INTERIOR BOARD OF INDIAN APPEALS

Choctaw Nation of Florida v. Director, Office of Federal Acknowledgment,
and Acting Eastern Regional Director, Bureau of Indian Affairs

50 IBIA 335 (11/19/2009)

Related Board case:
48 IBIA 273

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

CHOCTAW NATION OF FLORIDA, Appellant, v. DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT, and ACTING EASTERN REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellees.	)	Order Dismissing Appeal in Part and Affirming Regional Director's Decisions Docket No. IBIA 09-067 November 19, 2009

The Choctaw Nation of Florida (Appellant) appeals to the Board (1) from the alleged failure of the Director of the Office of Federal Acknowledgment (OFA Director) to take action, *see* 25 C.F.R. § 2.8 (appeal from inaction of official), on Appellant's request to be Federally recognized as an Indian tribe; and (2) from two letters (Decisions),[1] both dated March 3, 2009, by the Acting Eastern Regional Director, Bureau of Indian Affairs (Regional Director; BIA), declining Appellant's request that BIA accept land in trust for Appellant, and rejecting as unsupported Appellant's claim that it is entitled to an accounting or compensation for certain Choctaw lands, originally reserved by treaty, for which fee patents were issued in the 19th century.[2]

---

[1] One letter is addressed to Jerome C. James, Chief, Hunter Tsalagi-Choctaw Tribe; the other is addressed to Annie Dudley, Choctaw Nation of Florida. Appellant's appeal was filed by Dudley as Tribal Clerk. It appears that Appellant formerly was known as the Hunter Tsalagi-Choctaw Tribe of Indians and changed its name to the Choctaw Nation of Florida. *See* Letter from Acting OFA Director to Alfonso James, Jr., May 12, 2008.

[2] Appellant also invoked section 2.8 in appealing the Decisions to the Board, consistent with the Regional Director's own characterization of the Decisions. The text of the Decisions characterizes them as "declining to act," but the substance belies the characterization: the Decisions clearly addressed Appellant's requests on the merits and rejected them. The Board construed the appeal from the Decisions as an appeal from the Regional Director's actions, not from inaction. *See* Pre-Docketing Notice and Order to

(continued...)

We summarily dismiss, without further discussion, the appeal against the OFA Director because, as we recently reaffirmed in an earlier appeal filed by Appellant, section 2.8 does not apply to Federal acknowledgment proceedings, which are comprehensively governed by 25 C.F.R. Part 83. *See Choctaw Nation of Florida v. Eastern Regional Director*, 48 IBIA 273 (2009); *see also Estate of Martha Marie Vielle Gallineaux*, 44 IBIA 230, 238 n.15 (2007) (describing the doctrine of collateral estoppel). We affirm the Decisions. The Regional Director correctly concluded that his authority to consider trust land acquisition requests is limited to requests by or on behalf of Federally recognized Indian tribes, which Appellant is not; or by or on behalf of individual Indians, as defined in 25 C.F.R. § 151.2(c), which Appellant has not shown to be the case here. In addition, Appellant has not shown any error in the Regional Director's rejection of its request for an accounting and compensation for Choctaw treaty lands that were patented in fee in the 19th century.

Discussion

The Decisions responded to two requests made on behalf of Appellant, both of which apparently requested the acquisition of land into trust, and one of which apparently requested "an accounting for previous trust activity and compensation to the beneficial heirs of the Choctaw Nation of Florida."[3] The Regional Director concluded that Appellant and its members did not fall within the definitions of "Tribe" and "individual Indian," respectively, that are in the trust land acquisition regulations, 25 C.F.R. § 151.2, and

---

[2](...continued)
Show Cause (OSC), at 2-3, Mar. 31, 2009. Thus, the merits of Appellant's claims are within the scope of this appeal. *See Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 265-66 (2009) (distinguishing a failure to take action from taking action that declines to grant the specific relief requested).

[3] We say "apparently" because neither letter was included in the materials submitted by Appellant with its notice of appeal, although the notice of appeal included numerous enclosures. Upon receipt and review of the notice of appeal, the Board ordered Appellant to show cause why the Decisions should not be summarily affirmed. *See* OSC, at 3-4. We conclude that this appeal may be decided based upon the notice of appeal, Appellant's response to the Board's OSC, and the administrative record from *Choctaw Nation of Florida*, 48 IBIA 273 (Docket No. IBIA 09-38-A), which Appellant requested be considered as part of the record for this appeal. We have not requested the Regional Director's administrative record for the Decisions, and thus we rely on the Decisions' characterizations of Appellant's requests, with which Appellant has not taken issue.

therefore he was precluded from further considering Appellant's request. The Regional Director also declined Appellant's request for an accounting and compensation, concluding that BIA's records did not show that the properties identified by Appellant had been held in trust by the United States, and thus no basis existed to request an accounting, and no compensation was due to the owners or their heirs. We first address Appellant's arguments concerning the Regional Director's decision declining Appellant's trust land acquisition request, and then its arguments regarding the claim for an accounting and compensation.

I. Trust Acquisition Request

With respect to its trust land acquisition request, Appellant contends that (1) the Regional Director did not have authority to take action because trust acquisition decisions are reserved for the Secretary of the Interior; (2) the Regional Director erred in stating that the lands were never trust lands, because they are within the boundaries of the lands set aside for the Choctaw Nation in its Treaty with the United States in 1786;[4] (3) Appellant provided documentation to prove that individuals for whom it asks that land be taken into trust are descendants of members of the treaty-recognized Choctaw Nation, and are the children and grandchildren of Choctaw ancestors who received fee patents to land under the Treaty with the Choctaw Nation of 1830 (Treaty of 1830);[5] and (4) the Regional Director's decision is unfair. We reject the first argument as incorrect, and we conclude that the remaining arguments are simply not relevant to determining whether the Regional Director erred in finding that Appellant had not shown that Appellant or its members qualified to have land taken into trust for them under the applicable regulations, 25 C.F.R. Part 151.

Appellant's first argument apparently is premised on its reading of the trust land acquisition regulations, which state that "[t]he Secretary shall review all [trust land acquisition] requests." 25 C.F.R. § 151.12(a). But the regulations define "Secretary" to mean "the Secretary of the Interior *or authorized representative*." *Id*. § 151.2(a) (emphasis added). Therefore, we reject Appellant's argument that the Regional Director lacked authority to issue a decision because only the Secretary may consider and decide its trust acquisition request. *See also* 200 Departmental Manual 1.2 (Secretary has broad power to delegate his authority to subordinate officials).

---

[4] *See* Treaty with the Choctaw Nation, Jan. 3, 1786, 7 Stat. 21, *reprinted in* 2 C. Kappler, Indian Affairs: Laws and Treaties 11 (1904).

[5] *See* Treaty with the Choctaw Nation, Sept. 27, 1830, 7 Stat. 333, *reprinted in* 2 C. Kappler, Indian Affairs: Laws and Treaties 310 (1904).

Notably, with respect to Appellant's remaining arguments, Appellant does not contend that the Regional Director misapplied 25 C.F.R. Part 151, the regulations governing the acquisition of land into trust for Indian tribes or individual Indians.[6] The purpose and scope of the trust acquisition regulations, 25 C.F.R. Part 151, are to set forth authorities, policy, and procedures governing the acquisition of land into trust "for individual Indians and tribes." 25 C.F.R. § 151.1. None of Appellant's arguments refute the Regional Director's conclusion that Appellant is not a "tribe," and that membership in Appellant does not make one an "individual Indian," within the meaning of the regulations authorizing BIA to accept land into trust.

As defined in 25 C.F.R. § 151.2(b), "tribe" means any Indian tribe, band, nation, etc. that "is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs." Appellant is not so recognized. *See* Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 40,218 (Aug. 11, 2009).[7] Appellant's assertion that it is entitled to be recognized is a matter for OFA to decide, and not within the scope of this appeal.

The regulations define "individual Indian" to mean, in relevant part,

> (1) Any person who is an enrolled member of a *tribe*; (2) Any person who is a descendent (sic) of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation; [and] (3) Any other person possessing a total of one-half or more degree Indian blood of a *tribe*.

25 C.F.R. § 151.2(c) (emphasis added). Appellant has not provided any documentation to the Board to establish that a member of its group, on whose behalf a trust acquisition

---

[6] Appellant apparently accepts, as it must, the fact that BIA's authority to accept land into trust is governed by Part 151.

[7] Appellant enclosed with its notice of appeal a copy of a page from the U.S. Department of Justice web page, dated 1/23/2009, and titled "Tribal Justice and Safety in Indian Country - Tribal Governments," which lists "Hunter TsalagiChoctaw Tribe." The web page is no longer operative; the criteria for the list is not evident; and the web site now contains a link to the Federal Register list of Federally recognized tribal entities. *See* http://www.tribaljusticeandsafety.gov/govt2govt.htm.

request purportedly has been made, falls within this definition of "individual Indian." Appellant contends that its members are descendants of Choctaw ancestors to whom lands were patented in fee under the Treaty of 1830, but such Indian ancestry, standing alone, does not satisfy the definition of "individual Indian" in section 151.2(c).[8]

Appellant's failure to show that it or its members fall within the definition of "tribe" or "individual Indian," respectively, under 25 C.F.R. § 151.2, is dispositive, and thus it is not legally relevant whether Choctaw treaty lands were considered to have "trust" status prior to being patented in fee, or whether the lands would be considered to be within an "Indian reservation," as that term is specially defined by 25 C.F.R. § 151.2(f). Nor does the fact, which we assume for purposes of this appeal, that Appellant's members had Choctaw ancestors who accepted lands in fee under the Treaty of 1830, mean that they satisfy any of the three tests for determining whether one is an "individual Indian" within the meaning of the trust acquisition regulations.[9]

Appellant contends that the Decisions were unfair and discriminatory, and that "Appellant has been confronted with regulations which are not law but are used to usurp" Appellant's rights. Notice of Appeal, at 3. But whether the Regional Director's decision, if legally correct, is "unfair," is not a ground upon which the Board could reverse that decision, and thus we have no basis to consider the fairness of the result. Both the Regional Director and the Board are bound by the regulations. *See San Carlos Apache Tribe v.*

---

[8] Under the Treaty of 1830, the Choctaw Nation ceded its lands east of the Mississippi River and was removed to lands in present-day Oklahoma that were granted to it in fee. Article XIV of the Treaty, however, allowed each Choctaw head of a family to remain and become a citizen of the United States, and be granted lands in fee. *See* Treaty of 1830, 7 Stat. at 335, 2 C. Kappler, Indian Affairs: Laws and Treaties at 313. According to Appellant, its members' ancestors were among those Choctaws who stayed in the east and were granted lands in fee.

[9] We do not decide, of course, whether an individual who is a member of Appellant might *separately* qualify — i.e., through affiliation or descent associated with a Federally recognized tribe — as an "individual Indian" under 25 C.F.R. § 151.2. Appellant's arguments concerning the eligibility of individual members to have land taken into trust are based on descent alone from a Choctaw who accepted lands in fee under the 1830 treaty.

Western Regional Director, 41 IBIA 210, 220 (2005), and cases cited therein. Therefore, we affirm the Regional Director's decision declining to further consider Appellant's trust acquisition requests.

II. Request for an Accounting and Compensation

Appellant's request for an accounting and for compensation, with respect to the Choctaw 1786 Treaty lands that subsequently were ceded and then patented in fee, is necessarily dependent, as a threshold matter, on Appellant's standing to assert such claims, either as a successor-in-interest to the historic Choctaw Nation that entered into treaties with the United States, or as the proper representative to assert individual-based claims. Appellant's request also raises a question of the effect of previous adjudications or settlements arising from the treaties. *See, e.g., Choctaw Nation v. United States*, 119 U.S. 1 (1886). Of course, to the extent that a determination of Appellant's standing would implicate the Federal acknowledgment proceedings, that matter is outside the scope of this appeal. We need not address any of these threshold issues, however, because Appellant has identified no statute or regulation investing BIA with either the authority or an obligation to provide an accounting for lands that historically were set aside for the Choctaw Nation in the Treaty of 1786, but for which fee patents subsequently were issued. And with respect to Appellant's claim that it is entitled to compensation, even assuming it has standing and could otherwise overcome possible bars to such a claim, neither BIA nor the Board has authority to award damages, and therefore the Regional Director properly rejected Appellant's claim for compensation. *See Dailey v. Billings Area Director*, 34 IBIA 128, 129 (1999). We note, however, that the Regional Director's stated rationale was that there was "no compensation due to the owners or their heirs" for the lands identified by Appellant. Because a damages award would be outside BIA's jurisdiction, we affirm the Regional Director's substantive action denying Appellant's request for compensation, but on the alternative ground that BIA lacked jurisdiction to grant the request, as does the Board.

Appellant also requests that its "claim" be filed in the U.S. Court of Federal Claims, or in *Cobell v. Salazar*, Civ. No. 96-1285 (JR) (D.D.C.), "to be reviewed for compensation and discriminatory practices by the Federal Government in Issuing Patents (allotment) to break-up or diminish reservation lands and the failure to assist with the restoration of what is left of the Choctaw Indian reservation." Appellant's Response to OSC, at 5. The Board does not have the authority to assist Appellant in filing such a claim. Appellant has provided us with no basis to reverse the Decisions or otherwise provide relief to Appellant.

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 the appeal against the OFA Director for lack of jurisdiction and affirms the Regional Director's Decisions.

I concur:

// original signed	// original signed
Steven K. Linscheid	Sara B. Greenberg
Chief Administrative Judge	Administrative Judge*

*Interior Board of Land Appeals, sitting by designation.