicants and the Department reached a settlement of their dispute in 1983. As part of that settlement, the Department agreed to use certain stipulated procedures to investigate the facts surrounding the applications and to decide whether or not to recommend litigation to seek reconveyance of the involved land. Those stipulated procedures (Aguilar Stipulations) were the basis for the Aguilar and Title Recovery Handbook for Native Allotments (Aguilar Handbook) developed and used by the BLM to this date.<sup>4/</sup>

[2] By agreeing to the settlement in Aguilar, and to the Aguilar Stipulations, the Secretary of the Interior, in his discretion, defined the limited administrative mechanism to be used to conduct the Department's investigation. Stipulation No. 1, at issue in this appeal, established that

[t]he Bureau of Land Management (BLM) will review each allotment application file to determine whether there are any legal defects in the application. Legally defective applications which are incapable of being corrected will be rejected, and rejection by the authorized BLM official shall be final for the Department.

(Aguilar Handbook at 5.) With this stipulation, the Secretary identified BLM as the sole Departmental authority with respect to identifying legally defective applications and rejecting those incapable of correction. This Board clearly has no role in that process.

In this case, on June 29, 1960, the Bureau of Indian Affairs (BIA) filed with BLM, on behalf of Alfred Jacobs, a Native allotment application (Fairbanks 026054), claiming use and occupancy of 160 acres of land near the Native village of Stevens, Alaska. Item 9 of the application, requesting the applicant's beginning date of occupancy, was left blank. The record shows that BLM sent Jacobs notices on February 21, 1961, and on January 26, 1966, informing him that he must file proof of 5 years' use and occupancy within 6 years of filing the original application. The first notice apparently was never received by Jacobs, and the second notice was returned to BLM on January 31, 1966, with a handwritten notation across the envelope identifying Jacobs as "deceased." In fact, Jacobs died on April 29, 1961.

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<sup>4/</sup> The Department has extended the use of the Aguilar Stipulations to investigate applications involving all conveyances out of Federal ownership, not just conveyances to the State of Alaska. State of Alaska v. 13.90 Acres of Land, 625 F. Supp. 1315, 1319 (D. Alaska 1985); Wassilie Roberts, 153 IBLA 1, 4 (2000).

On August 23, 1966, BLM issued a decision rejecting Jacobs' application because "[t]he six year period expired on June 29, 1966, without the submission of the required proof." The land Jacobs applied for was later conveyed to the Dinyea Corporation on September 2, 1982.

Jacobs' allotment application was reinstated by BLM on July 10, 1992. BLM then notified Jacobs' heir Lillian Pitka, sought and obtained evidence of Jacobs' use and occupancy, and conducted a field examination of the land that determined Jacobs had satisfied the use and occupancy requirement. Later on December 9, 1996, BLM issued a decision stating that Jacobs' application was subject to the Aguilar Stipulations, but then requested that interested parties (including Pitka) submit any additional evidence in support of Jacobs' application within 90 days. Such evidence, including Pitka's statement that Jacobs' use of the land began in 1937, was timely submitted.

Without further explanation, on September 18, 2001, BLM issued its Decision rejecting Jacobs' application. The Decision stated simply that the application was rejected "because Alfred Jacobs did not submit evidence of five (5) years of use and occupancy within six (6) years of filing his application." BLM concluded that his application was legally defective and could not be corrected and, therefore, terminated by operation of law.<sup>5/</sup>

Jacobs died less than one year after his application was filed in 1960, well within the 6-year statutory life period. Although BLM tried to notify Jacobs of his deficient application and his need to supply proof of use and occupancy, Jacobs did not receive the first notice and had died long before the second notice. BLM received actual notice of Jacobs' death before the end of the statutory life period, but failed to take any steps to identify, locate, or notify his heirs so that the required proof could be filed to correct the deficiency within the statutory life period.<sup>6/</sup> BLM failed to act even though this Board has held that "an inheritable interest in a deceased applicant's allotment still arises upon his or her death, subject to the condition that BIA file, in timely fashion, the required evidence." Estate of Guy C. Groat, Jr., 46 IBLA 165, 171 (1980) (emphasis added). That failure clearly jeopardized Pitka's inheritable interest

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<sup>5/</sup> The Decision cited as authority the Board's decision in Jacqueline Dilts, *supra*.

<sup>6/</sup> The BIA may submit such proof on behalf of the heirs, so long as the proof on its face does not contradict information in the allotment application. Ernest L. Olson, Jr., 41 IBLA 179, 183 (1979); *see* 43 CFR 2561.2. The evidence eventually submitted to BLM by Lillian Pitka through the BIA and the Tanana Chiefs Conference, Inc., did not contradict Jacobs' original application.

in Jacobs' allotment, because without notice, Pitka had no reason to know that evidence was required. Due process would seem to have required notice.<sup>7/</sup>

[3] Notwithstanding our concerns over BLM's actions in this matter, this Board is powerless to consider Pitka's appeal. Aguilar Stipulation No. 1 clearly defines BLM's role as the sole agent of the Department with respect to this matter, and the Board has no authority to overrule that agent. That authority rests exclusively with the Secretary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's motion to dismiss Pitka's appeal is granted.

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H. Barry Holt  
Chief Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge

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<sup>7/</sup> “[S]tate action affecting property must generally be accompanied by notification of that action.” Tulsa Professional Collection Services v. Pope, 485 U.S. 478, 484 (1988), citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).