



INTERIOR BOARD OF INDIAN APPEALS

Choctaw Nation of Florida v. Eastern Regional Director, Bureau of Indian Affairs, et al.

48 IBIA 273 (02/11/2009)

Related Board case:
50 IBIA 335



United States Department of the Interior

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

CHOCTAW NATION OF FLORIDA,)	Order Docketing and Dismissing Appeal
Appellant,)	
)	
v.)	
)	Docket No. IBIA 09-38-A
EASTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS)	
<i>ET AL.</i> ,)	
Appellees.)	February 11, 2009

On January 8, 2009, the Board of Indian Appeals (Board) received a notice of appeal, styled as an “Inaction Appeal,” from the Choctaw Nation of Florida (Appellant), which seeks review of the alleged failure of various Departmental officials, including the Eastern Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to respond to certain requests from Appellant, including a request for “Re-recognition Certification,” and for fee lands to be “returned” to trust.¹ Appellant is not Federally recognized as an Indian tribe within the meaning of Federal law, *see* 73 Fed. Reg. 18,553 (Apr. 4, 2008), and the substance of Appellant’s various requests appeared directly to involve, or possibly to be contingent upon, Appellant’s petition for Federal acknowledgment.

The Board has held that 25 C.F.R. § 2.8 (appeal from inaction of official) does not apply to acknowledgment proceedings. *See In re Federal Acknowledgment of the Paucatuck Eastern Pequot Indians of Connecticut*, 34 IBIA 210, 211 (2000); *Miller v. Bureau of Indian Affairs*, 32 IBIA 294, 295 (1998); *see also In re Federal Acknowledgment of the Golden Hill Paugussett Tribe*, 34 IBIA 55 (1999). But in addition to that apparent hurdle, the notice of appeal did not reference or enclose any demand for action from Appellant to an official

¹ The notice of appeal identifies the Eastern Regional Director, Bureau of Indian Affairs (BIA); Jim James, the Great Plains and Eastern Regional Fiduciary Trust Administrator, Office of the Special Trustee for American Indians; and Randall Trickey, an employee in the Eastern Regional Office, BIA, as having failed to respond to Appellant’s various requests. The notice of appeal did not name the Office of Federal Acknowledgment, although that is the office that has jurisdiction over petitions for Federal acknowledgment.

from whom action was sought, in compliance with the requirements of section 2.8. Those requirements must be satisfied before a section 2.8 appeal may be filed with the Board. Therefore, the Board ordered Appellant to show cause why this appeal should not be dismissed. *See* Order, Jan. 13, 2009.²

Appellant's response to the Board's show cause order identifies the alleged failure of the Regional Director to respond to a request to have fee lands "returned" to trust, as a subject that would properly fall under 25 C.F.R. § 2.8.³ The problem for Appellant, however, is that to make an official's inaction subject to an appeal, a party must first submit to that official a written request for action pursuant to section 2.8.

Section 2.8 is very specific, and a demand for action under that section must, among other things, "[s]tate that unless the official involved either takes action on the merits of the written request within 10 days of receipt of such request by the official, or establishes a date by which action will be taken, an appeal shall be filed in accordance with this part." 25 C.F.R. § 2.8(a)(3).⁴ Appellant encloses with its response to the Board's show cause order a copy of a December 19, 2008, letter to the Regional Director, regarding Appellant's

² The Board also ordered Appellant to submit a signed notice of appeal because, as originally filed, it was unsigned and identified no individual as Appellant's agent or official. In response, Appellant submitted an amended notice of appeal that was signed by Annie P. Dudley as the Tribal Clerk. An enclosure with the notice of appeal indicates that there may be conflicting claims of leadership within Appellant, petitioner for Federal acknowledgment #288. *See* Letter from Acting Director, Office of Federal Acknowledgment to Alfonso James and William Calhoun, Aug. 6, 2008. We assume, solely for purposes of this decision, that Dudley was authorized to file this appeal on behalf of Appellant.

³ In its response, Appellant contends that it has fulfilled all of the requirements of 25 C.F.R. § 83.7 (mandatory criteria for Federal acknowledgment), and "therefore re-recognition shall be granted by the Assistant Secretary" through the Office of Federal Acknowledgment, as requested by Appellant. Inaction Appeal at 3, Jan. 22, 2008. But Appellant does not respond to or dispute the Board's clear precedent that section 2.8 does not apply to acknowledgment proceedings.

⁴ Section 2.8 contains other requirements that must also be followed before an appeal from inaction may be filed.

“Application to take lands in trust,” and contends that it has not received a response.⁵ But Appellant’s letter to the Regional Director did not refer to section 2.8, nor did it state or otherwise put the Regional Director on notice that unless he issued a decision within 10 days of receipt, or established a date by which action would be taken, Appellant would file an appeal.

We conclude that the Board lacks jurisdiction over this appeal because (1) section 2.8 does not apply to complaints concerning inaction on a petition for Federal acknowledgment, and (2) with respect to its application to have lands taken into trust (or any other requests alluded to in its notice of appeal), Appellant has not shown that it complied with the requirements of section 2.8, which must first be satisfied before an appeal may be taken to the Board.

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 docketed this appeal but dismisses it for lack of jurisdiction.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁵ Appellant also contends that it has been told that it must be Federally recognized before it will receive assistance regarding trust acquisition requests or self-governance and self-determination matters, but apparently these responses were not in the form of a written decision.