



MATRONA JAVIER

175 IBLA 395

Decided August 28, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

MATRONA JAVIER

IBLA 2008-66

Decided August 28, 2008

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying reinstatement of Alaska Native allotment application AA-873 with respect to 1.5 acres.

Affirmed as modified.

1. Alaska: Native Allotments

BLM properly denies reinstatement of an Alaska Native allotment application where the application, if reinstated, would be rejected as legally defective.

APPEARANCES: Carol Yeatman, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant; Lisa S. Toussaint, 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

Matrona Javier has appealed from a December 7, 2007, decision of the Alaska State Office, Bureau of Land Management (BLM), denying reinstatement of Alaska Native allotment application AA-873 with respect to 1.5 acres. BLM determined that Javier had knowingly and voluntarily relinquished her application in order to obtain a trustee deed for Lot 1, Block 7, U. S. Survey 4992, in the Clarks Point Townsite. The allotment application described a 5-acre parcel, but the trustee deed conveyed only 3.5 acres. Appellant contends that she did not knowingly and voluntarily relinquish her 5-acre application to receive only 3.5 acres. For reasons stated below, we affirm BLM's decision as modified.

BACKGROUND

On March 5, 1967, Javier filed Alaska Native allotment application AA-873 for a 330 by 660-foot parcel containing 5 acres, claiming that use and occupancy was initiated on March 5, 1967. Her application was forwarded by the Bureau of Indian Affairs (BIA) and received by BLM on April 12, 1967. By notice dated April 30, 1969,

BLM accepted Javier's application, subject to filing proof of use and occupancy by April 11, 1973. Javier filed her evidence of occupancy on November 20, 1972, again asserting occupancy from March 1967.

On January 10, 1973, BLM sent a letter advising Javier that she could substitute a primary place of residence application for her Native allotment application. On January 16, Javier filed a statement that she wanted to apply for her primary place of residence under section 14(h)(5) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(5) (2000). However, in an internal memorandum dated November 20, 1973, BLM noted that Javier's application fell within a township withdrawn by section 11(a) of ANCSA, 43 U.S.C. § 1610(a), for selection by the village of Clarks Point so that she could not obtain title under section 14(h)(5). The memorandum further noted that Javier's application fell within the specific boundaries of the Clarks Point Townsite, and that the conflict would have to be resolved before a patent could be issued to the townsite trustee. However, as Javier claimed that her home was on this land, she could obtain a deed for the land either under the Native Allotment Act or under the townsite laws.

The file contains a November 21, 1973, letter from the townsite trustee to Javier's daughter in response to letters from her concerning the status of her mother's allotment application and her father's adjoining application for a trade and manufacturing site. The trustee stated that he had authority to set lot lines and take portions of lots for rights-of-way, and that the lots on which the Javiers' buildings were located would be deeded to them.

On December 10, 1973, BLM sent a letter to Javier's daughter concerning the lots the Javiers occupied, stating that the townsite trustee would have authority to issue deeds for the lots after BLM conveyed the land to the townsite trustee.

On March 5, 1974, Javier filed a formal relinquishment of her Native allotment AA-873 and an application for a trustee deed for Lot 1, Block 7, U. S. Survey 4992, in the Clarks Point Townsite. The survey plat shows that parcel as measuring 250 by 610 feet with an area of 152,500 square feet, or about 3.5 acres.

On December 2, 1980, Congress enacted the Alaska National Interest Lands Conservation Act, which contained a provision approving all Native allotment applications pending before the Department of the Interior on or before December 18, 1971, with certain exceptions. 43 U.S.C. § 1634(a) (2000). However, subsection (a)(6) of that provision states that approval does not apply where an allotment application has been knowingly and voluntarily relinquished. In a letter to BLM dated December 19, 1980, a staff member of the Alaska Legal Services Corporation (ALSC) informed BLM that ALSC and BIA were contacting natives who had relinquished their allotments to give them an opportunity to request

reinstatement of their applications if the relinquishments were not knowing or voluntary. The letter identified Javier as one of the applicants who expressed an interest in reinstatement.

On June 19, 1984, BLM issued patent 50-84-0564 to the townsite trustee for the benefit of occupants of the Townsite of Clarks Point. The patent described approximately 218.46 acres including Lot 1, Block 7. On August 16, 1986, the townsite trustee issued a deed to Javier for Lot 1, Block 7.

In a document dated October 10, 2007, Bristol Bay Native Association (BBNA) requested reinstatement of Javier's Native allotment application AA-873, asserting that Javier "had applied for 5 acres and relinquished these 5 acres in reliance on the government's promise to give her the exact land as a townsite," but that "she did not get the same land but received less." Request for Reinstatement at 3. In the reinstatement request, BBNA argues that it is likely that if Javier had known that she was relinquishing a 5-acre application but would receive only 3.5 acres, she would not have relinquished her allotment, so that her relinquishment was not knowing or voluntary. In its December 7, 2007, decision, BLM determined that Javier had knowingly and voluntarily relinquished her application in order to obtain a trustee deed and denied reinstatement of her allotment application.

ISSUES

In her Statement of Reasons (SOR), appellant contends that her relinquishment was not knowing or voluntary because she was told that she would get the same land under the townsite patent that she applied for as an allotment, not 1.5 acres less.¹ SOR at 4, *citing Atkins v. BLM*, 116 IBLA 305, 312 (1990) (affirming a finding that a relinquishment was not knowing and voluntary where an applicant relinquished an allotment in order to receive a townsite conveyance but did not understand the effects of the relinquishment). She asserts that she is entitled to notice and an opportunity for a hearing on the issue of whether her relinquishment was knowing and voluntary. SOR at 5.

¹ Although appellant contends that there is nothing in the record showing that she was told that she would get less land, the Nov. 21, 1973, letter from the townsite trustee to Javier's daughter stated that he had authority to set lot lines and "take portions of lots for right-of-ways [*sic*]." In fact, appellant applied for a parcel that was 330 feet wide, and she received a parcel that was 250 wide, thus providing space for Bayou Loop Road on the north side of her parcel and Hillcrest Drive on the south. In addition, appellant's ALSC attorney, in a June 8, 1981, letter to BIA, acknowledged that Javier's townsite lot contained 152,500 sq. ft. (about 3.5 acres), and that Javier had relinquished her allotment claim to expedite conveyance of the trustee deed for the townsite lot. Answer, Ex. 5.

In its Answer, BLM disputes the assertion that appellant was unaware that she would get less land.² BLM also points out, and provides evidence to support, that when appellant commenced her use and occupancy of the parcel in 1967, the land was already segregated from entry by the filing of the Clarks Point townsite petition AA 504 on August 11, 1966, and its notation on the public land records. See *Aleknagic Natives Limited v. United States*, 635 F. Supp. 1477, 1480 (D. Alaska 1985), *aff'd sub nom. Aleknagic Natives Limited v. Andrus*, 806 F.2d 924, 925 (9th Cir. 1986).

ANALYSIS AND CONCLUSION

Reinstatement of Javier's application would place it in conflict with land patented to the townsite trustee, including the roads that border the parcel on the north and south. More important, however, is the fact, evident in the record, that Javier's use and occupancy of the land included in her allotment application began on March 5, 1967, *after* segregation of the land from entry, effective on August 11, 1966, with the filing of the Clarks Point townsite petition, and its notation on the public land records.

[1] In this case, it would be an exercise in futility to give further consideration to appellant's argument that her relinquishment was not knowing and voluntary. It is well established that reinstatement is not appropriate in circumstances in which the Native allotment application is insufficient or defective as a matter of law. See *Roselyn Isaac*, 147 IBLA 178, 183 (1999), and cases cited therein. Here, by her own evidence, appellant's occupancy began after segregation of the lands at issue, making her application fatally defective.³ See *Heirs of Howard Isaac*, 63 IBLA 343, 345 (1982). No purpose would be served by considering the nature of her relinquishment with the possibility of reinstatement when the ultimate result would be BLM's rejection of the application because of its fatal defect. Accordingly, we hold that BLM properly denies reinstatement of a Native allotment application where the application if reinstated would be rejected as legally defective. Accordingly, we affirm BLM's decision as so modified.

² BLM also notes that, although ALSC had previously written to BLM concerning the allotment, there is no evidence that appellant sought additional acreage from the townsite trustee. Answer at 10.

³ Appellant asserts no significant error in her Native allotment application.

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 appealed from is affirmed as modified.

_____/s/_____
H. Barry Holt
Chief Administrative Judge

I concur:

_____/s/_____
Bruce R. Harris
Deputy Chief Administrative Judge