



INTERIOR BOARD OF INDIAN APPEALS

Terese L. Garrett v. Assistant Secretary - Indian Affairs

13 IBIA 31 (09/21/1984)

Denying reconsideration of:  
13 IBIA 8



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

TERESE L. GARRETT, Appellant	:	Order Denying Reconsideration
	:	
	:	
v.	:	
	:	Docket No. IBIA 84-20-A
ASSISTANT SECRETARY FOR INDIAN AFFAIRS, Appellee	:	
	:	
	:	September 21, 1984

On September 17, 1984, the Board of Indian Appeals (Board) received a petition for reconsideration from appellant in the above case. In Terese L. Garrett v. Assistant Secretary for Indian Affairs, 13 IBIA 8 (1984), the Board found that, contrary to the arguments of appellant, Thomas Bokas was an Indian for whom the United States could hold land in Indian trust status and that, therefore, a deed of Indian trust land from Bokas to appellant must be approved by the Secretary in order to be effective. The Board remanded the matter to the Bureau of Indian Affairs (BIA) for a determination of whether the deed at issue should be retroactively approved.

Reconsideration by the Board is governed by 43 CFR 4.315. That regulation provides that reconsideration will be granted only in extraordinary circumstances.

Appellant is concerned that, by participating in the remand, she may be prevented from arguing in Federal court that the Board's decision as to Bokas' citizenship is legally incorrect. She asserts that the determination of citizenship is final agency action subject to judicial review under 5 U.S.C. §704 (1980), but that the Board's remand, which states that the determination of whether the deed should be retroactively approved will be final for the Department unless appealed to the Board, is an attempt to defer the finality of all issues.

The Board does not determine the jurisdiction of Federal courts. If appellant believes that the matter is ripe for judicial review, she may file an appeal. At that point certain remedies to restrain further Departmental action may be available to her. She may also be able to reach an agreement with BIA to defer consideration of whether the deed should be approved pending judicial review of the Board's primary decision. Alternatively, appellant may choose to participate in the remand with the express stipulation to BIA that such participation does not constitute acceptance of the Board's decision. The fact that appellant is faced with several legal questions that she must resolve does not, however, constitute extraordinary circumstances within the meaning of 43 CFR 4.315 so as to merit reconsideration by this Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied.

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//original signed  
Jerry Muskrat  
Administrative Judge

We concur:

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//original signed  
Bernard V. Parrette  
Chief Administrative Judge

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//original signed  
Anne Poindexter Lewis  
Administrative Judge