



## INTERIOR BOARD OF INDIAN APPEALS

Correy Alcantra v. Pacific Regional Director, Bureau of Indian Affairs

58 IBIA 252 (05/20/2014)



# United States Department of the Interior

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

CORREY ALCANTRA,	)	Order Dismissing Appeal
Appellant,	)	
	)	
v.	)	Docket No. IBIA 13-117
	)	
PACIFIC REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	May 20, 2014

Correy Alcantra (Appellant) appealed to the Board of Indian Appeals (Board) from a May 30, 2013, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to approve amendments to the tribal charter for the Coyote Economic Development Corporation, as requested by the Coyote Valley Band of Pomo Indians (Tribe) through Tribal Council Resolution No. CV-TC-04-04-13-01-B, adopted on May 22, 2013 (2013 Resolution). Appellant challenges the Decision on the grounds that by accepting the 2013 Resolution and approving the charter amendments, BIA improperly recognized Michael Hunter, rather than Appellant, as Chairman of the Tribe, and improperly recognized the Tribal Council headed by Hunter.

The Tribe, through the Tribal Council led by Hunter, has moved to dismiss the appeal as moot.<sup>1</sup> The Tribe states that the Tribal Council rescinded the 2013 Resolution without ever ratifying the charter amendments, making the Decision irrelevant and of no consequence, and thus rendering this appeal moot.<sup>2</sup> In addition to seeking dismissal, the Tribe proposes that the Board vacate the Decision in the interest of clarity to ensure that no significance can be attached to it. The Regional Director does not oppose the Tribe's motion.

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<sup>1</sup> This case involves a tribal dispute. The Board's references to actions taken by or on behalf of tribal officials, tribal entities, or the Tribe, and the Board's use of titles claimed by various individuals, shall not be construed as expressing any view on the underlying merits of the dispute.

<sup>2</sup> As provided in the Decision, the 2013 charter amendments, even after approval by BIA, required additional ratification action by the Tribe before they were to become operative.

Although the Board is not bound by the case-or-controversy constitutional limitation on Federal courts, we have a well-established practice of adhering to the mootness doctrine as a matter of prudence, to preserve limited resources and to avoid issuing advisory opinions. See *County of Santa Barbara, California v. Pacific Regional Director*, 58 IBIA 57, 59 (2013); *Van Mechelen v. Northwest Regional Director*, 56 IBIA 111, 112 (2013); *Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005). The mootness doctrine is based on the requirement that an active case or controversy must be present at all stages of the proceedings. A case becomes moot when “nothing turns on the outcome.” *Pueblo of Tesuque*, 40 IBIA at 274 (quoting *Schering Corp. v. Shalala*, 995 F.2d 1103, 1105 (D.C. Cir. 1993)).

Appellant objects to dismissal of the appeal, arguing that it is improper for the Tribe to withdraw the subject of the Decision—the 2013 charter amendments. Appellant contends that BIA’s failure to recognize him as the Tribe’s Chairman constitutes an ongoing dispute and thus this appeal cannot be considered moot.

Appellant misunderstands the nature and scope of this appeal. The action taken by BIA through the Decision was to approve the 2013 charter amendments. That action, whether taken rightly or wrongly, is now moot because regardless of whether the 2013 Resolution was validly enacted, and whether Hunter is the Tribe’s Chairman, the active case or controversy over BIA’s approval of the 2013 charter amendments no longer exists. Cf. *County of Santa Barbara*, 58 IBIA at 57 (appeal from BIA approval of tribal land consolidation plan dismissed as moot when tribe withdrew the plan); *Hamaatsa, Inc. v. Southwest Regional Director*, 55 IBIA 132, 133 (2012) (appeal from BIA trust acquisition decision rendered moot when tribe withdrew its trust application).

The “recognition” action that Appellant contends the Regional Director took when she issued the Decision, and which Appellant seeks to have addressed by the Board through this appeal, is dependent upon a live controversy over BIA’s approval of the 2013 charter amendments. The inclusion in the Decision of any express or implied recognition (or nonrecognition) was dependent upon BIA’s need to respond when presented with a request, made on behalf of the Tribe, to approve the 2013 charter amendments.

In seeking dismissal, the Tribe proposes that the Board vacate the Decision, in the interest of clarity. Thus, to the extent that any independent significance might have been attached to a “recognition” component of the Decision, our vacatur of the Decision necessarily means that no such significance may be imputed.

We conclude that Appellant has not met his burden to show that this appeal is not moot. The vehicle through which Appellant seeks vindication of his claim of entitlement to be recognized as the Tribe’s Chairman—his appeal from the Decision—cannot survive the

Tribe's rescission of the 2013 Resolution. And our vacatur of the Decision further ensures that any new decision by BIA that may implicate tribal recognition must be made on a clean slate without any party being able to attach significance to the Decision.<sup>3</sup>

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 concludes that the appeal is moot, vacates the Decision, and dismisses the appeal.

I concur:

                  // original signed                    
Steven K. Linscheid  
Chief Administrative Judge

                  //original signed                    
Thomas A. Blaser  
Administrative Judge

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<sup>3</sup> We note that the Tribe contends that Appellant is not an enrolled member of the Tribe, and thus lacked standing even to bring the appeal. Appellant contends that he was illegally kicked out of the Tribe several years ago. The Tribe also argues that even if the issue of Appellant's tribal membership is not considered (the Board lacks jurisdiction over enrollment disputes, *see* 43 C.F.R. § 4.330(b)(1)), Appellant would still have lacked standing to bring the appeal because he did not run for office in the tribal election in which Hunter was elected, and thus cannot challenge a BIA decision to recognize Hunter. We express no opinion on these conflicting claims. To the extent any of these claims or issues may be relevant to future action taken by BIA, our dismissal of this appeal does not preclude BIA from addressing them as appropriate.