



INTERIOR BOARD OF INDIAN APPEALS

Herb G. Wounded Head II v. Aberdeen Area Director, Bureau of Indian Affairs

22 IBIA 41 (05/01/1992)



United States Department of the Interior

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

HERB G. WOUNDED HEAD II, Appellant	:	Order Vacating Decision and Remanding Case
v.	:	
ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 92-12-A May 1, 1992

This is an appeal from an October 1, 1991, decision of the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for an Indian Business Development Program (IBDP) grant.

On June 26, 1991, appellant applied to the Pine Ridge Agency, BIA, for an IBDP grant in the amount of \$30,200 for the purpose of starting and operating a commercial bakery on the Pine Ridge Reservation. Appellant had earlier applied to the Small Business Administration (SBA) for a loan in the amount of \$83,200, to supply additional funding for the project. The SBA approved appellant's loan application on July 2, 1991, contingent upon, *inter alia*, his receipt of the IBDP grant.

The Acting Superintendent, Pine Ridge Agency, transmitted appellant's grant application to the Area Office on August 21, 1991, recommending approval. On October 1, 1991, the Area Director denied the application, stating:

Your application shows that your payroll will be \$63,091 the first year and \$165,000 the second year. The projected cash flows show that salaries will be \$400 per month or \$4,800 per year, plus \$1,920 for payroll expenses. Your projections need to be addressed to reflect realistic figures to operate this type of business.

Your application failed to provide bid quotes for the construction of the structure to house this operation. Also, of concern to us is that you have no personal experience for operating this type of venture. Your application fails to show how you would gain or who would provide you with the necessary experience for you to own, operate and manage this type of business.

On appeal to the Board, appellant responds to the Area Director's reasons for denial and also states that he is prepared to make whatever changes BIA requires. He states further that the SBA has extended its approval of his loan application pending the outcome of this appeal.

The Area Director's decision was based in part on the lack of information which, as far as the record shows, BIA never requested from appellant. Specifically, there is no indication in the record that BIA ever informed appellant that he should submit construction bids or a management training plan, although the absence of these materials formed part of the basis for denial of the application.

On a number of occasions, the Board has stated that it is improper for BIA to deny an application for financial assistance under the Indian Financing Act based on an applicant's failure to provide information that BIA never requested. E.g., Pourier v. Acting Aberdeen Area Director, 19 IBIA 266 (1991), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's October 1, 1991, is vacated, and this matter is remanded to him for further consideration. On remand, the Area Director should take into consideration the filings made by appellant in this appeal and allow appellant an opportunity to respond to any other problems he sees with appellant's application. 1/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

1/ It appears from statements made by appellant that BIA may not have discussed appellant's application with him at all during the time the application was under consideration. If an application for financial assistance requires clarification, or if additional information is needed, BIA should not deny the application without first seeking answers to its questions from the applicant and giving him/her an opportunity to submit the missing information. One means of doing this would be to issue a preliminary determination, as discussed in Nockey Construction, Inc. v. Portland Area Director, 22 IBIA 38 (1992). Whatever method is chosen, BIA should allow the applicant an opportunity to address BIA's concerns while the application is still pending before BIA, rather than require the applicant to file an appeal in order to get his responses heard.