INTERIOR BOARD OF INDIAN APPEALS

Roberta Weckeah Bradley v. Anadarko Area Director, Bureau of Indian Affairs

17 IBIA 210 (08/02/1989)

United States Department of the Interior

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

ROBERTA C. WECKEAH BRADLEY
v.
ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-45-A Decided August 2, 1989

Appeal from a decision of the Anadarko Area Director, Bureau of Indian Affairs, declining to acquire land in trust status for the benefit of an individual Indian.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Lands: Trust Acquisitions

   The decision whether to acquire land in trust status for an Indian tribe or individual is committed to the discretion of the Bureau of Indian Affairs. In reviewing such a decision, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Bureau of Indian Affairs: Administrative Appeals: Acts of Agents of the United States--Federal Employees and Officers: Authority to Bind Government

   Unauthorized acts by an employee of the Bureau of Indian Affairs cannot serve as the basis for conferring rights not authorized by law.

3. Indians: Lands: Trust Acquisitions

   When the Bureau of Indian Affairs reviews a request to acquire land in trust status for an Indian tribe or individual, it is required to consider the factors listed in 25 CFR 151.10. Proof that these factors were considered must appear in the administrative record.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Roberta C. Weckeah Bradley challenges an October 4, 1988, decision of the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to acquire a residential lot in Lawton, Oklahoma, in trust status for the benefit of appellant. For the reasons discussed below, the Board affirm that decision.

Background

Appellant is a Comanche Indian of 4/4 degree Indian blood. On January 17, 1985, she applied to the Anadarko Agency, BIA, to have taken into trust for her benefit a residential lot which she and her husband owned in fee status. The lot is described as Lot 7, Block 5, North Addition to the City of Lawton, Comanche County, Oklahoma. In justification of her request, appellant furnished answers to a number of questions on a trust acquisition application form prepared by the agency. In response to a question inquiring about her "need or reason for wanting this land owned in trust," she stated:

> I am getting older. I do not want to lose this property. My mother and I resided on this land over twenty years and it was in trust. I am a WWII veteran. In 1950, in order to obtain a VA loan to build a house there it was taken out of trust. To keep my promise to her I want this land owned in trust. [1/]

In response to the question asking her intended use of the land, she stated: "My daughter and her family reside on this land. She and her children are enrolled Comanches." She stated that she needed assistance in administering the land because:

> There seems to be more administrative work on many things these days, since I am older, I hope that it will not come about that I will lose this property. I intend to will this land to one of my three children. I resided on this land for 53 yrs. Due to my loved one giving this land to me, I have attained of it a fondness and close relationship.

On June 9, 1988, the agency Superintendent transmitted appellant's application and other documents related to the request to the Area Director. The Superintendent recommended that the request be approved, subject to the Regional Solicitor's title clearance.

1/ The record shows that the property was purchased in 1929 for Alice Parker (Topeseup), appellant's aunt, and that it was subject to restrictions against alienation or encumbrance. In 1950, an order removing restrictions was approved by the Commissioner of Indian Affairs.

By memorandum of July 8, 1988, the Area Director returned the file to the Superintendent, directing him to reassess the case in light of an earlier memorandum concerning another trust acquisition request.

On July 27, 1988, the Superintendent denied appellant's application for trust acquisition. His letter stated at page 2:

> The main direction of BIA leasing of trust lands has been for farming and grazing purposes because almost all allotments were in agricultural areas. The BIA regulations address agricultural leases and do not apply very well to residential leases. Consequently, the BIA is not equipped to administer residential property on behalf of the Indian owners. Trust homesites are difficult to lease and become abandoned as a result thereof. Although you may not believe this applies to your case, this is a typical pattern after the death of the original Indian owner when the homesite passes into multiple heirship.
>
> Similarly, the Branch of Realty has a tremendous workload in administering the lands presently held in trust, and although your tract is only 0.17 acres, the same trust responsibilities would be assumed as for other trust lands. We would not be able to assume such additional responsibilities for your tract without diminishing services to current Indian landowners.
>
> * * * * * *
>
> Since you do not utilize the site as your home, it is considered investment property. You are educated and have served in the armed services. You have dealt with the public while working for the government.
>
> For many years you have managed this property without the assistance of the government. There is nothing in the record to indicate you need government assistance in handling your affairs, nor does it reflect based on your education and past experience that any help is needed in the administration and maintenance of your land.

Appellant appealed to the Area Director, objecting to the Superintendent's conclusion that she did not need assistance in handling her affairs and arguing that administration of the property would not increase the workload of BIA significantly. Further, she argued that the land had been taken out of trust in 1950 in order to mortgage it, because at that time it was not possible to mortgage trust property. 2/ She stated that a BIA District Farmer had told her at that time that when the mortgage was paid off, she could have the land put back into trust status.

2/ 25 U.S.C. § 483a (1982), which authorizes mortgages of trust or restricted land owned by individual Indians, was enacted in 1956. Act of Mar. 29, 1956, 70 Stat. 62.

On October 4, 1988, the Area Director affirmed the Superintendent's decision. By letter of October 31, 1988, appellant appealed to the Washington, D.C., office of BIA. Her appeal was pending on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. 3/ It was transmitted to the Board on May 16, 1989, for consideration under the new procedures.

By notice of docketing dated May 18, 1989, the Board gave the parties an opportunity to make any further statement they wished to make. No further statements have been received.

Discussion and Conclusions

[1] The role of the Board in reviewing BIA decisions concerning the acquisition of land in trust status was recently discussed in City of Eagle Butte v. Aberdeen Area Director, 17 IBIA 192, 96 I.D. 328 (1989). In that case, the Board observed that such decisions are committed to BIA's discretion and that the Board does not have jurisdiction to substitute its judgment for BIA's. Cf. State of Florida v. United States Department of the Interior, 768 F.2d 1248 (11th Cir. 1985), cert. denied, 475 U.S. 1011 (1986). The Board concluded in City of Eagle Butte, however, that it does have authority to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority. 17 IBIA at 195-96, 96 I.D. at 330-31, and cases cited therein.

In this case, appellant argues that she relied on the statement of a BIA District Farmer in 1950 that, if the restrictions on her property were removed so that she could mortgage it, she would be able to have the land taken into trust after the mortgage was paid off. Thus the Board must address the question whether BIA has any legal obligation arising out of the District Farmer's statement.

[2] The District Farmer did not have authority to bind the Government to accept appellant's land in trust status at some unknown date in the future. The Board has previously held that the unauthorized act of a BIA employee does not create rights not given by law. Martineau v. Billings Area Director, 16 IBIA 104, 112 (1988); Simmons v. Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 243, 248 n.11 (1986). Accordingly, the Board holds that the District Farmer's statement did not vest appellant with any legal right to have her land taken into trust.

The next question is whether, in denying appellant's application, BIA properly followed the procedures set out in 25 CFR Part 151. 25 CFR 151.10 requires BIA to consider a number of factors in evaluating trust acquisition requests:

> (a) The existence of statutory authority for the acquisition of land in trust status and any limitations contained in such authority;

3/ See 54 FR 6478 and 6483 (Feb. 10, 1989).

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

[3] With respect to BIA's analysis of these factors, the Board stated in City of Eagle Butte, 17 IBIA at 196-97, 96 I.D. at 331:

> Proof that these factors were considered must appear in the administrative record. Because the final decision on whether or not to acquire land in trust status is committed to BIA's discretion, there is no requirement that BIA reach a particular conclusion as to each factor. See also State of Florida, 768 F.2nd at 1256: "The regulation does not purport to state how the agency should balance these factors in a particular case, or what weight to assign to each factor." In order to avoid any allegation of abuse of discretion, however, BIA's final decision should be reasonable in view of its overall analysis of the factors listed in section 151.10.

The Board further noted in that case that a trust acquisition request may be denied on the basis of an analysis of only some of the factors, if BIA's analysis shows that those factors weighed heavily against the trust acquisition. 17 IBIA at 197 n.3, 96 I.D. at 331 n.3.

In this case, the record demonstrates that all the factors were considered and that appellant's request was denied on the basis of two of them, i.e., factors (d) and (g). BIA concluded that appellant did not need assistance in managing her affairs and that BIA was not equipped to discharge the additional responsibilities resulting from the acquisition. The Board finds that BIA's decision to deny appellant's request was reasonable in light of BIA's analysis of the factors listed in 25 CFR 151.10.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Anadarko Area Director's October 4, 1988, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge