



INTERIOR BOARD OF INDIAN APPEALS

Walter Rosales, et al. v. Pacific Regional Director, Bureau of Indian Affairs

39 IBIA 12 (03/04/2003)

Denying reconsideration of:

34 IBIA 125

Judicial review of this case:

Affirmed, *Rosales v. United States*, 477 F. Supp. 2d 119 (D.D.C. 2007)

Affirmed, No. 07-5140 (D.C. Cir. Mar. 27, 2008)

Related Board cases:

32 IBIA 158

34 IBIA 50



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

WALTER ROSALES, ET AL.,	:	Order Denying Petition for Reconsi-
Appellants	:	deration of Docket No. IBIA 99-4-A;
	:	Dismissing Docket No. IBIA 00-28-A
	:	as Moot; and Affirming Decision in
v.	:	Docket No. IBIA 02-47-A
	:	
	:	Docket Nos. IBIA 99-4-A
	:	IBIA 00-28-A
PACIFIC REGIONAL DIRECTOR,	:	IBIA 02-47-A
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 4, 2003

Appellants Walter Rosales, et al., seek review of decisions issued by the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), in regard to three tribal elections for the Jamul Indian Village (Village). ^{1/} For the reasons discussed below, the Board of Indian Appeals (Board) denies a petition for reconsideration in one appeal, dismisses a second appeal as moot, and affirms the Regional Director's decision in the third appeal.

The Village was organized in 1981 as a community of half-bloods under the Indian Reorganization Act, 25 U.S.C. §§ 461, et seq. (IRA). The nature of its organization and the resulting membership questions have led to on-going disputes over tribal elections and tribal

^{1/} Appellants in Docket No. IBIA 99-4-A are Walter Rosales, Jane Dumas, Joe Comacho, Karen Toggery, Marie Toggery, Leslie A. Mesa, Gerald Mesa, Robert M. Mesa, William Mesa, and Vivian Flores. This appeal seeks review of the Village's 1997 tribal election. According to information in Rosales v. Pacific Regional Director, 37 IBIA 233 (2002), Marie Toggery has died since the filing of this appeal.

Appellants in Docket No. IBIA 00-28-A are Walter Rosales, Jane Dumas, Joe Comacho, Karen Toggery, Marie Toggery, Gerald Mesa, and Robert M. Mesa. This appeal seeks review of the Village's 1999 tribal election.

Appellants in Docket No. IBIA 02-47-A are Walter Rosales and Karen Toggery. This appeal seeks review of the Village's 2001 tribal election.

leadership. The background of these disputes was discussed in detail in Rosales v. Sacramento Area Director, 32 IBIA 158 (1998) (Rosales I), and will not be repeated here. ^{2/}

In Rosales I, the Board addressed disputes arising from a 1994 recall election and the 1995 tribal election. The Board found that the tribal election disputes were rooted in a larger and more fundamental dispute over tribal membership. Although the Board and BIA are not normally part of the process for determining tribal membership, the Board found that, because the Village was organized as a community of half-bloods, BIA was responsible for making the initial determination of who was eligible to vote in the IRA election based on who possessed the requisite 1/2 degree blood quantum. It further found that there were problems with this initial determination because there was no evidence that BIA had actually successfully verified the blood quantum reported. Despite this, BIA determined that there were 23 individuals with the requisite blood quantum and allowed them to vote in the IRA election which organized the Village.

The Board stated in Rosales I:

A determination of who is a tribal member must * * * precede any determination of who is a tribal leader. Without knowing who is a tribal member, neither the Village nor the Department [of the Interior] is in a position to know whether a tribal election was conducted in accordance with the constitution; i.e., whether only tribal members voted in that election (Art. V, sec. 3) and whether only tribal members were elected to office (Art. V, sec. 4).

32 IBIA at 166.

The Board concluded that the only way for there to be a lasting resolution of the issues raised in this series of appeals was to resolve the underlying membership questions. To that end, it requested that the Regional Director assist the Village's known members in addressing their membership and leadership problems in light of the decision in Rosales I.

In Rosales v. Sacramento Area Director, 34 IBIA 50 (1999) (Rosales II), the Board dismissed a challenge to a 1996 Secretarial election held to amend the Village's constitution. Although the same membership and leadership questions were raised in that appeal, the Board dismissed the appeal after finding "that there was no valid challenge to the Secretarial election under 25 C.F.R. § 81.22." 34 IBIA at 54.

^{2/} The Sacramento Area Director is now called the Pacific Regional Director. The Board uses the title Regional Director in this decision.

In Rosales v. Sacramento Area Director, 34 IBIA 125 (1999) (Rosales III), the Board noted that it had consistently held that a subsequent valid tribal election moots issues relating to earlier elections. See, e.g., Hamilton v. Acting Sacramento Area Director, 29 IBIA 122, 123 (1996). Finding that the Village's 1999 tribal election had not been contested, the Board dismissed as moot a challenge to the 1997 tribal election.

Rosales III was Docket No. IBIA 99-4-A. After the Board's dismissal of their appeal, Appellants petitioned for reconsideration. They alleged that they had, in fact, challenged the 1999 election, and provided evidence of that challenge. The Board took the petition for reconsideration under advisement.

Appellants subsequently appealed from the Regional Director's decisions recognizing the results of the Village's 1999 and 2001 tribal elections. As noted above, these appeals are Docket Nos. IBIA 00-28-A (1999 election) and IBIA 02-47-A (2001 election).

In accordance with its precedent that a subsequent valid tribal election moots disputes concerning earlier elections, the Board first addresses Docket No. IBIA 02-47-A. If the 2001 tribal election is found to be valid, the challenges to the earlier elections will be rendered moot.

Appellants' major argument is that the Regional Director failed to take any action in regard to the Board's discussion of the Village's membership issues in Rosales I. So that it could determine if this allegation was correct, the Board requested a report from the Regional Director on the status of his actions in regard to assisting the Village to resolve the membership dispute. The Board received the Regional Director's response on September 16, 2002. 3/

In his status report, the Regional Director states that he believes the Village's membership issues were resolved in the Jamul Indian Village Genealogical Study prepared by Dr. Michael G. Baksh, Ph.D. This report, which was funded by BIA, had been underway when Rosales I was before the Board. The report was submitted to the Regional Director in May 1998, approximately one month after the Board's decision in Rosales I. The study completed an exhaustive review of the blood quantum of the Village's original 23 members, finding that 1 of those individuals had a 1/2 degree blood quantum, 4 had a 3/4 degree blood quantum, and the remaining 18 had a 4/4 degree blood quantum. The study also provided genealogical tables showing the blood quantum of the descendants of the original 23 members. The Regional Director formally accepted this report on September 30, 1998.

3/ After beginning consideration of these appeals, the Board discovered that it appeared that the Regional Director had not served a copy of his status report on Appellants. Therefore, it sent a copy to Appellants and gave them an opportunity to respond. The Board has received and considered a response from Appellants.

The Regional Director continued his status report by indicating that only persons who were among the original 23 members of the Village voted in the 1996 Secretarial election that lowered the blood quantum requirement for membership in the Village to 1/4 degree. This is the Secretarial election that was at issue in Rosales II.

Appellants contend that the Regional Director has disregarded the Board's decision in Rosales I, by failing to meet with "the true majority of the actual members of the JAMUL tribe to address their membership and leadership problems." Appellants' Dec. 31, 2001, Statement of Reasons in Docket No. IBIA 02-47-A. This contention is based on Appellants' continued argument that the blood quantum for membership in the Village cannot be lowered to less than 1/2 degree, and therefore only persons with 1/2 or more blood quantum can be "actual members" of the Village.

The Board rejected this contention in Rosales I. The contention is based on a policy, previously espoused by at least some Departmental officials, that there was a distinction between "historic" and "created" tribes. As discussed in Rosales I, 32 IBIA at 163-66, this policy was soundly rejected by Congress in 1994 when it amended the IRA by adding sections (f) and (g) to 25 U.S.C. § 476. The Village has the right to determine its own membership criteria, including, if it wishes, lowering the blood quantum for tribal membership.

The Board addresses that part of Appellants' argument in which they contend that the Regional Director has not taken action to address the membership issue. The initial problem with the Village's membership resulted from BIA's apparent failure to verify fully the blood quantum of the 23 individuals who were allowed to organize the Village. That failure was addressed in the Baksh genealogical study. The Board rejects Appellants' contention that the Regional Director has not taken action in response to its decision in Rosales I.

Appellants base most of their remaining arguments on their contention that the 1996 Secretarial election was invalid. This contention was made in Rosales II. The fact that Rosales II was decided on procedural, rather than substantive, grounds does not enable Appellants to continue to assert their substantive arguments against the election. The results of the Secretarial election became final for the Department of the Interior with the issuance of the Board's July 29, 1999, decision in Rosales II. Under these circumstances, Appellants' objections to the Secretarial election will not be entertained.

The bottom line in these appeals is that Appellants failed successfully to challenge the 1996 Secretarial election, and the Village's Constitution was amended to allow membership with a 1/4-degree blood quantum. The 2001 tribal election was held after the Constitutional amendment. Appellants have failed to show that the 2001 election was not conducted in accordance with the Constitution's lowered blood quantum requirement. Because of this failure, Appellants have not carried their burden of proving that the Regional Director committed any reversible error in his decision concerning the 2001 tribal election.

Based on the finding that the 2001 tribal election has not been successfully challenged, and is therefore considered valid, the Board finds that the challenges to the 1997 and 1999 tribal elections are moot. 4/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Appellants' petition for reconsideration of Docket No. IBIA 99-4-A is denied; their appeal in Docket No. IBIA 00-28-A is dismissed as moot; and the Regional Director's decision in Docket No. IBIA 02-47-A is affirmed. 5/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Kathleen R. Supernaw
Acting Administrative Judge

4/ Other arguments not specifically addressed were considered and found to be repetitious of arguments addressed in earlier Board decisions regarding the Village's election and leadership disputes.

5/ Appellants continue to assert that a majority of the Village's original members did not participate in tribal elections, including the 1996 Secretarial election. Even assuming that this assertion is correct, it does not make the elections illegal. The Village's original members have the right to choose either to participate or not to participate in tribal elections.

Appellants' continued refusal to participate in the Village's tribal government by, for example, declining to register to vote and holding separate elections, only allows those individuals Appellants oppose the opportunity to run the tribal government as they choose. Appellants might wish to consider bringing their voices to the tribal council by registering to vote and by participating in the tribal government. BIA has done its part here by providing the information necessary for a determination of the blood quantum of the Village's original 23 members and, consequently, of their descendants. It would appear to now be time for all of the Village's members to help the Village move forward.