



INTERIOR BOARD OF INDIAN APPEALS

Akiak Native Community v. Acting Juneau Area Director, Bureau of Indian Affairs

26 IBIA 232 (09/15/1994)



United States Department of the Interior

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

AKIAK NATIVE COMMUNITY, Appellant	:	Order Affirming Decision
	:	
	:	
v.	:	
	:	Docket No. IBIA 94-113-A
ACTING JUNEAU AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	
	:	
	:	September 15, 1994

Appellant Akiak Native Community seeks review of an April 6, 1994, decision issued by the Acting Juneau Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving its application for funding under the FY 1994 Small Tribes grant program. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Pursuant to an announcement published at 58 FR 68696 (Dec. 28, 1993), appellant filed an application for a grant under the Small Tribes program. On April 6, 1994, the Area Director notified appellant that its application was denied. The denial letter stated:

Under the rules established in the grant announcement * * *, an application must be deemed nonresponsive if it fails to include a current authorizing resolution from the tribal council. That an application will be rejected if not accompanied by a resolution was emphasized in the one page "Advice on Application Preparation" included with the announcement mailed to you by the Juneau Area Office.

Appellant appealed this decision in an April 18, 1994, letter to the Area Director. Appellant stated that its records showed it sent a resolution with its proposal, and contended that "[t]he resolution must have gotten lost in the process or on the way there. I am enclosing * * * a copy of the authorizing resolution that had already been sent, but had apparently been lost. We don't have the original resolution so we are sending a copy." In a May 5, 1994, letter, the Area Director notified appellant that the appeal had been forwarded to the Board, and stated:

My disapproval was required because the program announcement expressly required that an authorizing tribal resolution be included with the application for it to be considered responsive. Your appeal letter stated that a resolution had been passed, and you believed it was in fact included with the application. We have since carefully reviewed our files and cannot find that resolution. The file does show, however, that the application was

received at the Bethel Agency on or about the deadline date of February 28th, and that the agency's checklist review determined that no resolution accompanied the application.

Although I can appreciate your frustration that your application was disapproved for a seeming minor deficiency, which apparently was caused inadvertently, this program was highly competitive and the rules do not permit correction of an application deficiency after the application deadline.

Although informed of its right to do so, appellant did not file any additional statements with the Board.

Appellant's appeal is based on its assertions that a tribal resolution accompanied its application and that the resolution must have been lost either by BIA or "on the way" to BIA. The Area Director states that the application did not contain a resolution upon its initial review by the Agency. The administrative record contains the Agency checklist indicating that no resolution was included. Appellant does not explain how the resolution might have been lost "on the way" to the Agency.

As the Board held in Sac and Fox Nation v. Chief, Branch of Judicial Services, 26 IBIA 203 (1994), it is an applicant's responsibility to ensure that its application is complete upon receipt by BIA.

Furthermore, even though the resolution submitted by appellant is dated prior to the application deadline of February 28, 1994, it cannot be considered at this time. The Board has consistently held that, in competitive grant programs, consideration of information presented after the deadline for submission of an application would violate BIA's and the Board's duty to give fair and equitable consideration to all grant applications by giving some applicants two chances to submit an acceptable application. See, e.g., Native Village of Shishmaref v. Acting Juneau Area Director, 26 IBIA 230 (1994); Baltimore American Indian Center v. Eastern Area Director, 26 IBIA 189 (1994), 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 Acting Juneau Area Director's April 6, 1994, decision is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge