



INTERIOR BOARD OF INDIAN APPEALS

Dona J. Lente-Dawson v. Albuquerque Area Director, Bureau of Indian Affairs

27 IBIA 289 (04/07/1995)



United States Department of the Interior

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

DONA J. LENTE-DAWSON, : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 94-162-A
ALBUQUERQUE AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : April 7, 1995

This is an appeal from a February 28, 1994, decision issued by the Albuquerque Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for an Indian Business Development grant in the amount of \$125,000. Appellant filed her notice of appeal and a statement of reasons with the Area Director, who transmitted them to the Board. Although the Board did not receive these documents until July 21, 1994, it accepted appellant's appeal as timely because of incorrect appeal instructions provided in the Area Director's decision. See 25 CFR 2.7.

The appeal was docketed on August 12, 1994. Appellant was given an opportunity to make further arguments in a brief before the Board. She did not do so. The Area Director, however, filed a brief.

The Area Director's decision stated:

We have reviewed your Indian Business Development Program (IBDP) Grant request of \$125,000 to construct a roller skating rink and Shoot-A-Round entertainment center in Alamogordo, New Mexico. The application does not meet our grant program's minimum requirements; therefore, we are denying your request based on the following information.

Title 25 of the Code of Federal Regulations (CFR), Part 286, Section 7, states: "To be eligible for a grant an economic enterprise must be located on an Indian reservation or located where it makes or will make an economic contribution to a nearby reservation by providing employment to tribal members residing thereon or by expending a portion of its income for material or services on the reservation."

Your application does not satisfy this requirement. The proposed business location is Alamogordo which is off the nearest reservation, the Mescalero Apache Reservation. Our review of the Business Plan indicates no economic contribution to that reservation or any employment opportunities to tribal members residing on that reservation.

The application's financial data section indicates the Bank of Alamogordo will finance 75 percent, \$500,000 of the total project cost which will be matched with our grant of \$125,000. The application does not contain the required bank commitment letter which states their willingness to finance this project. Also the requested \$125,000 exceeds the \$100,000 maximum grant amount for individuals. These two items do not comply with 25 CFR Part 286, Section 17 (b) and (c).

Under 25 CFR, Part 286, Section 3, an eligible applicant must actively participate in the management and operation of the economic enterprise as well as control management decisions. It appears you will be responsible for bookkeeping, and ordering equipment and supplies on a part-time or voluntary basis and Mr. Dawson [appellant's husband] will provide the day-to-day management decisions.

(Feb. 28, 1995, Decision at 1-2).

In her statement of reasons, dated April 29, 1994, appellant indicated that she would reduce the amount of her grant request to \$100,000. She stated that she had made an appointment with the First National Bank of Alamogordo to discuss the preparation of a commitment letter. With respect to management of the proposed business, appellant stated that the business would be a partnership between her and her husband and would be jointly managed. With respect to economic impact on an Indian reservation, she attached a letter from the President of the Mescalero Apache Tribe, stating that the Tribe supported and encouraged Indian businesses to locate on the reservation or in nearby communities. The President's letter also stated that the Tribe "would endorse the Dawsons' business venture as a means of providing employment opportunities to tribal members residing in Alamogordo."

Although the Board normally does not consider information that was not before the Area Director when he issued his decision, it makes an exception in appeals filed under the various Indian Financing Act programs. "This deviation from usual procedure is intended to ensure that BIA's decisions in this area 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). As indicated in that decision, the procedure is intended to encourage BIA to offer loan and grant applicants "an opportunity to address BIA's concerns while the matter is still pending before BIA, rather than require the applicant to file an appeal to get [her] responses heard." 22 IBIA at 158.

Pursuant to this special procedure, the Board now considers the new information supplied by appellant in her statement of reasons. First, appellant has reduced her grant request to \$100,000, in order to comply with the regulatory limitations in 25 CFR 286.17(c). Thus, appellant has eliminated one of the reasons for denial of her grant application.

Second, appellant indicated that she had made an appointment with her lending bank to discuss a letter of commitment. By letter of May 27, 1994, she requested an extension of time for submitting the commitment letter to BIA because the bank had requested more information. Although she indicated that she would be returning to the bank during the week of May 27, 1994, with the requested information, she has supplied no further information to the Board concerning her bank financing. Therefore, the Board must assume that appellant did not obtain a commitment letter from the bank.

25 CFR 286.17(b) provides: "A grant may be made only to an applicant who is able to obtain at least 75 percent of the necessary financing from other sources." Because she has not furnished proof that she is able to obtain the required 75 percent financing, appellant has failed to show error in the Area Director's decision. The Area Director's decision might well be affirmed on this basis alone.

The Board notes, however, that appellant has also failed to show that her business "will make an economic contribution to a nearby reservation by providing employment to tribal members residing thereon or by expending a portion of its income for materials or services on the reservation," as required by 25 CFR 286.7. The tribal President's letter states only that appellant's business would provide employment opportunities to tribal members living in Alamogordo. The letter does not indicate that the business would provide employment to tribal members living on the Mescalero Apache Reservation.

Further, appellant has failed to show that she would have control over management decisions in the proposed business. 25 CFR 286.3 requires that, in order to qualify for an Indian Business Development grant, a business must be at least 51 percent Indian owned. It also requires that the Indian owners participate in management in such a way that "the Indian owner(s) [will] control management decisions." Appellant's statements indicate that, at most, she will share equally in management decisions with her non-Indian husband.

In appeals arising under 25 CFR Part 2, an appellant bears the burden of showing error in the BIA decision appealed from. E.g., Moses v. Portland Area Director, 27 IBIA 279 (1995). Appellant has failed to carry her burden of proof in this case.

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 28, 1994, decision is affirmed.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge