



INTERIOR BOARD OF INDIAN APPEALS

Patricia Ann Schoolcraft Patencio v. Sacramento Area Director,  
Bureau of Indian Affairs

13 IBIA 150 (05/21/1985)

Reconsideration denied:  
13 IBIA 187

Judicial review of this case:  
Appeal filed, *Patencio v. United States Department of the Interior*,  
No. CV-85-4629 PAR (BX) (C.D. Calif.)



# United States Department of the Interior

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

PATRICIA ANN SCHOOLCRAFT PATENCIO

v.

AREA DIRECTOR, SACRAMENTO AREA OFFICE,  
BUREAU OF INDIAN AFFAIRS

IBIA 84-54-A

Decided May 21, 1985

Appeal from a decision of the Sacramento Area Director, Bureau of Indian Affairs, refusing to disburse certain funds to appellant from the Individual Indian Money account of Ruth Elaine Patencio pursuant to an assignment of income.

Reversed and remanded with instructions.

1. Bureau of Indian Affairs: Administrative Appeals: Generally

Field and area offices of the Bureau of Indian Affairs do not have authority to overturn decisions of the Deputy Assistant Secretary--Indian Affairs (Operations).

2. Indians: Trust Responsibility

In order to fulfill its trust responsibility, the Bureau of Indian Affairs must carry out actions undertaken on behalf of Indian beneficiaries in a way that is not contrary to their best interests.

APPEARANCES: Patricia Ann Schoolcraft Patencio, pro se; Duard R. Barnes, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee. Counsel to the Board: Kathryn A. Lynn.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On September 24, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Patricia Ann Schoolcraft Patencio (appellant). Appellant sought review of a June 1, 1984, decision of the Sacramento Area Director (Sacramento BIA), Bureau of Indian Affairs (BIA), concerning the refusal to make certain payments to appellant from the Individual Indian Money (IIM) account of her adopted mother, Ruth Elaine Patencio. Appellant sought review by the Board on the ground that her appeal to the Deputy Assistant Secretary--Indian Affairs (Operations) (Deputy Assistant Secretary) had not been decided within 30 days from the time it was ripe for decision, as is required by 25 CFR 2.19. By order dated September 26, 1984, the Board made a preliminary determination that it had jurisdiction over the appeal and requested the

administrative record. The record was received on February 8, 1985. For the reasons discussed below, the Board reverses the June 1, 1984, decision and remands the case to BIA with instructions.

Background

Ruth Elaine Patencio (Ruth Patencio), Palm Springs Allottee No. PS-20, is a member of the Agua Caliente Band of Mission Indians, and has interests in several Indian trust allotments in the Palm Springs, California, area. She and appellant, who is non-Indian, have apparently been friends for more than 20 years. Appellant has served as Ruth Patencio's business advisor and, according to Ruth Patencio's statements, has assisted her in substantially increasing her income.

On October 18, 1979, Ruth Patencio executed a document entitled "Assignment of Present Income from Trust Property Pursuant to 25 CFR 104." <sup>1/</sup> There is no evidence in the record that BIA was involved in drafting this document. The assignment stated:

I, RUTH PATENCIO, of Palm Springs, California, in consideration of natural love and affection do hereby assign and transfer to PATRICIA ANN SCHOOLCRAFT of Palm Springs, California, the following one-half of all my total income including one-half of all my percentage rents for the lifetime of PATRICIA ANN SCHOOLCRAFT but in no event exceed a period of seventy years from the date appearing herein. This Assignment of Present Income shall accrue only to PATRICIA ANN SCHOOLCRAFT and cannot be assigned or transferred.

\* \* \* \* \*

I hereby appoint the authorized Bureau Officer of Indian Affairs or his successor having jurisdiction over the above-described real property as my attorney in fact to pay upon demand to PATRICIA ANN SCHOOLCRAFT any payments when not paid when agreed upon, said date to start immediately from the date appearing herein, then consecutively for the rest of her lifetime or the time span stated herein, said payments to be made from income from development contracts from the Trust land described above, and I ratify all that my attorney in fact shall lawfully do, or cause to be done under this authority.

It is understood that in the case of my death, this assignment shall constitute a claim against income from the above described lands superior to that of my heirs.

This Assignment of Income does not grant any right, title or interest in land other than the one-half of my total

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<sup>1/</sup> Part 104 of 25 CFR has been renumbered without substantive change as Part 115. The part concerns the administration of IIM accounts.

income plus one-half of my total percentage rents from the above described lands for the period of time specified. All of the landowner rights to sell, lease, encumber, or hypothecate this land shall remain with RUTH PATENCIO or her heirs, executors or successors, with the approval of the Secretary of the Interior and no such rights, powers or authority is conferred upon Patricia Ann Schoolcraft. [Description of real property omitted.]

The assignment was signed by Ruth Patencio and witnessed by two persons. Appellant accepted the assignment by signing the document. Appellant's signature was witnessed by two additional persons.

By letter dated November 5, 1979, the Director of the Palm Springs Field Office (Palm Springs BIA), BIA, informed Ruth Patencio that he had considered the proposed assignment of income and had "determined that it would not be in your long range best interest for me to approve the assignment \* \* \*. Accordingly that document is returned herewith unapproved."

Ruth Patencio appealed this decision to Sacramento BIA, where it was affirmed on January 14, 1980. The decision letter stated at page 1:

The trust responsibility of the United States, carried out by the Bureau of Indian Affairs, is created by the passage of the Act of February 8, 1887 (24 Stat. 389), as amended, which provides that trust patents issued to Indian allottees shall be held in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of death, to his or her heirs or devisees. All allottees to whom such trust patents shall have been made shall be subject to the exclusive jurisdiction of the United States as provided by applicable statutes and regulations.

The intent and manner by which you propose to assign the rentals and percentages from existing leases to a third party is precluded by the Code of Federal Regulations (CFR), Title 25 INDIANS. Part 104 of said regulations, provides that monies directed to individual Indian accounts from leases, sales proceeds, or other income generated from trust property, may be disbursed to the account holder upon their application for same. The jurisdiction and supervision exercised in performing the role as trustee extends to the point of acceptance of such trust funds by the account holder. Upon the acceptance of the funds by the individual, the Bureau of Indian Affairs exercises no physical control as the trust is then extinguished and the disposition and/or expenditure of the monies is the individual's sole privilege.

Ruth Palencia appealed this decision to the Deputy Assistant Secretary. During the 2-1/2 year pendency of this appeal, she took several other actions with regard to appellant. On or about January 28, 1981, she signed applications for the withdrawal of specified sums from her IIM account

for the periods 1981 through 1991. These amounts were to be paid to appellant. The withdrawal applications were approved by Palm Springs BIA on January 28, 1981. Following approval of her withdrawals, on January 29, 1981, Ruth Patencio authorized Palm Springs BIA to disburse the funds to appellant, stating that this arrangement was to "be regarded as an Assignment of my income from my Trust Properties." The payment authorization was approved by Palm Springs BIA on February 5, 1981. In a second action, on March 26, 1982, Ruth Patencio adopted appellant through the Superior Court of California, County of Riverside, Case No. A-9552.

On June 14, 1982, the Deputy Assistant Secretary issued a decision in Ruth Patencio's appeal in which he stated at pages 1-2:

The Area Director's decision of January 14, 1980, upheld the Palm Springs Field Office Director's decision. The basis for his denial centers on (1) Title 25, Code of Federal Regulations, Part 104, which addresses Individual Indian Money accounts, and (2) the Act of February 8, 1887 (24 Stat. 389), as amended. The Act sets forth the Bureau's trust responsibilities, and, in conjunction with the aforementioned CFR Part, formed the basis for his refusal to overturn the Palm Springs Field Office Director's decision.

We are not convinced by the arguments used by the Area Director. Given that Ms. Schoolcraft is the sole beneficiary of your will, [2/] that you will retain half the income generated by your trust property, and that the Bureau's policy is to encourage self-determination on the part of Indian landowners in the management of their property, I am returning your appeal to the Sacramento Area Director with the recommendation that he reconsider his January 14, 1980 decision and permit you to take the action you have requested.

By letter dated June 23, 1982, Sacramento BIA informed Ruth Patencio that "[i]n view of the basis of the decision rendered, I have reconsidered my January 14, 1980, decision and by copy of this letter, hereby request the Director, Palm Springs Office, to exercise his delegated authority favorably to the action you have requested." On July 1, 1982, Ruth Patencio executed a new assignment, with only minor changes from the first document. Appellant accepted the assignment, the signatures were witnessed, and the document was approved by Palm Springs BIA. On July 21, 1982, an addendum was executed and approved by Palm Springs BIA. This addendum added other income to the assignment and clarified the division of Ruth Patencio's funds. The clarification stated that:

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2/ The record does not reveal when this will was executed, or whether it has since been changed. In any case, neither the Deputy Assistant Secretary's decision nor this opinion constitutes approval of any will that Ruth Patencio may have executed, or a finding that her will cannot be changed, should she desire to do so.

Whenever any income, of any kind, is submitted to the Bureau, I would like it put into my Individual Indian Money Account (IIM), any assignments outstanding paid (as specified) and the remainder to be divided equally, 1/2 to myself and 1/2 to Patricia. This division, and checks issued should be after each check is deposited into my account number 70407.

The BIA made payments to appellant under this assignment until March 1984, when they received a letter from Ruth Patencio stating that she was "rescind[ing] my previous instructions outlined in the Assignment of Present Income from Trust Property, 25 CFR 104 dated July 1, 1982, and any addendums to such assignment. From this day forth no further checks are to be issued to Patricia Ann Schoolcraft from my IIM account." By letter dated March 20, 1984, Palm Springs BIA informed appellant that, pursuant to Ruth Patencio's letter, no further checks would be issued to her from Ruth Patencio's account.

On April 18, 1984, Palm Springs BIA informed Sacramento BIA that appellant had appealed the denial of further disbursements. Palm Springs BIA stated that there was no right of appeal because the decision was made by Ruth Patencio, not BIA. The memorandum further stated on page 1 that appellant indicated "she doesn't understand how the Assignment can be rescinded. The privilege of Ruth E. Patencio to rescind was purposely omitted from the Assignment of Income, so if Ruth E. Patencio decided at a later date to rescind, she could [sic] do so."

On May 9, 1984, Palm Springs BIA informed appellant that no payments would be made to her on the basis of Ruth Patencio's approved applications for withdrawals from her IIM account for the periods from 1981-1991. The reason for this decision was that BIA had concluded "that these applications were just an arrangement made by Ms. Ruth Patencio based on neither a contract nor an obligation, but an arrangement to be enforced with her desires." Because these applications had been approved before the Deputy Assistant Secretary issued his decision, BIA had disregarded them when the general assignment was approved.

By letter of July 19, 1984, Ruth Patencio wrote to Sacramento BIA in support of appellant's position. That letter states in its entirety:

I wish to support the position of Patricia Ann Schoolcraft Patencio, my adopted daughter, on her Appeal in your office, an Assignment of Present Income From Trust Property, that the Assignment is an Irrevocable Contract and I wish to make my intentions clear about this matter.

I had tried before, in 1979, to set up Irrevocable Assignments but none that were in contract form and I understood that after I signed this Assignment that it was Irrevocable, by Roberta Dyer of the Palm Springs Bureau, and this is what I intended to do. So you can understand my surprise when I was told by the B.I.A. that I could rescind this and they did it so quickly without any problem such what is the law and what will be my

problem when it gets to Court, I don't trust that it will be easy as they say when it took me three years of Appeals to get this approved by John Fritz in Washington.

In March, 1984, I sought to rescind the Assignment of Present Income From Trust Property because I was upset with Patricia; however, I have had second thoughts because she has been a loyal friend for 22 years and my Business Representative, which has more than tripled my income since 1971, therefore I have decided to write to you and let you know the position that I am taking on Patricia's Appeal to your Office. I make these decisions without any undue influence, duress, fraud, menace, coercion or mistake.

In our conversation of a few days ago you said that "We are here to go along with the wishes of the Indian", so I am thanking you in advance for following my wishes as stated in this letter.

Despite this letter, on August 22, 1984, Sacramento BIA affirmed the refusal to make any further disbursements to appellant from Ruth Patencio's IIM account. After discussing the operation of 25 U.S.C. § 81 (1982), the decision letter states at page 2:

For the most part, 25 U.S.C. 81 was intended to protect Indians from improvident contracts and is the statute governing the negotiation and execution of tribal attorney contracts (25 CFR 89) with tribes not organized under the Indian Reorganization Act (25 U.S.C. 476). Furthermore, the Act specifies that the contracts must be authorized under other "laws or treaties with the United States." The question of whether 25 U.S.C. 81 may be applicable to an assignment has not been adjudicated to the best of our knowledge. It is presently our position that the 1982 Assignment of Income would fail the test of a contract as it would constitute a gift for which there is no consideration.

Upon review of the Assignment of Income, we note that the authority cited for the approval was 25 CFR 104.12, which has been renumbered as 25 CFR 115.12. Section 115.12 is authorized pursuant to the Act of October 17, 1968 which amended the Act of September 21, 1959 (73 Stat. 604; 25 U.S.C. 954). The 1959 statute relates to the equalization of allotments as well as to the appointment of guardians and conservators for the allottees of the Agua Caliente Reservation. The 1968 amendment provides that the Secretary of the Interior, with the consent of the individual Indian, may use, advance, expend, exchange, deposit, dispose of, invest, and reinvest, in any manner and for any purpose, any money or other property held by the United States in trust for such Indian. The purpose of the 1968 amendment to the 1959 statute was to provide the Secretary with more control over the activities of private guardians/conservators and to protect

the assets of the Indians. A gift would not provide such protection.

Needless to say, any action authorized under the 1968 amendment must be in accordance with those authorities which have been delegated from the Secretary of the Interior.

Responsibility for the disbursements from IIM accounts to the Agua Caliente members based upon Individual Indian Accounts Applications, Form 5-139B, has been redelegated from the Area Director to the Palm Springs Director. However, in reviewing the redelegations from the Secretary to the Area Directors, we find "assignments of income" listed as an exception (10 BIAM 3.5D(2)) to the authorities that may be redelegated. To the best of our knowledge, assignments of income may only be approved by the Area Director as security for a loan made pursuant to the Revolving Loan Fund (25 CFR 101.13(d), formerly 25 CFR 91.13(d)). Therefore, the Palm Springs Director lacked authority to approve the assignment and the assignment is considered invalid. [Emphasis in original.]

The letter concluded at page 3 that "the Bureau lacks authority to approve an assignment such as the one in question herein."

By letter dated August 23, 1984, Sacramento BIA informed Ruth Patencio of the denial of appellant's appeal. That letter states on page 1:

We wish to advise you at this time that we still feel that an assignment or other document that provides Patricia with one-half of your income for her lifetime is not in your best interests.

\* \* \* \* \*

Section 115.6 (25 CFR) also states that any Indians requiring banking services shall be encouraged to utilize commercial facilities. The Bureau's IIM system was not designed to serve as a substitute for a commercial banking facility or other financial institution. Your previous appeal to our 1980 denial was remanded to this office for reconsideration on the basis that it is the Bureau's policy to encourage self-determination on the part of Indian landowners in the management of their property. In keeping with that policy, you are always at liberty to request that your leases be amended to provide that rental payments be paid directly to you and any such payments may be disposed of by you, as you so desire.

We realize that Patricia may appeal our decision, however, it is our belief that we are without authority to approve assignments of income except as provided in 25 CFR 101.13(d).

If it is still your position that Patricia receive one-half of your income, please discuss the matter with Mr. Bell Haney, Director of the Palm Springs Office. It is hoped that a satisfactory solution, other than an assignment of income, can be found.

In response to this letter, on September 25, 1984, Ruth Patencio wrote Sacramento BIA, repeating her support of appellant's appeal. Her letter states at pages 1-2:

I wish to state that there is no other alternative in my mind and I appealed for three long years to have this Assignment of Income approved and I just don't understand how the Acting Director of the Palm Springs Office could change the decision of the Deputy Assistant Secretary of Indian Affairs.

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I agree with Patricia in that it was understood by me that the Assignment was and is an irrevocable contract or agreement and that Mr. John Fritz, Deputy Assistant Secretary of Interior approved the document whether it was a contract, agreement or a gift \* \* \* .

Please take into consideration that the reason that I wanted this document approved by the B.I.A. is so that I couldn't ever change it. I was under the impression since it had gone to Washington under appeals that took three long years approximately that a document such as this was written in stone and that it would be so for 70 years or Patricia's lifetime. These are my wishes otherwise I could have gone through my own bank back in 1979 instead of having to fight with the BIA.

If a decision is rendered in Patricia's favor, and I truly hope it is, a procedure should be established so that she will never have to go through this again.

Appellant appealed Sacramento BIA's decision to the Deputy Assistant Secretary. When no decision was rendered in her appeal within 30 days from the time it was ripe, she filed a notice of appeal with the Board seeking review by it under the provisions of 25 CFR 2.19. 3/ On September 26, 1984,

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3/ Section 2.19 states in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the [Deputy Assistant Secretary--Indian Affairs (Operations)] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision.

"(b) If no action is taken by the [Deputy Assistant Secretary] within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision."

the Board made a preliminary determination that it had jurisdiction over the appeal and requested that the administrative record be sent to it within 30 days. As previously stated, the record was received on February 8, 1985. Appellant filed an opening brief on March 12, 1985. In response to a letter from appellant, the Board granted expedited consideration of this case on March 28, 1985. Briefing was concluded on April 29, 1985.

### Discussion and Conclusions

The progress of this entire matter shows quite plainly that the Palm Springs and Sacramento offices believe that an assignment of Ruth Patencio's income is not in her best interest. No rationale is presented for this belief, although several possible explanations are suggested by the record. First, appellant is non-Indian. Second, there is always the possibility, as occurred here, that Ruth Patencio would have a disagreement with appellant and wish to change her mind. Third, it is also possible that Ruth Patencio's leases might become unproductive or decrease in value so that she could not provide for her own needs with only one-half of their income. Finally, the record contains a June 21, 1984, memorandum from the Assistant Regional Solicitor, Sacramento, to Sacramento BIA relating hearsay information concerning appellant's possible dealings with other Agua Caliente Indians. The memorandum advises Sacramento BIA that if this hearsay is true, it should be documented and made part of the record. The statement was not documented. It is purely speculative, therefore, to attempt to determine the real reason for the continued opposition to this arrangement by the Palm Springs and Sacramento offices.

What the record does show is that Ruth Patencio was informed by Palm Springs BIA that the assignment would be irrevocable, and she understood that fact and continued in her desire to give appellant one-half of her

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<sup>4/</sup> See Ruth Patencio's July 19, 1984, letter to Sacramento BIA, quoted in text, supra. This comports with the general rule of law under which an assignment is a manifestation of the present transfer of an interest, which extinguishes the right in the assignor and transfers it to the assignee. Restatement (Second) of Contracts § 317 (1981). Because an assignment is an executed transaction, it requires no consideration. 4 Corbin, Contracts, § 909 (1963). A gratuitous assignment, however, may be revocable unless the gift has been completed in accordance with the law of gifts. 4 Corbin, supra at § 910; 3 Williston, Contracts, § 438A (1960). A gratuitous assignment may also be made irrevocable by being reduced to a writing signed and delivered by the assignor. Restatement, supra at § 332(1)(a); 4 Corbin, supra at § 921; 3 Williston, supra at § 438A. In this case, delivery of the underlying documents, the leases of Ruth Patencio's interests in Indian trust allotments, was neither possible nor practical. Instead, Ruth Patencio wrote and signed an assignment, and delivered that document to appellant who acknowledged acceptance of the assignment on the assignment document itself. If this were found insufficient to constitute an irrevocable completed gift, an assignment may also become irrevocable by estoppel. If the assignor could reasonably foresee that the assignee would change his or her position in

income. 5/ The Deputy Assistant Secretary found that the Palm Springs and Sacramento offices had not given sufficient reasons to prohibit Ruth Patencio from taking the action she desired. The matter was remanded to those offices with the recommendation that the decision be reconsidered and Ruth Patencio be permitted to do what she requested. The Deputy Assistant Secretary's decision was not appealed and so constitutes a final decision of the Department of the Interior. 25 CFR 2.3(b).

On reconsideration and pursuant to the Deputy Assistant Secretary's recommendation, Sacramento BIA requested Palm Springs BIA to exercise its delegated authority favorably to Ruth Patencio's request. 6/ Accordingly, Palm Springs BIA approved the assignment of income, and began payments to appellant. Sacramento BIA now alleges in its decision that the assignment was improperly approved because it was signed by Palm Springs BIA, an office that does not have delegated authority to approve assignments of trust income, and because, in any case, BIA does not have authority to approve assignments that are not made as security for a loan. See 10 BIAM 3.5D(2) and 25 CFR 101.13(d). These are obviously factors that should have been taken into consideration in 1982 when the offices were trying to carry out the Deputy Assistant Secretary's decision. In essence, Sacramento BIA's decision asserts that because BIA allegedly failed to take all potential problems into consideration, and therefore failed to carry out Ruth Patencio's desires in a way that was beyond legal question, the funds that Ruth Patencio sought to give appellant can be denied her.

[1] BIA field and area offices do not have authority to overturn decisions of the Deputy Assistant Secretary. If the Palm Springs and Sacramento offices disagreed with the Deputy Assistant Secretary's decision, their recourse was to present him with additional information and argumentation and request that he reconsider his decision. Failing to do so, they were obliged to carry out his decision.

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fn. 4 (continued)

reliance on the assignment, and such detrimental reliance occurs, the assignment is irrevocable. Restatement, supra at § 332(4).

Because the general rule is that written assignments, even when gratuitous, are irrevocable, we cannot give credence to Sacramento BIA's assertion that Ruth Patencio's privilege to revoke the assignment was purposefully not mentioned in the document so that she could revoke it at will.

5/ Ruth Patencio's March 1984 letter attempting to rescind the assignment is the only deviation from her expressed intent to make the assignment irrevocable. This deviation was explained and retracted in her July 19, 1984, letter to Sacramento BIA in support of appellant's appeal. Ruth Patencio expressed the same intent as to irrevocability in her Sept. 25, 1984, letter to Sacramento BIA.

6/ The Department admits on page 3 of its answer brief that "it is apparent that both the Deputy Assistant Secretary and the Acting Area Director expected that a way would be found to permit Ruth Patencio to accomplish her intended gift to the appellant."

In its 1984 decision, Sacramento BIA argues first that Palm Springs BIA lacked authority to approve an assignment of income. Although the assignment here was signed by Palm Springs BIA, approval was given only because of the Deputy Assistant Secretary's decision that no adequate grounds for disapproval were presented, and it is Federal policy to allow Indian self-determination. Because approval was given by the Deputy Assistant Secretary, Sacramento BIA's assertion that Palm Springs BIA did not have authority to approve an assignment is without merit.

Furthermore, Sacramento BIA's allegations that BIA has no authority to approve an assignment of trust income are unconvincing. The fact that one kind of assignment is mentioned in 25 CFR 101.13(d), a regulation dealing specifically with the revolving loan fund, does not mean that no other kind of assignment can be approved. The Board notes that the Solicitor does not argue BIA's alleged lack of authority to approve assignments in the Department's brief on appeal. Rather, the appeal brief asserts only that Ruth Patencio has revoked BIA's authority to make payment to appellant.

[2] The Department's arguments on appeal, as well as Palm Springs BIA's assertions that it intended the assignment to be revocable (see Apr. 18, 1984, memorandum to Sacramento BIA, quoted supra), raise the question of revocability. Ruth Patencio has stated that she wanted the assignment to be irrevocable, and understood that it was. As noted in footnote 4, supra, under most circumstances, an assignment such as the present one probably would be found to be irrevocable. Here, however, BIA was acting as a trustee for Ruth Patencio. In order to fulfill its trust responsibility to her, BIA was required to carry out her desires in a way that was not contrary to her best interests. In the absence of any underlying legal obligation that is being discharged through the assignment, permitting the trust beneficiary to dispose of uncertain and possibly needed future income irrevocably would violate the trustee's duties.

All parties recognize that Ruth Patencio intends that this assignment of income continue uninterrupted for appellant's lifetime or seventy years. That intention can be made explicit. Ruth Patencio's right to revoke the assignment, however, must also be made explicit. Thus, the assignment instrument must show, either through rewriting or through an addendum, that Ruth Patencio can revoke the assignment.

The Board's finding that the trust responsibility requires this assignment to be revocable means that Ruth Patencio had the authority to revoke the assignment and could have done so in March 1984. Contrary to BIA's arguments on appeal, however, the Board concludes that her letters of July 19 and September 25, 1984, were sufficient to revive the assignment. 7/

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7/ Ruth Patencio indicated in her Sept. 25, 1984, letter that she hoped a procedure would be devised so that this situation would not arise again. This opinion makes her responsible for ensuring the continuation of payments to appellant. If such payments are to continue, she need only refrain from exercising her right to revoke.

Therefore, unless BIA can provide some alternative and equally efficient means acceptable to both parties for carrying out Ruth Patencio's expressed direction that one-half of her income, after the payment of any other contractual debts, be paid to appellant, the July 1, 1982, assignment of income and the July 21, 1982, addendum, as modified by this opinion to include the right to revoke, are ordered reinstated, and appellant is to receive payments in accordance with their terms. 8/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 1, 1984, decision of the Sacramento Area Director is reversed and the matter is remanded to that office with instructions to effectuate the desires of Ruth Patencio with regard to payments to Patricia Ann Schoolcraft Patencio as expressed in her July 1, 1982, assignment of trust income, the July 21, 1982, addendum, and the letters of July 19 and September 25, 1984, as modified by this opinion.

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//original signed  
Bernard V. Parrette  
Chief Administrative Judge

We concur:

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//original signed  
Jerry Muskrat  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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8/ This opinion does not constitute a general determination of the legality of gratuitous assignments of trust income. The assignment here is reinstated to provide a vehicle for fulfilling Ruth Patencio's expressed directive and is not intended to preclude development of a new method, acceptable to all parties, at some future date.