



INTERIOR BOARD OF INDIAN APPEALS

Carl D. Moses v. Portland Area Director, Bureau of Indian Affairs

27 IBIA 279 (04/05/1995)



United States Department of the Interior

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

CARL D. MOSES,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-96-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	April 5, 1995

This is an appeal from a February 22, 1994, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for an Indian Business Development grant in the amount of \$6,250. Appellant sought the grant in order to make partial payment for a pickup truck, purchase tools and equipment, and pay operating costs for a new construction company.

The Area Director's decision stated that his reasons for denying appellant's application were: "1. There is not a firm commitment letter. 2. Amount of grant request does not meet policy. 3. No three year projections * * *. 4. The loan for the truck appears to be after the fact."

After the Board received the administrative record in this matter, it issued an order of limited remand. It noted that appellant apparently had not been given an opportunity to address BIA's concerns with his application, particularly with respect to the information stated to be missing. ^{1/} The Board made the remand in accordance with its common practice in Indian Financing Act cases, in which it seeks "to ensure that BIA's decisions * * * are based upon consideration of all relevant information, while keeping the adversarial nature of the proceedings to a minimum." Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, 22 IBIA 153, 157 (1992). In this case, the Board also observed that the Area Director's second reason for denial was inadequate because it failed to state why the amount of appellant's grant request did not meet policy or, more properly put, why it did not meet the regulatory requirements for Indian Business Development grants. The Board ordered the Area Director to consider the contentions made by appellant in his notice of appeal and issue a new decision.

^{1/} Appellant filed a response to the Board's order, stating that the information the Area Director indicated was missing from his application was in fact not missing.

The Area Director issued a new decision on May 13, 1994, again denying appellant's application. The Board received the decision on July 25, 1994. It issued a notice of docketing on July 26, 1994, informing appellant of his briefing privileges and of the fact that he bore the burden of proving error in the Area Director's decision. Appellant did not file a brief.

In appeals arising under 25 CFR Part 2, an appellant bears the burden of showing error in the BIA decision appealed from. E.g., S & H Concrete Construction, Inc. v. Acting Phoenix Area Director, 20 IBIA 176 (1991). In this case, appellant failed to file a brief or any other document challenging the Area Director's second decision. Accordingly, he has failed to carry his burden of proof.

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 February 22 and May 13, 1994, decisions are affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge