



INTERIOR BOARD OF INDIAN APPEALS

Jackie Madariaga v. Pacific Regional Director, Bureau of Indian Affairs

52 IBIA 36 (08/12/2010)



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

JACKIE MADARIAGA,)	Order Dismissing Appeal for Lack of
Appellant,)	Jurisdiction and Referring Matter
)	to the Assistant Secretary -
v.)	Indian Affairs
)	
PACIFIC REGIONAL DIRECTOR,)	Docket No. IBIA 08-109-A
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	August 12, 2010

Mr. Jackie Madariaga (Appellant) has appealed the December 12, 2006, decision of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), in which the Regional Director declined to intervene in an enrollment dispute and other related matters involving the Temecula Band of Luiseno Mission Indians of the Pechanga Indian Reservation (Tribe)¹. The Regional Director determined that he lacked the authority to grant a request by Appellant and a group identified as “The Pechanga People” to intervene and reverse a Tribal Business Council (Council)² decision allowing disenrollment proceedings against Appellant and his relatives to continue despite the Tribe’s repeal of the Tribe’s Disenrollment Procedure. The Regional Director also rejected the group’s requests that BIA refuse to recognize the results of a tribal election, suspend any further government-to-government relations/dealings with the Tribe, and assist in new tribal elections. The Regional Director concluded that the requested actions would impermissibly intrude on and interfere with the Tribe’s rights to self-government and to resolve internal tribal matters in a tribal forum. Appellant asserts that BIA has both the authority and the

¹ The List of Federally-recognized tribes identifies the Tribe as the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California. *See* 74 Fed. Reg. 40,218, 40221 (Aug. 11, 2009). The Tribe’s Constitution identifies it as the Temecula Band of Luiseno Mission Indians.

² Various documents in the record before us identify the Tribal Business Council simply as the Tribal Council. The Council consists of the Tribe’s Chairperson and six Council Members elected from the general membership.

duty to resolve the disputes which, he contends, involve violations of the Indian Civil Rights Act, 25 U.S.C. § 1302, and other Federal laws, as well as tribal law.

On June 26, 2008, the Board of Indian Appeals (Board) issued an order directing Appellant to show cause why the Board should not dismiss the appeal because it necessarily involves and would require adjudication of an enrollment dispute over which, in accordance with 43 C.F.R. § 4.330(b)(1), the Board has no jurisdiction. The Board also requested that Appellant demonstrate that he has standing to bring each claim asserted on appeal, and that he brief the issue of exhaustion of tribal remedies by showing that he exhausted those remedies before seeking BIA intervention or explaining why such exhaustion is not required in this case.

Appellant responded to the Board's order, asserting that, despite its appearance, the dispute is not an enrollment dispute but, instead, a conflict between the authority of the Tribe's general membership to pass a law — in this case a law repealing the disenrollment procedures previously enacted by the Tribe — and the ability of the Council to disregard that law by interpreting it as inapplicable to certain tribal members, specifically Appellant and other members of his extended family. Appellant contends that the Council's action violates his due process and equal protection rights, and denies him benefits and services associated with tribal membership; contravenes the Indian Civil Rights Act; and implicates the Tribe's government-to-government relationship with BIA. Appellant also argues that he has standing because the Regional Director's refusal to review the dispute has deprived him of the rights and privileges afforded tribal members, and that he has exhausted available tribal remedies.

We find that, despite Appellant's attempt to convince us otherwise, this case is essentially a tribal enrollment dispute, revolving around whether Appellant was properly disenrolled from the Tribe. Accordingly, we conclude that, pursuant to 43 C.F.R. § 4.330(b)(1), we have no jurisdiction to adjudicate this appeal. Since we have no jurisdiction, we do not address whether Appellant would otherwise have standing to bring the appeal or whether he has exhausted tribal remedies. We therefore dismiss the appeal for lack of jurisdiction. We refer the matter to the Assistant Secretary - Indian Affairs, for further review and action, as appropriate.³

³ We note that certain tribal enrollment disputes under 25 C.F.R. Part 62 do fall within the jurisdiction of the Department, but they lie within the jurisdiction of the Assistant Secretary - Indian Affairs, not the Board. *See Vedolla v. Acting Pacific Regional Director*, 43 IBIA 151, 154 (2006). Our referral of this dispute to the Assistant Secretary - Indian Affairs does not constitute a determination as to Assistant Secretary's jurisdiction over the matter.

Factual and Procedural Background⁴

Under Article II.A. of the Tribe's December 10, 1978, Constitution and Bylaws (Constitution), to qualify for membership in the Tribe, an applicant must show proof of lineal descent from original Pechanga Temecula people. On October 2, 1988, the Tribe adopted the Disenrollment Procedure, the stated purposes of which were to correct mistakes or irregularities that had occurred when tribal membership was approved and to provide a fair hearing on the disenrollment question.

In late 2002 and early 2003, the Tribe's Enrollment Committee (Committee) received documents questioning whether Paulina Hunter was an original Pechanga Temecula person and therefore whether members claiming through her, including Appellant, were legitimate tribal members, and requesting the initiation of the disenrollment process for such descendants. After reviewing the allegations, responses from Appellant and his family members challenging the allegations, and its own records, the Committee decided that grounds existed for commencing the disenrollment process. Pursuant to section 2 of the Disenrollment Procedure, the Committee issued a summons dated May 3, 2005, notifying Appellant of that fact, requesting additional information concerning his family history, and directing him to contact the Committee to set up an initial meeting. Appellant met with the Committee in early June 2005, at which time the Committee explained why the currently available documentation did not prove lineal descent from an original Pechanga Temecula person on the Pechanga Reservation, and granted him an additional 30 days, i.e., until July 15, 2005, to provide further additional information concerning his enrollment status.

On June 19, 2005, while Appellant's disenrollment proceeding was pending, the Tribe held a general membership meeting at which several tribal members introduced a petition designed to repeal the Disenrollment Procedure and declare that all currently enrolled members met the qualifications for tribal membership. The petition specifically provided:

- (1) The Disenrollment Procedure is repealed effective June 19, 2005.

⁴ Because we did not ask the Regional Director to prepare or transmit the administrative record, our recitation of the factual and procedural background is based on the documents currently in record, including the Regional Director's decision, Appellant's notice of appeal and response to the Board's order to show cause, and the attachments included with Appellant's pleadings.

(2) All persons whose names appear on the membership roll as of June 19, 2005, constitute a base roll and meet the qualifications for membership in the Constitution and Bylaws.

(3) Any person who proves an unbroken chain of lineal descent from a member in (2) also meets the qualifications for membership in the Constitution and Bylaws.

(4) It is unlawful for the Enrollment Committee to investigate members for disenrollment purposes.

The Tribe approved the petition at a July 18, 2005, meeting called to discuss and vote on the petition.

After passage of the petition, the Enrollment Committee raised several questions concerning implementation of the petition with the Council.⁵ The Council responded in a November 29, 2005, memorandum, in which the Council opined (1) that the Tribe's constitutional membership requirements were not changed by the petition and should continue to be used to process all requests and applications for membership; (2) that the October 1988 Disenrollment Procedure had been repealed and no longer existed as tribal law and accordingly, there was now no mechanism for disenrolling tribal members, and no investigations for disenrollment purposes could be pursued, except for the disenrollment case that was already in process at the time the petition was presented to the general membership; and (3) that the Paulina Hunter descendants disenrollment case was not covered by the petition and should continue to be processed utilizing the Disenrollment Procedure.

Although the Committee received the Council's memorandum in November 2005, the Council did not advise the general membership of the Tribe of its instructions until it issued a March 14, 2006, memorandum to the Tribe announcing and explaining the implementation of the petition. As support for its determination that the petition did not

⁵ According to the Council, the Committee properly directed the questions to the Council, rather than the general membership, because the general membership had historically recognized the Council's authority to implement and interpret, when necessary, the actions of the general membership as part of the Council's duty under Article V of the Tribe's Constitution to uphold and enforce the Tribe's Constitution, bylaws, and ordinances. Appellant disputes this function of the Council, arguing that any questions about the general membership's action should have been resolved by the membership itself.

affect any pending disenrollment cases, the Council asserted that the petition lacked any direct language specifically stating whether it was intended to terminate or discontinue ongoing disenrollment cases and that it was impossible to determine the legislative intent of all general membership voters concerning the applicability of the petition to pending disenrollment cases. The Council also stated that the Enrollment Committee had the sole discretion to resolve enrollment issues and that the general membership had no power or authority to halt or terminate ongoing disenrollment proceedings through the petition process. The Council further took the position that the instruction to the Committee to continue to process any pending disenrollment cases was not an instruction concerning the substantive nature of any case but simply a clarification of procedure.

In accordance with the Council's instructions, the Committee continued to process Appellant's disenrollment case. On March 16, 2006, the Committee issued its decision finding that Appellant failed to meet the qualifications for membership in the Tribe because Paulina Hunter, through whom Appellant asserted his lineal heritage, was not an original Pechanga Temecula person. The Committee therefore revoked Appellant's tribal membership and declared that he had lost all privileges and rights accorded a member. Appellant appealed the Committee's decision to the Council, as provided in the Disenrollment Procedure. Although no decision by the Council is included documents before us, we presume that the appeal was not successful.

By letters dated April 30 and July 10, 2006, a group of individuals identifying themselves as "The Pechanga People" requested that BIA intervene in this matter, reverse the Council's decisions regarding the repeal of the Disenrollment Procedure, decline to recognize the results of the Tribe's July 15, 2006, election (in which Appellant and other disenrolled members of his family were unable to vote), suspend any further government-to-government relations or dealings with the Tribe, and assist in new tribal elections. They asserted that the Tribe had approved the petition with full knowledge that the aim of the petition was to ban all disenrollments from the date of its passage, including pending disenrollments of members, and that the Council's contrary implementation instructions violated the Tribe's Constitution, Federal laws, and Supreme Court precedent by overriding a duly enacted tribal law. They further claimed that the Council's action infringed on the Tribe's sovereignty and jeopardized the Tribe's government-to-government relationship with the Federal government. They therefore asked BIA to intervene and resolve their dispute with the Council over the applicability of the petition.

In his December 12, 2006, decision, the Regional Director concluded that intervening in the tribal dispute would intrude and interfere with the Tribe's right to self-government in violation of Federal statutes, case law, and well-established BIA policy. He noted that the courts have consistently held that a tribe has the right to self-government

and to determine its own membership, and that tribal courts, not the Federal courts or the Department of the Interior, provide the appropriate forum wherein individuals who allege violations of the Indian Civil Rights Act by tribal governments may be heard. He further found that none of the circumstances under which BIA is authorized to act existed here and that, therefore, BIA had no authority to interpose itself in what the Regional Director characterized as a purely tribal matter. Accordingly, he denied the request that BIA intervene in this matter.

Appellant appealed the Regional Director's decision.⁶ He asked the Board to determine that the Council's actions and the resulting disenrollments were invalid and violated the Indian Civil Rights Act, Federal law, and tribal law; that the violations impacted and tainted the 2006 and subsequent tribal elections; and that new tribal elections should be held with those denied participation in the July 2006 elections allowed to participate.

By order dated June 26, 2008, the Board noted that the dispute underlying the appeal appeared to involve, at its core, disenrollment actions taken by tribal officials, specifically noting that part of the relief Appellant requested was a determination that the March 2006 disenrollments were invalid. Citing 43 C.F.R. 4.330(b)(1), which provides that the Board has no jurisdiction to adjudicate tribal enrollment disputes, the Board directed Appellant to show cause why the Board should not dismiss the appeal on the ground that the appeal necessarily involves and would require the adjudication of an enrollment dispute.

Appellant timely responded to the Board's order. He conceded that the controversy appears to be an enrollment dispute, but argued that the "real issue" is a conflict between the authority of the Tribe's general membership to pass a law — in this case a law repealing the Disenrollment Procedure — and the actions of the Council in interpreting the law as inapplicable to a class of tribal members, i.e., Appellant and other members of his extended family, and allowing the disenrollments to proceed. Appellant contended that the Council's actions violated his due process and equal protection rights, denied him benefits and services associated with tribal membership, contravened the Indian Civil Rights Act, and undermined the Tribe's government-to-government relationship with BIA. He further

⁶ Appellant's notice of appeal included Ms. Matilda Smith and "The Pechanga People" in its heading, but no individual other than Appellant signed the appeal, and Appellant has provided no evidence that he was authorized to bring an appeal on behalf of another individual or organization. In the absence of such evidence, the Board considers the appeal to have been brought by Appellant solely on his own behalf.

averred that BIA has the authority and responsibility to interpret tribal law under circumstances presented here.

Neither BIA nor the Tribe responded to Appellant's submission, and the matter is now ready for review.

Discussion

Although Appellant attempts to cast this appeal as something other than an enrollment dispute, the crux of the appeal centers on Appellant's allegations that he was improperly disenrolled from the Tribe and that the Board should declare the disenrollment invalid. His additional claims concerning tribal elections and the government-to-government relationship are all dependent on the premise that the disenrollments were invalid. Because this case thus is essentially a tribal enrollment dispute which, in accordance with 43 C.F.R. § 4.330(b)(1), we have no jurisdiction to adjudicate, we dismiss the appeal.

The Board's jurisdiction is set forth at 43 C.F.R. § 4.330. Subsection (a) of that section describes the Board's general jurisdiction to review administrative actions or decisions of BIA officials; subsection (b) delineates exceptions to that general jurisdiction, specifically providing in relevant part that "[except] as otherwise permitted by the Secretary or the Assistant Secretary - Indian Affairs by special delegation or request, the Board shall not adjudicate: (1) Tribal enrollment disputes." See *Edwards v. Pacific Regional Director*, 45 IBIA 121, 125 (2007); *Vedolla*, 43 IBIA at 154.⁷

Appellant contends that the issue here is not disenrollment but violations of Federal and tribal law, including the Indian Civil Rights Act and various provisions of the Tribe's Constitution. However, as we stated in *Edwards*, the Board does not "review alleged violations of law in a vacuum or independent of their consequences because it is the harm or injury that flows from the violation that gives rise to [an appellant's] claim." 45 IBIA at 125. Here, Appellant seeks redress for his disenrollment from the Tribe, which he claims flowed from the Council's violation of tribal and Federal law, a conclusion bolstered by the fact that Appellant's request for relief explicitly asks for a Board determination that his disenrollment was invalid. None of Appellant's attempts to characterize this dispute as something other than an enrollment dispute convinces us that this appeal is not, at its heart,

⁷ The effect of subsection 4.330(b)(1) is to preclude Board review of *BIA actions* in tribal enrollment disputes; regardless of subsection 4.330(b), the Board lacks jurisdiction to directly review enrollment actions by Indian tribes. See *Vedolla*, 43 IBIA at 154 n.4.

a tribal enrollment dispute. We therefore conclude that we have no jurisdiction to adjudicate this appeal and dismiss the appeal for lack of jurisdiction.

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 for lack of jurisdiction, and refers the matter to the Assistant Secretary - Indian Affairs for further review and action, as appropriate.

I concur:

// original signed
Sara B. Greenberg
Administrative Judge*

// original signed
Steven K. Linscheid
Chief Administrative Judge

*Interior Board of Land Appeals, sitting by designation.