



INTERIOR BOARD OF INDIAN APPEALS

Wilmadene Butler v. Acting Portland Area Director, Bureau of Indian Affairs

21 IBIA 220 (03/02/1992)



United States Department of the Interior

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

WILMADENE BUTLER, : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 91-107-A
ACTING PORTLAND AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : March 2, 1992

This is an appeal from a May 24, 1991, decision of the Acting Portland Area Director (Area Director), Bureau of Indian Affairs, denying appellant's application for a U.S. direct loan in the amount of \$55,000.

Appellant, a member of the Confederated Tribes of the Grand Ronde Community, stated in her loan application that she intended to use the loan funds to make repairs to a house in Monmouth, Oregon, which she owned and occupied; pay off the remaining loan on the house; and then rent it. She further stated that she intended to use the balance of the loan funds to purchase a new home in Grand Ronde, Oregon, which she would occupy.

The Area Director denied appellant's application for the reason that her intended use of the funds was not permitted under the regulations governing the direct loan program. He cited 25 CFR 101.2(b)(2), which provides that loans may be made to "[i]ndividual Indians and Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower," noting that appellant sought a loan primarily for purposes of repairing and paying off an existing loan on a house which she intended to use as rental property. He continued:

Even if regulations permitted us to loan, the risk involved is too excessive to provide reasonable assurance of repayment.

Your application states that you have a remaining loan balance on your present home of \$28,000 with payments of \$351. A \$55,000 loan from the Bureau increases your debt load to \$83,000 and a combined payment of \$877 per month. This payment is 62 percent of your stated gross pay and exceeds prudent lending practices.

If you should consider selling your present home and investing those funds in a new home and are still unable to locate reasonable other financing then you may wish to consider the Bureau's U.S. Direct Loan Program for assistance.

Appellant contends that the Acting Area Director erred in his calculations concerning her ability to repay the loan. She fails to address, however, his conclusion concerning the permissibility of her proposed use of the loan funds.

25 CFR 101.2(b) lists the purposes for which U.S. Direct Loans may be made. The purpose for which appellant sought a loan does not come within any of these listed purposes. Even if the Area Director erred in his calculations concerning her repayment ability, as appellant contends, appellant cannot prevail here because she has not shown error in the Area Director's threshold conclusion that her proposed use of loan funds was not permitted under the regulations. The burden was on appellant to make such a showing. E.g., Ames v. Acting Billings Area Director, 20 IBIA 246 (1991); Power Fuel Producers, Inc. v. Acting Anadarko Area Director, 20 IBIA 190 (1991).

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

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge