



INTERIOR BOARD OF INDIAN APPEALS

Michael Shotpouch v. Acting Eastern Oklahoma Regional Director,
Bureau of Indian Affairs

38 IBIA 217 (11/18/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

MICHAEL SHOTPOUCH,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 02-94-A
ACTING EASTERN OKLAHOMA	:	
REGIONAL DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	November 18, 2002

Appellant Michael Shotpouch seeks review of a March 6, 2002, decision of the Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA), denying a request to approve a Deed to Restricted Indian Lands for a tract of land in Jay, Oklahoma (the Jay property). 1/ For the reasons discussed below, the Board affirms the Regional Director’s decision.

Appellant was the presumptive owner of a 1/36 restricted interest in the Byrd Shotpouch allotment, an 18.95-acre allotment in Delaware County, Oklahoma. 2/ On September 12, 2001, he conveyed his interest to his sister Deanna Gail Shotpouch by quitclaim deed. The deed and the purchase price of \$2000 were approved on October 2, 2001, by the Oklahoma District Court for Delaware County. Order Approving Deed, No. PB-2001-107 (Ok. Dist. Ct., Delaware County, Oct. 2, 2001).

On October 10, 2001, Appellant contracted to purchase the Jay property for \$2000. On October 16, 2001, he completed an Application for Restricted Form Deed of Indian

1/ The property is described in the deed as: “Lots 1, 2, 3, 4, & 5 of Block 1, Brown Addition to the Town of Jay, Oklahoma, according the official record plat thereof. LESS AND EXCEPT [a 140 square-foot portion of Lot 1].”

2/ As of the date of the Regional Director’s decision, the estate of Byrd Shotpouch had not been probated.

Land, in which he sought restricted status for that property under 25 U.S.C. § 409a. ^{3/} In a document accompanying his application, he stated that he planned to use the property for a smoke shop.

Appellant's application was reviewed by the Cherokee Nation, which performs BIA realty functions under its Self-Governance Compact. On January 8, 2002, the Nation's Natural Resources Director wrote to the Regional Director, recommending approval of Appellant's application. On February 1, 2002, the Nation's Director of Government Resources wrote to the Regional Director, stating that his letter was intended to clarify the January 8, 2002, letter. The February 1, 2002, letter stated, in essence, that the Nation believed the granting of restricted status for the purpose described by Appellant was contrary to the policy of 25 U.S.C. § 409a and BIA's trust acquisition regulations in 25 C.F.R. Part 151.

In his March 6, 2002, decision, the Regional Director analyzed Appellant's request under the trust acquisition criteria in 25 C.F.R. § 151.10, noting that the Board had earlier approved his use of these criteria in evaluating applications for restricted fee status. See Keil v. Muskogee Area Director, 21 IBIA 126 (1991). ^{4/} Based upon his analysis, the Regional Director denied Appellant's application.

On appeal to the Board, Appellant contends that the Regional Director's decision is contrary to Federal law and policy, as expressed in the Indian Reorganization Act (IRA), the Oklahoma Indian Welfare Act (OIWA), and the Indian Self-Determination Act (ISDA). He argues that granting restricted fee status to the Jay property would further the policy of these statutes because it would promote economic development. He also argues that several trust

^{3/} 25 U.S.C. § 409a provides:

“Whenever any nontaxable land of a restricted Indian of the Five Civilized Tribes or of any other Indian tribe is sold to any State, county, or municipality for public-improvement purposes, or is acquired, under existing law, by any State, county, or municipality by condemnation or other proceedings for such public purposes, or is sold under existing law to any other person or corporation for other purposes, the money received for said land may, in the discretion and with the approval of the Secretary of the Interior, be reinvested in other lands selected by said Indian, and such land so selected and purchased shall be restricted as to alienation, lease, or incumbrance, and nontaxable in the same quantity and upon the same terms and conditions as the nontaxable lands from which the reinvested funds were derived, and such restrictions shall appear in the conveyance.”

^{4/} The Eastern Oklahoma Regional Director was formerly known as the Muskogee Area Director.

acquisitions for economic development purposes have been approved for the Chickasaw Nation and others, and suggests that his application for restricted status has been treated differently. ^{5/}

One of the three statutes cited by Appellant—i.e., the ISDA—authorizes trust acquisitions only for tribes. See 25 U.S.C. § 450h(a)(3). Although the IRA and the OIWA authorize the acquisition of land in trust for individual Indians as well as tribes, 25 U.S.C. §§ 465, 501, both make trust acquisition discretionary with the Secretary of the Interior. ^{6/} The granting of restricted fee status under 25 U.S.C. § 409a is likewise discretionary with the Secretary. The regulations in 25 C.F.R. Part 151 implement all of these statutory authorities and state the policy under which BIA’s discretionary trust acquisition decisions are to be made.

As the Regional Director noted, the regulations do not specifically identify “economic development” as a purpose for which trust acquisitions may be made for individual Indians. By contrast, 25 C.F.R. § 151.3(a)(3) specifically authorizes trust acquisitions for tribes for economic development purposes. In other respects as well, the regulations set out a broader acquisition authority for tribes than they do for individuals. (Compare 25 C.F.R. § 151.3(a) with 25 C.F.R. § 151.3(b)). Further, the regulations make acquisitions for individuals subject to an additional criterion, not applicable to acquisitions for tribes. With respect to individual applicants, BIA is required to consider “the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs.” 25 C.F.R. § 151.10(d).

^{5/} Appellant’s arguments also suggest that he believes he has a right to have his application approved in light of BIA decisions on other applications. The Board has previously rejected such arguments, noting that there is no “right” to have an application for trust or restricted status approved and that each application must stand on its own merits. Ross v. Acting Muskogee Area Director, 21 IBIA 251, 252 (1992); Eades v. Muskogee Area Director, 17 IBIA 198, 202 (1989).

^{6/} 25 U.S.C. § 465 provides:

“The Secretary of the Interior is hereby authorized, in his discretion, to acquire * * * any interest in lands * * * for the purpose of providing land for Indians.

* * * * *

“Title to any lands or rights acquired pursuant to [the IRA] shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired * * *.”

25 U.S.C. § 501 provides:

“The Secretary of the Interior is hereby authorized, in his discretion, to acquire * * * any interest in [certain agricultural and grazing lands]. * * * Title to all lands so acquired shall be taken in the name of the United States, in trust for the tribe, band, group, or individual Indian for whose benefit such land is so acquired * * *.”

In the exercise of its discretionary authority, BIA has chosen to distinguish between trust acquisitions for tribes and trust acquisitions for individuals. It is well within BIA's authority to make such a distinction. As was observed by the Regional Director, and as is particularly apparent from 25 C.F.R. § 151.10(d), BIA has chosen to view trust acquisitions for individuals as protective of those individuals (thus making the individuals' need for protection a relevant factor). The individuals most in need of protection would normally be the least likely to be able to engage in effective economic development. Thus, economic development by individuals, even if not a purpose precluded by the regulations, cannot be construed as a favored purpose. In any event, there is no requirement in the regulations that BIA look with favor upon an individual Indian's trust acquisition or restricted fee application because the applicant intends to use the property for business purposes.

Appellant expresses disagreement with the Regional Director's analysis under the criteria in 25 C.F.R. § 151.10. However, he does not show that the Regional Director committed any legal error. Nor does he show that the Regional Director improperly exercised his discretion. Accordingly, he has not carried his burden of proof. See, e.g., Iowa v. Great Plains Regional Director, 38 IBIA 42, 45 (2002).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's December 29, 1992, decision is affirmed. 7/

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

7/ All pending requests are denied. All arguments not discussed in this decision have been considered and rejected.