



## INTERIOR BOARD OF INDIAN APPEALS

Tsiokawe, Kakwerias, Kanietakeron, and Tehaiento'tha' v. Eastern Regional Director,  
Bureau of Indian Affairs

46 IBIA 326 (03/27/2008)



# 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

TSIOKAWE, KAKWERIAS,	)	Order Dismissing Appeal
KANIETAKERON, and	)	
TEHAIENTO'THA',	)	
Appellants,	)	
	)	
v.	)	Docket No. IBIA 08-31-A
	)	
EASTERN REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	March 27, 2008

Appellants Tsiokawe, Kakwerias, Kanietakeron, and Tehaiento'tha<sup>1</sup> seek review from the Board of Indian Appeals (Board) of an October 31, 2007, decision of the Eastern Regional Director, Bureau of Indian Affairs (Regional Director; BIA), in which the Regional Director recognized the Three Chief Government, and not the Constitutional Government, as the governing body of the St. Regis Mohawk Tribe (Tribe). Appellants further ask that the Board declare both the Three Chief Government and the Constitutional Government defunct. Following briefing on the issue of Appellants' standing to bring this appeal, we conclude that Appellants lack standing and therefore we dismiss.

## Background

The governance of the Tribe has been the subject of dispute since 1995. *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 143 (D.D.C. 1999); *see also Tarbell v. Dep't. of the Interior*, 307 F. Supp. 2d 409 (N.D.N.Y. 2004) (*Tarbell I*). At that time, a group of tribal members apparently sought to alter the centuries-old "three chief" form of tribal government in favor of a constitution-based form of government. *Tarbell I*, 307 F. Supp. 2d. at 411. Various tribal referenda held to determine whether the Tribe should or did adopt the constitutional government have been hotly contested. *Id.* at 411-13. The relevance of this dispute for the United States is that the Federal government must determine which tribal government is

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<sup>1</sup> Appellants also are known as Lyle David Pierce III (Tsiokawe), Dana Leigh Thompson (Kakwerias), Larry V. Thompson (Kanietakeron), and Melvin J. White (Tehaiento'tha').

the legitimate tribal governing body for purposes of conducting government-to-government business. See *Rhatigan v. Muskogee Area Director*, 21 IBIA 258, 259, 261-62 (1992).

The most recent development in this ongoing dispute is the Regional Director's decision of October 31, 2007, to recognize the Three Chief Government. This decision issued after the Regional Director's previous decision, rendered April 24, 2000, was vacated by the district court in *Tarbell I*. In his April 24 decision, the Regional Director had affirmed an earlier decision by BIA's New York Field Representative to recognize the Three Chief Government. In remanding the matter to BIA, the district court found that BIA had erred by not "undertaking a detailed factual inquiry, with input from both sides, [to] determin[e] the issue of [t]ribal leadership." 307 F. Supp. 2d at 429.

Appellants appealed to the Board from the Regional Director's October 31 decision. Appellants averred in their notice of appeal that only one of them, Appellant Tehaiento'tha', currently is a tribal member; the remaining three Appellants averred that they renounced their tribal membership over ten years ago. Notice of Appeal at 2 & nn.2-4. Nothing in the appeal suggested that any of the Appellants had standing to appeal from the Regional Director's decision, for which reason the Board issued an order to show cause why the appeal should not be dismissed for lack of standing.

Appellants and the Regional Director both have responded to the order to show cause as have the appellants in a separate appeal from the same decision, *Tarbell v. Eastern Regional Director*, IBIA No. 08-29-A (*Tarbell II*), which presently is pending before the Board.<sup>2</sup> Appellants Tsiokawe, Kakwerias, and Kanietakeron concede that they lack standing and seek to appear as amici curiae. Appellants' Brief at 6. As to Appellant Tehaiento'tha', Appellants argue that "he has standing as there is no valid governmental body to represent his interests or rights." *Id.* at 2. According to Appellants, neither the Three Chief Government nor the Constitutional Government are valid governments under tribal law, for which reason an individual tribal member such as Appellant Tehaiento'tha' has standing to pursue an appeal of the Regional Director's decision.

The Regional Director contends that all four Appellants lack standing, three because they lack membership in the Tribe and the fourth because he has not articulated a legally protected interest in the subject matter of the appeal. The *Tarbell II* appellants advise the Board that Appellant Tehaiento'tha' was a member of the Tribe's election board in 1996

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<sup>2</sup> Collectively, the *Tarbell II* appellants claim to be officials of the Constitutional Government that the Regional Director determined in his October 31 decision was not entitled to recognition.

and part of a group of individuals responsible for petitioning for the second referendum on the Tribe's form of government. The *Tarbell II* appellants appear to suggest that Appellant Tehaiento'tha' lacks standing because his appeal is rooted in the outcome of the second referendum in 1996 from which he failed to appeal to the tribal court. They argue that he should not, therefore, be able to resurrect his claims before the Board.

### Discussion

We conclude that none of the Appellants — Tsiokawe, Kakwerias, Kanietakeron, and Tehaiento'tha' — have standing to pursue this appeal. Appellants Tsiokawe, Kakwerias, and Kanietakeron are former members of the Tribe who concede that they lack standing. Appellant Tehaiento'tha' is a tribal member but he, too, lacks standing. Although he may well be affected in a generalized way, along with other tribal members, by the Regional Director's decision to recognize the Three Chief Government, that does not make him an interested party for purposes of appealing the October 31 decision. Nor does his claim that the Tribe lacks *any* governing body cloak him with standing. We turn to a brief discussion of these claims.

As the Board explained in its Order to Show Cause, the Board has a well-established practice of adhering to jurisdictional constraints, such as standing, as a matter of prudence in the interest of administrative economy. See *Peltier v. Great Plains Regional Director*, 46 IBIA 16, 20 n.6 (2007); *LeCompte v. Acting Great Plains Regional Director*, 45 IBIA 135, 146 (2007). To evaluate standing, the Board follows the three elements of standing described in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992): An appellant must show that (1) an actual or imminent, concrete and particularized injury to or invasion of a legally-protected interest has occurred; (2) the injury is fairly traceable to the challenged action; and (3) the injury is redressable by a favorable decision. The Board consistently has found that — apart from candidates for tribal office — individual tribal members lack standing to appeal from BIA's decisions to recognize tribal governing bodies. *Bullcreek v. Western Regional Director*, 40 IBIA 191, 194 (2005); *Displaced Elem Lineage Emancipated Members Alliance v. Sacramento Area Director*, 34 IBIA 74, 77 (1999); *Frease v. Sacramento Area Director*, 17 IBIA 250, 256 (1989).<sup>3</sup>

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<sup>3</sup> We note, too, that in its remand order, the district court in *Tarbell I* instructed BIA to “undertak[e] a detailed factual inquiry, with input from *both* sides.” 307 F. Supp. 2d at 429 (emphasis added). The court did not suggest that tribal members, as individuals, had standing to participate in the proceedings before BIA to determine which tribal government to recognize.

Appellants Tsiokawe, Kakwerias, and Kanietakeron renounced their membership in the Tribe more than ten years ago. They have identified no legally protectable interest of theirs that allegedly was injured by the Regional Director's decision regarding the governance of the Tribe. See *Displaced Elem Lineage Emancipated Members Alliance*, 34 IBIA at 77 (former members lack standing to assert claims regarding internal tribal matters). We need not say more concerning standing for these three appellants, especially since they concede that they lack standing.<sup>4</sup>

Appellant Tehaiento'tha' remains a tribal member. As to his standing, Appellants claim that "there is no valid governmental body to represent [the] interests or rights [of Appellant Tehaiento'tha']," Appellants' Brief at 2, and that any recognition by BIA of any form of government for the Tribe "will strip [Appellant Tehaiento'tha' of his] rights as a member of the [T]ribe to, *inter alia*, make fundamental political decisions," *id.* at 5. Appellant Tehaiento'tha' thus states a generalized grievance. At issue in this appeal, however, is which of two competing groups of governmental officials the Department of the Interior (Department) should recognize for the purpose of conducting government-to-government relations. The Board has never recognized any legally-protected interest that resides in individual tribal members to sever the government-to-government relationship by having the Department recognize *no* tribal government. See *Bullcreek*, 40 IBIA at 194.<sup>5</sup> And individual tribal members certainly do not have any direct "governmental" relationship with the United States that can be "injured" by the Federal government's recognition of a particular tribal government. Appellants' claim is, in substance, indistinguishable from other claims for which the Board has rejected individual standing: An individual tribal member does not have standing to assert a claim based on his or her "personal assessment of what is or what is not in the best interests of the tribe." *Id.*

Finally, Appellants' reliance on *Harjo v. Kleppe*, 420 F. Supp. 1110 (D.D.C. 1976), *aff'd sub. nom, Harjo v. Andrus*, 581 F.2d 949 (D.C. Cir. 1978), to support standing for Appellant Tehaiento'tha' is misplaced. Standing was not an issue in *Harjo*. In *Harjo*, BIA recognized the Principal Chief as the governing authority of the Creek Nation and disbursed Federal funds to him to be used for various tribal purposes. The plaintiffs in

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<sup>4</sup> The three nonmember Appellants seek to participate as amici curiae on behalf of Appellant Tehaiento'tha'. However, because we conclude that he, too, lacks standing, the request to participate as amici is moot.

<sup>5</sup> Appellant Tehaiento'tha' does not claim to be an official of the Constitutional Government or other tribal officeholder who might be directly affected by the Regional Director's decision.

*Harjo* were four electors to the Creek National Council who represented various tribal towns within the Nation. Their contention was that the Principal Chief was spending, with BIA's knowledge and approval, tribal funds received from BIA when tribal law only authorized the National Council to expend tribal funds. As framed by the district court, the issue before it was "whether the Secretary [of the Interior] has acted lawfully in refusing to permit the Creek National Council to participate in the determination of the uses to which tribal funds [including Federal funds] will be put and other tribal matters." 420 F. Supp. at 1117; *see also id.* at 1118 (same). As members of the National Council, the plaintiffs in *Harjo* had standing to bring suit on their claims. In contrast, Appellant Tehaieto'tha' does not claim to be a member of either the Three Chief Government or the Constitutional Government.

We conclude that none of the arguments advanced by Appellants entitle them to standing to pursue their appeal of the Regional Director's October 31, 2007, decision to recognize the Three Chief Government.

### Conclusion

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 Board dismisses Appellants' appeal of the Regional Director's October 31, 2007, decision for lack of standing.<sup>6</sup>

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>6</sup> Nothing in this decision affects the pending challenge in *Tarbell II* to the Regional Director's October 31, 2007, decision.