INTERIOR BOARD OF INDIAN APPEALS

In re Federal Acknowledgment of the Choctaw Nation of Florida

57 IBIA 195 (07/11/2013)

Related Board case:
59 IBIA 231

# 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

| | | |
|---|---|---|
| IN RE FEDERAL ACKNOWLEDGMENT OF THE CHOCTAW NATION OF FLORIDA | ) ) ) ) ) | Order Affirming Decision<br><br>Docket No. IBIA 11-135<br><br>July 11, 2013 |

In this proceeding before the Interior Board of Indian Appeals (Board), Petitioner, the Choctaw Nation of Florida, seeks reconsideration of the Final Determination by the Assistant Secretary – Indian Affairs (Assistant Secretary) against acknowledgment of Petitioner as an Indian tribe within the meaning of Federal law.[1] The Assistant Secretary concluded that Petitioner did not demonstrate that it satisfies 25 C.F.R. § 83.7(e) (criterion (e)) (membership consists of individuals who descend from a historical Indian tribe), which is one of seven regulatory criteria that a petitioning group must satisfy for such acknowledgment. *See* 25 C.F.R. § 83.6(c)-(d) (all seven criteria must be satisfied). According to the Final Determination, Petitioner did not establish that any of its claimed ancestors or current members descends from a historical tribe of Choctaw Indians, or from any other Indian tribe. 76 Fed. Reg. at 23623. Thus, the Assistant Secretary found it unnecessary to reach the other six criteria. *Id.* at 23621.

Petitioner, through Timothy L. Taylor, Esq., filed a request for reconsideration pursuant to 25 C.F.R. § 83.11, which provides the Board with limited jurisdiction to review final acknowledgment decisions made by the Assistant Secretary. The party requesting reconsideration has the burden to establish, by a preponderance of the evidence, *see* 25 C.F.R. § 83.11(e)(9)-(10), one or more of the following grounds for the Board to vacate a final determination and order reconsideration:

§ 83.11(d)(1): "That there is new evidence that could affect the determination";

---

[1] The Final Determination was signed by the Assistant Secretary on April 21, 2011, and was published in the Federal Register on April 27, 2011. 76 Fed. Reg. 23621. A "Summary under the Criteria and Evidence for the Proposed Finding against Federal Acknowledgment of [Petitioner]" (Proposed Finding), was signed by the Deputy Assistant Secretary on July 2, 2010, and notice of it was published in the Federal Register on July 12, 2010. 75 Fed. Reg. 39703.

§ 83.11(d)(2): "That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value";

§ 83.11(d)(3): "That the petitioner's or the [Office of Federal Acknowledgment's (OFA)[2]] research appears inadequate or incomplete in some material respect"; or

§ 83.11(d)(4): "That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the [seven mandatory criteria]."

Petitioner alleges that all four of these grounds are present in this case, but it has not met its burden to establish any of them and thus we affirm the Final Determination.

**Background**

Petitioner incorporated in the State of Texas in 2003 and has an office located in the town of Marianna, Florida, on the eastern part of the Florida Panhandle. Proposed Finding (PF) at 8. Petitioner claims that its 77 current members descend from a historical tribe of Choctaw Indians. 76 Fed. Reg. at 23622. Petitioner asserted, for both the Proposed Finding and the Final Determination, that its ancestors migrated from North Carolina to Georgia and then Florida following the forcible removal in the 1830s of most of the Choctaw Indians from Alabama, Louisiana, and Mississippi to Indian Territory in what later became Oklahoma. *Id.*; PF at 8.

Both the Proposed Finding and the Final Determination concluded that most of Petitioner's members descend from Burton Hunter (born circa 1836-1842) and his wife Lucy (born circa 1842), whose maiden name was not determined. 76 Fed. Reg. at 23622; PF at 11. The Proposed Finding and the Final Determination also concluded that neither Burton Hunter nor Lucy descended from a historical tribe of Choctaw Indians or from any other tribe. 76 Fed. Reg. at 23623; PF at 11 & n.2 (discussing census identifications of the Hunter family as other than Indian).

Moreover, OFA found that Petitioner had confused several different people with its real ancestors, Burton and Lucy Hunter. *See* PF at 12-15. In the Proposed Finding, OFA

---

[2] OFA is located within the Office of the Assistant Secretary – Indian Affairs, and is the office with primary responsibility to handle acknowledgment petitions and prepare recommendations for the Assistant Secretary.

found that Petitioner had submitted genealogical information for two different men named Burton Hunter, neither of whom was Indian, and that the Burton Hunter who is an ancestor of Petitioner never moved to Florida from North Carolina by way of Georgia. *Id.* at 12. OFA additionally found that Petitioner had submitted genealogical information for two women with the maiden name "Pope," both of whom Petitioner purported to be its ancestor Lucy, but neither of whom was demonstrated to be that person or of Indian descent. *Id.* at 13-15.

As comments on the Proposed Finding, Petitioner submitted several new documents, one of which OFA found relevant to criterion (e). 76 Fed. Reg. at 23622. That document was a Dawes Roll[3] entry for a "Lucy Pope." *Id.* OFA presumed that by submitting it Petitioner was attempting to advance a claim that the Dawes Commission had enrolled Petitioner's ancestor Lucy as a member of Choctaw Nation in Indian Territory (now Oklahoma). *Id.* However, OFA found that this "Lucy Pope" was born around 1878, had the maiden name "Sam," was shown on the 1910 Federal Census to be living with her family in Oklahoma, and was neither Petitioner's ancestor Lucy nor was she one of the other two previously described Pope women. *Id.* Accordingly, in the Final Determination, the Assistant Secretary declined to acknowledge Petitioner as an Indian tribe because it failed to establish that its ancestors and current members descend from a historical Indian tribe as required by criterion (e). *Id.* at 23623.

On July 18, 2011, Petitioner filed a timely request for reconsideration (Request).[4] Petitioner's Request alleges that all four of the grounds for the Board to vacate the Final

---

[3] The Dawes Roll is the "Final Rolls of Citizens and Freedmen of the Five Civilized Tribes in Indian Territory" (Cherokee, Choctaw, Creek, Chickasaw, and Seminole) compiled by the Federal Dawes Commission. PF at 24 n.13.

[4] On February 26 and 27, 2013, the Board received, via fax and mail, submissions from Bernadette Rodgers requesting Federal assistance with "land claim issues" and attaching 42 pages of documents. Rodgers is apparently the daughter of Petitioner's Chief, Willie L. Williams. Among other things, the documents show that Rodgers and Williams have recorded in their names, and as "Indian Country," a deed to land that apparently was owned long ago by an Asbury Hunter and is now owned by a third party who is objecting to the creation of a cloud on her title. A deed such as Rodgers's and Williams's, which is unconnected to the chain of title, is commonly referred to as a "wild" or "interloper" deed. Because Rogers's submission is not relevant to whether Petitioner satisfies criterion (e), and because it was filed with the Board after the deadline for filing a request for reconsideration, we do not consider it. We have previously held that new evidence submitted outside the 90-day time limit for filing a request for reconsideration would be untimely. *In re Federal*

(continued…)

Determination and order reconsideration are present in this case. As Exhibit A, Petitioner submitted a document entitled "Ethnological and Ethnohistorical Summary, January 25, 2011," which Petitioner represents was authored by an anthropologist, Fred Chapman, in consultation with Choctaw Nation of Florida officials. Request at 1 (unnumbered) & Ex. A at 1 (unnumbered). Petitioner also represents that it had previously submitted this report as a comment on the Proposed Finding, after the comment deadline had expired. *See* Request at 1 (unnumbered); 76 Fed. Reg. at 23622 (the Final Determination explained that Petitioner submitted a comment late and that pursuant to 25 C.F.R. § 83.10(*l*)(1) the Assistant Secretary did not consider it). An untimely comment on a proposed finding may be considered by the Board as new evidence when it is submitted to the Board with a timely filed request for reconsideration. *See* 25 C.F.R. § 83.11(b), (d)(1). Thus, we consider Exhibit A as new evidence in support of Petitioner's Request.

On November 15, 2011, the Assistant Secretary filed the documents from the record that are critical to the request for reconsideration, and made the entire record available to the Board. In response to Petitioner's Request, the transmittal of critical documents stated:

> The Request for Reconsideration references a report "compiled by" Mr. Fred Chapman "in the most objective non-bias[ed] professional manner" as Exhibit A. This report was not served on the Department as part of the Request for Reconsideration. The OFA contacted Mr. Chapman for a copy of his report and also contacted the Legal Assistant at the Board for a copy of it. The two documents that we received differ in significant respects. Exhibit A to the Request for Reconsideration . . . contrasts with the original ethnohistorical narrative prepared by and received from Fred Chapman.

Transmittal of Documents Central to Request for Reconsideration (Transmittal of Critical Documents), Nov. 15, 2011, at 2 (quoting Petitioner's Request). The correspondence between OFA and Chapman indicates that Exhibit A is not the version written by Chapman, but instead is an edited version of a document that he did author, which is entitled "Draft Ethnological and Ethnohistorical Research Notes, October 2010 – January 2011" (Chapman Report).[5] *See* Email correspondence between OFA and Fred

---

(…continued)
*Acknowledgment of the Ramapough Mountain Indians, Inc.*, 31 IBIA 61, 66, 71 (1997); *see* 25 C.F.R. § 83.11(b) (the request "shall include any new evidence to be considered").

[5] The correspondence between OFA and Chapman does not expressly state that someone altered Chapman's work without his consent or prior knowledge, however, that would appear to be a reasonable conclusion to draw from it.

Chapman, Sept. 2011 (Transmittal of Critical Documents, Attach. 3); Chapman Report (Transmittal of Critical Documents, Attach. 2).

For reasons we elaborate below, we conclude that Exhibit A—even if we were to accept Petitioner's representation of it as authentic—is not "new evidence that could affect" the Assistant Secretary's determination within the meaning of § 83.11(d)(1). Next, we conclude that Petitioner has failed to establish any other ground for the Board to vacate the Final Determination and order reconsideration. Therefore, we affirm, to the extent of our jurisdiction, the Final Determination.

## Discussion

Petitioner has not met its burden of proof for any of the Board's four grounds under 25 C.F.R. § 83.11(d)(1)-(4) for vacating the Final Determination and ordering reconsideration.

### I. New Evidence

Petitioner offers only Exhibit A as "new evidence that could affect the determination." Request at 1 (unnumbered); *see* 25 C.F.R. § 83.11(d)(1). As a threshold issue, it is unclear to us what information in this document, including its 14-page bibliography,[6] is purported to be "new." Petitioner filed this document as new evidence without identifying what information contained in it is not already contained in the administrative record. *See In re Federal Acknowledgment of the Golden Hill Paugussett Tribe,* 32 IBIA 216, 223 (1998) ("new" evidence includes only evidence that was not part of the administrative record). Where, as here, "the Board cannot determine, with reasonable diligence, what evidence is claimed to be new, a Request for Reconsideration will be deemed not to have carried its burden of proof with respect to the new evidence." *In re Federal Acknowledgment of the Snoqualmie Tribal Org.*, 34 IBIA 22, 31 (1999); *see In re Federal Acknowledgment of the Juaneño Band of Mission Indians, Acjachemen Nation*, 57 IBIA 149, 157 (2013) ("Petitioner's list of references and its unsubstantiated assertions are inadequate to meet its burden." Footnote omitted.). Furthermore, even if Petitioner had not failed to meet its burden to identify the purported "new" evidence, we have found

[6] The bibliography attached to Exhibit A is entitled "Preliminary Bibliography, Choctaw Nation of Florida, December 2010," and includes citations to over 100 reference materials that do not appear in the bibliography attached to the Chapman Report. *Compare* Exhibit A at 5-19 (unnumbered) *with* Chapman Report at 6-7.

nothing in Exhibit A that is both pertinent to criterion (e) and that could affect the Assistant Secretary's determination.[7]

Additionally, we have serious concerns about the authenticity of Exhibit A, which Petitioner represents as Chapman's work but which deviates from the Chapman Report in numerous fundamental respects. A few examples of these differences are described below.

According to the Chapman Report, Petitioner identifies itself "with the Chacato[8] natives of the central [Florida] Panhandle first mentioned by the Spanish in 1639." Chapman Report at 1. The Chapman Report states that "[h]istorical accounts of the native people of the Panhandle regularly mention the Chacato until the early 18th century, after which the record is virtually silent . . . . The Chacato are mentioned intermittently . . . until 1822, but not in relation to the Florida Panhandle." *Id*. Exhibit A, in contrast, states that "[h]istorical accounts of the native people of the Panhandle regularly mention the Choctaws *until the mid-19th century* . . . . The Choctaws are mentioned intermittently in various historical documents in relation to the Florida Panhandle." Exhibit A at 1 (unnumbered) (emphasis added). As another example, the Chapman Report states that "the only historic-era site that seems to be firmly associated with the Chacato is the Dog River Site . . . near Mobile, Alabama." Chapman Report at 2. Yet, Exhibit A states that there are "*two* historic-era sites that seem[] to be firmly associated with the Choctaws," the Dog River Site in Alabama and the Waddells Mill Site near Marianna, Florida. Exhibit A at 2 (unnumbered) (emphasis added). Finally, although the Chapman Report contains a bracketed "editor's note" that he "can't verify that any . . . treaties explicitly mention the Florida Choctaw," Exhibit A omits the editor's note and states that several treaties "identify . . . the Florida Choctaw Nation former Chief." *Compare* Chapman Report at 5 *with* Exhibit A at 4 (unnumbered).

Although we have concluded that Exhibit A is not new evidence that could affect the Final Determination, we find the discrepancies between Petitioner's Exhibit A, offered as

---

[7] Petitioner also appended, without explanation, several other documents to its Request. For the same reasons discussed above, those documents also do not establish a basis for the Board to vacate the Final Determination and order reconsideration.

[8] For reasons that are not fully explained in either report, both the Chapman Report and Exhibit A use the terms "Chacato" and "Choctaw" interchangeably. The Chapman Report states that the evidence, "while admittedly inconclusive, suggests that to some extent, the Chacato are ancestral to the Florida Choctaw community found today in the vicinity of Marianna, Florida." Chapman Report at 1. In comparison, Exhibit A states that the evidence "suggests that to a *great extent*, the Choctaws are the same native people as the Chacatos." Exhibit A at 1 (unnumbered) (emphasis added).

Chapman's work, and the version proffered by Chapman to OFA extremely troubling, and a matter that may warrant additional inquiry by the Department.

## II. Reliance on Unreliable or Non-Probative Evidence

Petitioner next contends "[t]hat a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value." Request at 1 (unnumbered); *see* 25 C.F.R. § 83.11(d)(2). However, Petitioner does not meet its burden to identify the evidence on which the Assistant Secretary allegedly placed undue reliance, much less establish that it constitutes a substantial portion of the evidence relied upon in the Final Determination. Petitioner's arguments are in reality disagreements with the Assistant Secretary regarding the proper interpretation of the evidence. For example, Petitioner contends that its ancestor Lucy is "Lucy Sam Pope-Hunter" and that she had a daughter Susan, a granddaughter Matilda (who Petitioner asserts was 4 years old in 1853 or 1854), and a great grandson, current Chief Willie L. Williams. *See* Request at 1-2 (unnumbered). However, the Choctaw Indian who is identified on the Dawes Roll as Lucy (Sam) Pope was born around 1878, and plainly could not be Petitioner's claimed ancestor. *See supra* at 197. The Final Determination rejected Petitioner's interpretation of the genealogical evidence regarding its ancestor Lucy, *see* 76 Fed. Reg. at 23623, and Petitioner fails to show that the Assistant Secretary relied on unreliable or non-probative evidence. Petitioner's disagreement with the Assistant Secretary's interpretation is not sufficient to meet its burden under § 83.11(d)(2). *See, e.g., In re Federal Acknowledgment of the Snoqualmie Tribal Org.*, 34 IBIA at 35 ("a showing of disagreement with [the] analysis is not sufficient to establish that grounds for reconsideration exist").

## III. Inadequate or Incomplete Research

Petitioner also argues that OFA's "research appears inadequate or incomplete in some material respect." Request at 2 (unnumbered); *see* 25 C.F.R. § 83.11(d)(3). Specifically, Petitioner asserts that census records after 1850 are inconsistent, inaccurate, and incomplete. *See* Request at 2 (unnumbered). Even assuming that there are flaws in the census records, which are *sources* of genealogical information that OFA consulted, this argument does not call into question the adequacy or completeness of OFA's *research*. Much more than that, Petitioner "must show, at a minimum, that additional research would produce material information not previously considered by [OFA]." *In re Federal Acknowledgment of the Mobile-Washington County Band of Choctaw Indians of South Alabama*, 34 IBIA 63, 69 (1999). And, Petitioner "must do more than offer a general description of materials that [OFA] allegedly should have reviewed or researched more completely." *In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 IBIA 30, 39 (2005).

Petitioner contends that OFA "should look to more accurate information" than census records, but it does not identify such information. Request at 2 (unnumbered). Instead, it suggests that OFA failed to consider that "[t]he Bureau has recognized the Petitioner as a federally recognized tribe prior to terminating that status." *Id.* at 2-3 (unnumbered). Although Petitioner's argument is less than clear, it appears that Petitioner may believe that it has been Federally recognized as an Indian tribe by the U.S. Census Bureau, based on Petitioner's participation in the 2010 U.S. Census. Petitioner points out that it "participated in the Census partnership and received per diem for attending [a] meeting," and also "received a big wood plaque of recognition from the Federal Census Bureau in 2011." *Id.* at 2 (unnumbered). Not only do these facts not make Petitioner a Federally recognized Indian tribe, they are irrelevant to OFA's research on whether Petitioner descends from a historical Indian tribe pursuant to criterion (e).[9]

IV. Reasonable Alternative Interpretation of the Evidence Not Previously Considered

Finally, Petitioner argues "[t]hat there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination[] that would substantially affect the determination." Request at 3 (unnumbered); *see* 25 C.F.R. § 83.11(d)(4). Petitioner's only specific contention is that, "[h]istorically[,] it would not be the first time that a group of American Indians did not relocate with the larger group but in fact stayed in their home lands as a domestic dependent group capable of controlling their own internal governmental functions." Request at 3 (unnumbered).

This is not a possibility that OFA failed to consider. The Proposed Finding states:

> In the early 1830s, the Federal Government forcibly relocated most of the Choctaw to Indian Territory in what later became Oklahoma, although some of them remained in Mississippi and Louisiana. Today, there are three federally recognized Choctaw Indian tribes in the United States, the Choctaw Nation of Oklahoma, the Mississippi Band of Choctaw Indians, and the Jena Band of Choctaw Indians of Louisiana. . . . All the available evidence in the

---

[9] It also seems plausible that Petitioner seeks to reassert an argument, which was considered in the Proposed Finding, that the Federal Government previously acknowledged Petitioner based on the fact that its ancestor Burton Hunter received a grant of public domain land under the Homestead Act of 1862, 12 Stat. 392. *See* PF at 10. OFA noted that the Homestead Act was not limited to Indian applicants and it found no evidence in the land case file at the National Archives to suggest that Burton Hunter was Indian. *Id.* at 10, 19-20. Therefore, regardless of what argument Petitioner is making, it has failed to meet its burden to show that OFA's research was inadequate or incomplete in some material respect.

> petition record indicates the [Petitioner] is an association formed in 2003 of individuals who claim but have not documented Indian ancestry.

PF at 8. Thus, Petitioner has not articulated an alternative interpretation of the evidence under § 83.11(d)(4). *See In re Federal Acknowledgment of the Ramapough Mountain Indians*, 31 IBIA at 81.[10]

**Conclusion**

For the reasons discussed above, we conclude that Petitioner has not established any grounds for us to vacate the Final Determination and order reconsideration by the Assistant Secretary, and therefore, as provided by § 83.11(e)(9), we affirm the Final Determination with respect to the allegations that we have jurisdiction to review.

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 affirms, to the extent of its jurisdiction, the Final Determination.

I concur:

| // original signed | //original signed |
|---|---|
| Thomas A. Blaser | Steven K. Linscheid |
| Administrative Judge | Chief Administrative Judge |

[10] Petitioner also argues that the burden in this case falls on the petitioner but that "[t]he burden should fall [instead] on the Bureau [of Indian Affairs] because [it] did not follow the Indian Reorganization Act by locating and documenting all tribes." Request at 3 (unnumbered). The Board is bound by the regulations, and must apply the burden of proof to requests for reconsideration as assigned by the regulations. *See* 25 C.F.R. § 83.11(e)(9). To the extent Petitioner's argument may be construed as a complaint about its burden under the regulations to satisfy the criteria for Federal acknowledgment, we do not consider it as articulating a sufficiently clear ground for reconsideration to warrant a referral to the Secretary. *See In re Federal Acknowledgment of the Central Band of Cherokee*, 55 IBIA 196, 199-200 (2012).