



INTERIOR BOARD OF INDIAN APPEALS

Mid-America All-Indian Center, Inc. v. Acting Anadarko Area Director,
Bureau of Indian Affairs

26 IBIA 246 (09/27/1994)



United States Department of the Interior

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

MID-AMERICA ALL-INDIAN
CENTER, INC.,
Appellant
v.
ACTING ANADARKO AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
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: Docket No. IBIA 94-172-A
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: September 27, 1994

Appellant Mid-America All-Indian Center, Inc., seeks review of a July 11, 1994, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to accept and review appellant's application for a FY 1994 Indian Child Welfare Act (ICWA) grant as an off-reservation organization. Appellant's application was filed pursuant to a notice of availability of funds published in the Federal Register. See 59 FR 25542 (May 16, 1994). Appellant filed its notice of appeal and later statement of reasons with the Area Director pursuant to instructions given in the program announcement and the Area Director's decision. The Board of Indian Appeals (Board) received appellant's notice of appeal and the administrative record on August 15, 1994, and appellant's statement of reasons, with accompanying documents, on August 29, 1994. The Area Director did not file a response. For the reasons discussed below, the Board affirms the Area Director's decision.

The Area Director stated that appellant's application failed to meet the mandatory eligibility requirements because it did not include an official request for a grant by resolution of the board of directors, as was required by 25 CFR 23.31(d); and did not contain a request from the board of directors covering the duration of the proposed program as was required by 25 CFR 23.33(b)(1). See also Part III.C(1) of the program announcement.

25 CFR 23.31(d) provides that grants to off-reservation organizations may be made "when officially requested by a resolution of the board of directors of the Indian organization applicant." Part III.C(1) of the program announcement does not contain the same words as the regulation, but does require "an official request" from the board of directors.

Appellant argues that it has been its policy to apply for other grants by submitting a letter from the Secretary of its Board of Trustees stating that the Trustees have approved the Executive Director's application for the grant. The table of contents for appellant's application indicates that page 2 of its application is an official request from the Board of Trustees. Page 2 of the application is an undated letter from the Acting Chairperson of appellant's Board of Trustees to the Anadarko Area Office stating "[t]his letter will serve as authorization from [appellant's] Board of Trustees to

make a grant application.” Included with appellant's statement of reasons was an undated document signed apparently by five of the six members of appellant's Board of Trustees. The document states that the Board of Trustees “approves the resolution approval at the May 25, 1994 meeting.”

The new document submitted on appeal cannot be considered. In reviewing decisions under competitive BIA grant programs, the Board has consistently held that consideration of information presented after the date for filing an application would violate BIA's and the Board's duty to give fair and equitable consideration to all applications, by giving some applicants two opportunities to submit an acceptable application. See Native American Service Agency v. Eastern Area Director, 26 IBIA 186 (1994), and cases cited therein. Therefore, only the Acting Chairperson's letter can be considered in this appeal.

In Baltimore American Indian Center v. Eastern Area Director, 26 IBIA 189 (1994), the Board rejected an argument that the signature of the chairman of that Center's board of directors on the grant application constituted an official request from its board of directors. The Board stated that it was not an abuse of discretion to determine that the regulations and program announcement required a separate official document from the board of directors in order to demonstrate the commitment of the entire board to the program. Appellant has presented no arguments which lead the Board to reconsider this holding, whether the regulations and program announcement are read to require an actual resolution or some lesser form of official request.

The Board finds that the Area Director's decision can be affirmed on the basis of this one reason. Cf. Native American Service Center. It notes, however, that because the application did not contain “an official request” for the grant from appellant's Board of Trustees, it also did not contain “an official request * * * covering the duration of the proposed program” as was required by 25 CFR 23.33(b)(1) and Part III.C(l) of the announcement. 1/

1/ The Area Director's decision also noted that appellant's application indicated it intended to subgrant ICWA funds to the Kansas Mental Health Center. The Area Director stated that although tribal governments were permitted to subgrant ICWA funds, there were no provisions for subgrants by an off-reservation organization.

The Board does not address this aspect of the Area Director's decision. Although the letter from appellant's Acting Chairperson, discussed in text, supra, states that the application is being made “with the Mental Health Association of South Central Kansas,” the exact nature of the relationship between the two organizations is not clear without at least a close reading of the application. Because the Board has held that appellant did not meet the mandatory eligibility requirements, it will not review the application further in order to address an issue that will have no effect on the ultimate result.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Anadarko Area Director's July 11, 1994, decision is affirmed. 2/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

2/ On Sept. 26, 1994, as this decision was being prepared for signature, the Board received a brief from the Area Director. The Board's Sept. 6, 1994, notice of docketing and order concerning briefing provided that the Area Director could file a brief within "30 days from his receipt of appellant's statement of reasons." As noted above, the statement of reasons was filed initially with the Area Director, who forwarded the document to the Board. The original statement of reasons shows receipt by the Area Director on Aug. 15, 1994. This date of receipt was confirmed in the Area Director's letter transmitting the statement to the Board. Accordingly, the Area Director's brief should have been postmarked on or before Sept. 14, 1994. It was postmarked Sept. 21, 1994. Because the Area Director's brief was not timely filed, it was not considered in reaching this decision.