



INTERIOR BOARD OF INDIAN APPEALS

Tiffany L. (Hayes) Aguayo, et al., and Gina Howard, et al. v. Acting Pacific Regional
Director, Bureau of Indian Affairs

55 IBIA 192 (07/18/2012)

Reconsideration denied:
55 IBIA 240



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

TIFFANY L. (HAYES) AGUAYO,)	Order Docketing and Dismissing
et al.,)	Appeals, and Order Referring Docket
Appellants,)	No. IBIA 12-128 to Assistant
)	Secretary-Indian Affairs
v.)	
)	
ACTING PACIFIC REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	
_____)	
)	
GINA HOWARD, et al.,)	Docket Nos. IBIA 12-127
Appellants,)	IBIA 12-128
)	
v.)	
)	
ACTING PACIFIC REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	July 18, 2012

On July 5, 2012, the Board of Indian Appeals (Board) received one notice of appeal from 44 individuals (collectively, Appellants I),¹ through Thor O. Emblem, Esq., seeking

¹ Appellants I are Tiffany L. (Hayes) Aguayo, Karen (Renio) Duro, Rachael Ellis-Trujillo, Rosa Estrada, Christian Griffith, Justin Griffith, Natasha Griffith, Cameron C. Hayes, Pamela Kennedy, Elizabeth Martinez, Jacqueline McWhorter, Dawn Mojado, Priscilla Mojado, Michael Peralta, Johnny Poling, Jessica Renteria, Adam Trujillo, Andrea Trujillo, Annalee H. (Yanez) Trujillo, Bradley L. Trujillo, Jr., Brandon M. Trujillo, Sr., Brian A. Trujillo II, Charles Trujillo, Donald Trujillo, Jennifer Trujillo, John A. Trujillo, Jonathan Trujillo, Joshua E. Trujillo, Kristine Trujillo, Laura J. Trujillo, Leslie Trujillo, and minors Rebekah Trujillo, Richard Trujillo, Brianna Mendoza, Angel Morales, Destiny Pena, Mari (continued...)

review of a June 7, 2012, letter (June 7 Letter) issued by the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), which has been docketed as No. IBIA 12-127. A second appeal was received by the Board on July 9, 2012, from 36 individuals (collectively, Appellants II),² through Dennis G. Chappabitty, Esq., seeking review of the same June 7 Letter³ as well as review of an earlier letter dated February 24, 2012 (February 24 Letter). This second appeal is docketed as No. IBIA 12-128. In each of his letters, the Regional Director declined to address the merits of Appellants' tribal enrollment dispute with the Pala Band of Mission Indians (Tribe), citing lack of jurisdiction; the Regional Director did, however, make an "informal recommendation[]" to the Tribe on the matter. We docket these appeals, but dismiss them for lack of jurisdiction because the Board does not have authority to adjudicate tribal enrollment disputes such as these, nor does it have jurisdiction to decide appeals from BIA officials' inaction on such disputes. We refer the appeal received from Appellants II to the Assistant Secretary-Indian Affairs (AS-IA) for his consideration.⁴

On June 1, 2011, the Tribe's Executive Committee apparently issued a decision to disenroll Appellants Gina Howard and Luanne Moro. Thereafter, the Executive Committee apparently disenrolled the remaining 78 Appellants in a sweeping decision dated February 3, 2012. Appellants appealed these two decisions to the Regional Director, who in turn issued the letters that are the subject of these appeals. In his letters, the Regional Director declined to issue a formal decision on the merits of Appellants' claims because the Regional Director asserted that the Tribe's Enrollment Ordinance did not grant him that authority. The Regional Director instead issued informal recommendations to the

(...continued)

Pena, Mauro Pena, Rogelio Pena, Geronimo Poling, Krista Poling, Kristopher Poling, Cheyenne Trujillo, and Brandon Trujillo, Jr.

² Appellants II are Gina Howard, Luanne Moro, Ronald D. Allen, Jr., Kelly L. Peterman, Charles Allen, Jr., Nikki Harris, Mikki Graber, Vikki Oxley, Shawn Thomas Rogers, Jeanne Durso, Daniel Durso, Robert J. Morris, Misty Morris, Ray Morris, Monique Early, Melissa Hunter, Mary Montoya, Robert I. Ruppert, Justin M. Ruppert, David Guaytano Riggs, Jr., Ronald "J.R." E. Riggs, Jr., Raymond J. Bozigian, Ben Johnson, Gordon L. Johnson, Joey Pink, Kalcie J. Ontiveros, Kirsten T. Ontiveros, Brittney L. Luthers, John A. Randolph, Jr., and minors Marki Ontiveros, Piper Ontiveros, Johnathan A. Torres, Joshua Torres Cuevas, Tara P. Torres, Janette T. Lewis, and Jason A. Lewis.

³ The letters are identical except for the addressee and the list of appellants attached to each letter.

⁴ We do not refer the appeal from Appellants I because their appeal was delivered to the AS-IA and seeks review by either the Board or the AS-IA.

Tribe, pursuant to the Enrollment Ordinance, recommending that the Tribe continue to recognize all of the Appellants as enrolled members.

Appellants I then filed their appeal from the June 7 Letter, which sought review by the Board “and/or” the Assistant Secretary-Indian Affairs (AS-IA).⁵ The appeal was filed pursuant to 25 C.F.R. § 2.9 (general regulations governing notices of appeal) and 25 C.F.R. § 2.8 (appeal from inaction of official), and was delivered to both the AS-IA and the Board. Appellants II filed their appeal seeking review of both the February 24 and June 7 Letters.

Absent a special delegation or request by the AS-IA, the Board does not have jurisdiction to review tribal enrollment disputes. 43 C.F.R. § 4.330(b)(1); *see also, e.g., Madariaga v. Pacific Regional Director*, 52 IBIA 36, 42 (2010); *Quitiquit v. Acting Pacific Regional Director*, 51 IBIA 275, 276 (2010). Certain tribal enrollment disputes are appealable to the AS-IA pursuant to the regulations in 25 C.F.R. Part 62. *See Vedolla v. Acting Pacific Regional Director*, 43 IBIA 151, 154 (2006), and cases cited therein; *see also* 25 C.F.R. Part 62.⁶ And when, as here, it is not clear whether an appeal concerning a tribal enrollment dispute falls within the scope of Part 62, the Board has relied on 43 C.F.R. § 4.330(b) to dismiss and refer such matters to the AS-IA. *Vedolla*, 43 IBIA at 154. The Board therefore dismisses that portion of the appeal filed by Appellants I. Because the notice of appeal was also delivered to the AS-IA, we need not refer this matter to him separately. The Board also dismisses the appeal filed by Appellants II in its entirety but refers the matter to the AS-IA for his consideration because, unlike the appeal received from Appellants I, Appellants II do not expressly request review by the AS-IA in their appeal.

Appellants I also sought review, pursuant to 25 C.F.R. § 2.8, of the Regional Director’s failure to issue a decision on the merits of their claims, rather than an informal recommendation to the Tribe. Section 2.8 is an action-prompting mechanism through which a party seeking action by a BIA official may request action (pursuant to certain procedural requirements) and then appeal from the BIA official’s inaction if the official does not respond in accordance with § 2.8. If the official does not so respond, “the official’s inaction shall be appealable to the next official in the process established in this part.” 25 C.F.R. § 2.8(b). Because 43 C.F.R. § 4.330(b)(1) bars the Board from deciding tribal enrollment disputes, the Board is not the “next official in the process” to whom inaction on

⁵ Appellants I also have filed suit in Federal court to obtain judicial review of, *inter alia*, the February 24 Letter. *Aguayo v. Salazar*, No. 12-cv-00551 WQH (KSC) (S.D. Cal.).

⁶ The Board expresses no opinion on whether the AS-IA has jurisdiction to decide Appellants’ tribal enrollment dispute.

a tribal enrollment dispute may be appealed. *See* 25 C.F.R. § 2.8(b). The Board therefore lacks authority to consider the § 2.8 claim, and we dismiss it 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 docketed but dismisses these appeals for lack of jurisdiction, and refers Docket No. IBIA 12-128 to the Assistant Secretary-Indian Affairs.

I concur:

// original signed
Debora G. Luther
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge