



INTERIOR BOARD OF INDIAN APPEALS

Tabeguache/Uncompahgre Indian Tribal Members, and Uinta Indian Tribal Members v.
Western Regional Director, Bureau of Indian Affairs

59 IBIA 41 (07/24/2014)



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

TABEGUACHE/UNCOMPAHGRE)	Order Affirming Decision in Part and
INDIAN TRIBAL MEMBERS, and)	Dismissing Appeal in Remaining Part
UINTA INDIAN TRIBAL MEMBERS)	
Appellants,)	
)	
v.)	Docket No. IBIA 12-044
)	
WESTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	July 24, 2014

Lynda M. Kozlowicz and Edson G. Gardner filed this appeal with the Interior Board of Indian Appeals (Board) in the name of Tabeguache/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members, and possibly on their own behalf, organized as Kozlowicz and Gardner Advocate, Inc. Kozlowicz and Gardner seek review of an October 31, 2011, decision (Decision) of the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA), which upheld a decision of BIA’s Uintah and Ouray Agency Superintendent (Superintendent) declining requests submitted by Kozlowicz and Gardner for BIA to issue tribal corporate charters, under the Indian Reorganization Act, *see* 25 U.S.C. § 477, for Kozlowicz and Gardner Advocate, Inc., for Uinta Indian Members, and for Uncompahgre Indian Members; and to issue a proposed amendment to the Ute Indian Tribe’s Constitution and Bylaws.

We affirm the Decision insofar as the appeal seeks review of the decision to deny a § 477 tribal corporate charter to Kozlowicz and Gardner Advocate, Inc., because, after concluding that Kozlowicz and Gardner have standing to appeal this portion of the Decision, we conclude that the Regional Director was correct in determining that charters issued under § 477 are available only to Indian tribes, and that Kozlowicz and Gardner Advocate, Inc. is not recognized by the Secretary of the Interior (Secretary) as an Indian tribe.

We dismiss the appeal in remaining part because Kozlowicz and Gardner have provided no evidence to show that they have been authorized to represent, or to bring the appeal on behalf of, “Tabeguache/Uncompahgre Indian Tribal Members” or “Uinta Indian Tribal Members,” neither of which entities, we would add, has been shown to exist in fact as an organization, formal or informal. Nor have Kozlowicz and Gardner shown that they have standing, as individuals, to assert the interests of Tabeguache/Uncompahgre Indian

Tribal Members and Uinta Indian Tribal Members in seeking review of the portion of the Decision denying tribal charters to those alleged entities. Even assuming that Kozlowicz and Gardner could have shown that they have authority to bring the appeal on behalf of these entities, it is undisputed that neither Tabeguache/Uncompahgre Indian Tribal Members nor Uinta Indian Tribal Members are recognized as Indian tribes by the Secretary, and thus a § 477 charter would be unavailable to them.

And with respect to the final portion of the Decision—declining the request for BIA to issue a proposed amendment to the Ute Indian Tribe’s Constitution—Kozlowicz and Gardner have identified no alleged cognizable interest that they have (or that Tabeguache/Uncompahgre Indian Tribal Members or Uinta Indian Tribal Members have) that was adversely affected by that portion of the Decision. Neither Kozlowicz nor Gardner claims to be a member of the Ute Indian Tribe, and they specifically allege that Tabeguache/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members are “separate and distinct” from the Federally recognized Ute Indian Tribe. *See* Verified Appeal and Statement of Reasons, Nov. 14, 2011 (Notice of Appeal), at 2.

Finally, during these proceedings, Kozlowicz and Gardner submitted a “Letter of Intent” to the Board to petition for Federal acknowledgment as an Indian tribe, and subsequently requested information on certain issues. We briefly address the requests for information, emphasizing that the Board’s jurisdiction in Federal acknowledgment cases is limited, and does not extend to considering letters from groups announcing an intent to petition for Federal acknowledgment.

Background

During January and February of 2011, Kozlowicz and Gardner submitted four requests for action to the Superintendent. Specifically, they requested that the Superintendent issue, pursuant to 25 U.S.C. § 477, a tribal corporate charter for Kozlowicz and Gardner Advocate, Inc., for Uinta Indian Members, and for Uncompahgre Indian Members; and issue a proposed amendment to the Ute Tribal Constitution.¹

¹ *See* Letter from Kozlowicz and Gardner Advocate, Inc. to Secretary and Superintendent, Jan. 31, 2011 (Request to Issue a Corporate Charter for Kozlowicz and Gardner Advocate, Inc.) (Administrative Record (AR) Tab 7); Letter from Kozlowicz and Gardner Advocate, Inc. to Secretary and Superintendent, Feb. 3, 2011 (Request to Issue Uinta Corporate Charter) (AR Tab 9); Letter from Kozlowicz and Gardner Advocate, Inc. to Secretary and Superintendent, Feb. 7, 2011 (Request to issue Uncompahgre Indians Corporate Charter) (AR Tab 10); Letter from Kozlowicz and Gardner Advocate, Inc. to Secretary and Superintendent, Feb. 7, 2011 (Request to Issue Proposed Amendment to Ute Tribal Constitution) (AR Tab 11).

Section 477 provides, in relevant part, that the Secretary “may, upon petition by any tribe, issue a charter of incorporation to such tribe.” 25 U.S.C. § 477. Title 25 of the United States Code defines the term “Indian tribe” to mean “any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.” 25 U.S.C. § 479a(2). The Secretary’s list of Federally recognized tribes is periodically published in the Federal Register. *See id.* § 479a(3); 25 U.S.C. § 479a-1. In 2011, the list of Federally recognized tribes was published at 75 Fed. Reg. 60810 (Oct. 1, 2010), as supplemented, 75 Fed. Reg. 66124 (Oct. 27, 2010), and the most recent list is published at 79 Fed. Reg. 4748 (Jan. 29, 2014). The list does not include as Federally recognized tribes Kozlowicz and Gardner Advocate, Inc., “Uinta Indian Members,” or either “Uncompahgre Indian Members,” or “Tabeguache/Uncompahgre Indian Tribal Members.”

On February 9, 2011, the Superintendent issued a decision addressing each request. Letter from Superintendent to Kozlowicz and Gardner Advocate, Inc., Feb. 9, 2011 (Superintendent’s Decision) (AR Tab 5). The Superintendent stated that BIA was unable to issue the requested tribal corporate charters because 25 U.S.C. § 477 only authorizes such charters for Federally recognized Indian tribes, and the Secretary does not recognize as Indian tribes any of the entities upon whose behalf corporate charters were requested. Superintendent’s Decision at 1-2 (unnumbered). The Superintendent also concluded that BIA was not authorized to propose an amendment to the Ute Indian Tribe’s Constitution because any such request must originate with the Ute Indian Tribe, and the Tribe had not made a request. *Id.* at 2 (unnumbered).²

Kozlowicz and Gardner sought to appeal the Superintendent’s decision directly to the Board, but we dismissed the appeal for lack of jurisdiction and referred it to the Regional Director for consideration. *Tabeguache/Uncompahgre Indian Tribal Members and Uinta Tribal Members v. Uintah and Ouray Agency Superintendent*, 53 IBIA 129, 130 (2011).³

On October 31, 2011, the Regional Director issued the Decision, in which he affirmed the Superintendent’s decision. The Regional Director agreed that BIA cannot

² The Ute Indian Tribe of the Uintah & Ouray Reservation, Utah, is also referred to in the Superintendent’s decision as the “Northern Ute Tribe.”

³ After the Board issued its decision, Kozlowicz and Gardner, along with several other individuals, filed suit in the U.S. District Court for the District of Utah, which dismissed the suit as premature because the Department had not taken final agency action on the matter. *Gardner v. Salazar*, No. Civ. 2:11-CV-0719 BSJ, 2013 WL 1284343 at *3 (D. Utah Mar. 27, 2013), *aff’d*, *Gardner v. Jewell*, 538 Fed. Appx. 830, 832 (10th Cir. 2013).

issue tribal corporate charters to entities that are not Federally recognized as Indian tribes. Decision at 1 (AR Tab 1). The Regional Director upheld the Superintendent's determination that BIA could not act on Kozlowicz and Gardner's request for a proposed amendment to the Ute Indian Tribe's Constitution because it was not a valid request. *Id.* The Regional Director concluded that the request did not satisfy the regulatory requirements for requesting a Secretarial election on a proposed amendment to the Constitution. *Id.* at 1-2; *see also* 25 C.F.R. Part 81.⁴

Kozlowicz and Gardner appealed the Decision to the Board. The appeal was filed in the name of the Tabeguache/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members. Notice of Appeal, Cover Letter to Board. Kozlowicz identified herself as a "Ute Tribal Advocate," Gardner identified himself as a "Uinta Descendent Advocate," and both referred to themselves as "plaintiffs," although they did not include themselves, either individually or as Kozlowicz and Gardner Advocate, Inc., in the caption of their pleadings. *Id.*, Cover Letter and at 1. Appellants contend that Uinta and Tabegauche/Uncompahgre Indian Members are "entit[ies] separate and distinct from [the] Ute Indian Tribe," and that they "should have Charters separate and apart from [the] Ute Indian Tribe." *Id.* at 2.

After receiving the administrative record for the appeal, the Board scheduled briefing, and, after explaining the doctrine of standing, noted a lack of clarity "precisely on whose behalf and under what authority Kozlowicz and Gardner purport to bring this appeal, and whether the appellants in whose name this appeal was filed have standing." Notice of Docketing and Order, Jan. 30, 2012, at 3-4. The Board ordered Kozlowicz and Gardner "to identify more specifically the appellants (individuals or entities) on whose behalf they intended to file this appeal, to demonstrate (through appropriate affidavits or other documentation) that they have authority to represent those appellants, and to demonstrate (through appropriate affidavits or other documentation), that appellants have standing to bring the appeal." *Id.* at 4.⁵

⁴ The Decision relied upon 25 C.F.R. § 81.5(a)&(b), which apply to the authorization of an election to *adopt or revoke* a tribal constitution and bylaws, upon a request from a tribal government or a petition containing the signature of at least 60% of tribal members. Subsection 81.5(d) applies to "the adoption of *amendments* to a constitution and bylaws or a charter" (emphasis added), for which the authorization of a Secretarial election requires a "request[] pursuant to the amendment article of those documents."

⁵ *Cf. Uintah and Uncompahgre Descendants v. Uintah and Ouray Agency Superintendent*, 51 IBIA 220, 220-21 & n.2 (2010) (noting the same representation and standing issues, but dismissing appeal on other grounds); *Gardner v. Uintah and Ouray Agency Superintendent*, 51 IBIA 166, 166 n.1 (2010) (same).

Kozlowicz & Gardner Advocate, Inc., on behalf of Tabegauche/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members, responded with a “Statement of Standing.” The response asserts that Kozlowicz and Gardner Advocate, Inc., requested Federally chartered corporations under 25 U.S.C. § 477 for Tabegauche/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members, and that Appellants are an “arm of [the] *Ute Indian Tribe of the Uintah and Ouray Reservation v. State of Utah*, 114 F. 3d 1513 (10th Cir. 1997).” Statement of Standing, Feb. 8, 2012, at 1-2. The Statement of Standing argues that Tabegauche/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members are entitled to have Kozlowicz and Gardner represent them in the proceedings before the Board. *Id.* at 4. The Statement of Standing is signed by Kozlowicz and Gardner, but it does not identify any member(s) of Appellants Tabegauche/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members, does not provide any documentation regarding the organization of those entities, and does not provide any affidavits or other documentation to indicate that such entities authorized Kozlowicz and Gardner to file the appeal on their behalf.⁶

Discussion

I. We Affirm the Decision to Deny the Request for a Tribal Charter for Kozlowicz and Gardner Advocate, Inc.

Although it is not entirely clear whether this appeal seeks to pursue a challenge to the portion of the Decision denying the request for issuance of a § 477 tribal charter to Kozlowicz and Gardner Advocate, Inc., we do not question that Kozlowicz and Gardner, as the apparent principals of this entity, have authority to represent it, pro se, and that it has standing to challenge this portion of the Decision. On the merits, we affirm the Regional Director’s decision to deny issuing a tribal charter to Kozlowicz and Gardner Advocate, Inc. The Secretary’s authority to issue corporate charters under § 477 is limited to issuing such charters to “tribes,” and Kozlowicz and Gardner Advocate, Inc., is not an Indian tribe within the meaning of Federal law. It is not on the Secretary’s list of Federally recognized tribes. *See supra* at 43. Thus, Kozlowicz and Gardner Advocate, Inc. cannot be issued a charter under § 477.

⁶ Kozlowicz identifies herself as a “Ute Tribal Advocate” and Gardner identifies himself as a “Uintah Indian Advocate,” but they do not assert that either is a licensed attorney. That does not preclude them from representing themselves or their own entity, Kozlowicz and Gardner Advocate, Inc., pro se, nor would it necessarily preclude them from representing an Indian tribe or members of an Indian tribe, *see* 43 C.F.R. § 1.3(a), upon a proper showing.

II. We Dismiss the Appeal from the Decision in Remaining Part

We dismiss the appeal in remaining part because Kozlowicz and Gardner have not provided any evidence to show that they have been authorized by the entities or organizations, formal or informal, Tabegauche/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members, to bring the appeal on their behalf. While the Statement of Standing asserts that these entities are “entitled” to have Kozlowicz & Gardner Advocate, Inc., represent them in these proceedings, and that Kozlowicz & Gardner Advocate, Inc., has been “delegated” that authority, Statement of Standing at 4, no evidence has been offered to show that Kozlowicz & Gardner Advocate, Inc., was, in fact, authorized by either entity to bring the appeal in its name or on its behalf.⁷

Nor would either Kozlowicz and Gardner, as individuals, or Kozlowicz and Gardner Advocate, Inc., as an organization, have standing to bring the appeal in order to assert the interests of others. In order to have a right of appeal to the Board, an appellant must have a legally protected interest that was adversely affected by the decision that is being appealed. *See* 25 C.F.R. § 2.2 (definitions of “Appellant” and “Interested party”); 43 C.F.R. § 4.331 (Who may appeal); *Preservation of Los Olivos v. Pacific Regional Director*, 58 IBIA 278, 296 (2014) (*POLO*). An appellant must assert its *own* legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of others. *Thompson v. Great Plains Regional Director*, 58 IBIA 240, 241 (2014). An organization may bring an appeal on behalf of its members, if certain requirements are met, *see POLO*, 58 IBIA at 282 n.6, but one organization, e.g., Kozlowicz & Gardner Advocate, Inc., does not have standing to assert the interests of another organization, e.g., Tabegauche/Uncompahgre Indian Tribal Members and Uinta Indian Tribal Members. Accordingly, Kozlowicz and Gardner have failed to establish that they have authority to represent, or to seek relief on behalf of, any parties other than themselves. *Reeves v. Great Plains Regional Director*, 54 IBIA 207, 213 (2012) (appellant could not assert legally protected interest of a family member); *Yeahquo v. Southern Plains Regional Director*, 36 IBIA 11, 12 (2001) (rejecting appellants’ claim that they represented Indian tribe, because they could not show that the tribe authorized them to bring the appeal).

⁷ Thus, we need not decide whether, even if authorized by one or both entities—assuming such entities exist—Kozlowicz and Gardner would be authorized to represent them before the Board. *See* 43 C.F.R. § 1.3 (Who may practice). Although § 1.3 includes a special provision for “the dealings of Indian tribes or members of Indian tribes with the Department,” the Regional Director undoubtedly was correct that neither Tabegauche/Uncompahgre Indian Tribal Members nor Uinta Indian Tribal Members are Federally recognized Indian tribes. *See* 79 Fed. Reg. 4748 (Jan. 29, 2014).

Neither Kozlowicz nor Gardner has asserted that they are members of either Tabegauche/Uncompahgre Indian Tribal Members or Uinta Indian Tribal Members. But even assuming that such entities exist and that Kozlowicz and Gardner are members of one or both, such membership, standing alone, would not confer upon them a right to act on behalf of the organization, and as already noted, no evidence of such authorization has been offered. Thus, even if they are members of these entities, Kozlowicz and Gardner have not demonstrated standing to bring the appeal to assert the interests of those entities.

And finally, Kozlowicz and Gardner have not alleged that they are members of the Ute Indian Tribe, nor have they identified any cognizable interest of theirs that was affected by BIA's decision declining the request to issue a proposed amendment to the Ute Indian Tribe's Constitution. In the absence of identifying any such legally protected interest, Kozlowicz and Gardner have failed to demonstrate that they have standing to appeal BIA's decision not to issue a proposed amendment to the Ute Indian Tribe's Constitution.

III. Kozlowicz and Gardner's Submission Concerning Federal Acknowledgment

After the completion of briefing on the merits, Kozlowicz and Gardner filed two documents with the Board, one titled "Plaintiff's Letter of Intent to [Board], Petition to Secretary of Interior for Appellants['] Federal Acknowledgment as Indian Tribe Under Treaty" and the other titled "Petitioner's Notice of Removal of Action to U.S. Secretary of Dept. of the Interior—(Petition for Federal Recognition)."⁸ Because the purpose of this filing was unclear, the Board ordered Kozlowicz and Gardner to clarify whether their submission was intended to seek some action in addition to a decision by the Board on their appeal from the Regional Director's Decision. Order for Clarification, May 8, 2013, at 2. If so, the Board ordered Kozlowicz and Gardner to identify (1) what action they request, (2) from whom, and (3) on what authority. *Id.* at 2-3.

Kozlowicz and Gardner responded with a "Clarification for Basis of Finding of Fact," which the Board finds remains unclear in explaining the purpose of filing the Letter of Intent and related materials with the Board in these proceedings. The statement concludes with "requests from [the Board for] the following information":

(1) "Clarification of activities in filing for federal recognition application with [the Board]"; (2) information on the activities that "were considered by the [Board] in its finding Appellants['] federal recognition"; and (3) clarification that Appellants' federal recognition application was actually filed with the United States Secretary of Interior, including the Board's "record of . . . findings." Appellants' Clarification, May 17, 2013, at 3-4.

⁸ These documents were apparently also filed in the Federal court litigation, *Gardner v. Salazar*. See *supra* note 3.

An application for Federal acknowledgment is not filed with the Board, nor has the Board made any “finding” on Federal acknowledgment of Tabegauche/Uncompahgre Indian Tribal Members or Uinta Indian Tribal Members, except to note in this decision that neither is recognized by the Secretary as an Indian tribe. *See supra* note 7. The Board has no authority to consider or act on a Letter of Intent to petition for Federal acknowledgment. The Board’s role in the Federal acknowledgment process is limited to reviewing requests for reconsideration of final determinations made by the Assistant Secretary. *See* 25 C.F.R. § 83.11. To the extent that Kozlowicz and Gardner are seeking information on how to file a petition for Federal acknowledgment, they must follow the process set out in Part 83.⁹ With respect to the third request for information, the Board is not in a position to determine whether Kozlowicz and Gardner “actually filed” an application for Federal recognition with the Secretary of the Interior, or with the appropriate office, i.e., the Office of Federal Acknowledgment. Kozlowicz and Gardner may contact the appropriate office(s) for the confirmation they seek to obtain.¹⁰

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 affirms the Decision in part and dismisses the appeal in remaining part.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

⁹ It appears that Kozlowicz and Gardner are familiar with this process, and thus they are aware that letters of intent requesting acknowledgment must be filed with the Department’s Office of Federal Acknowledgment through the Assistant Secretary – Indian Affairs, not the Board. *See* Appellants’ Clarification at 3 (summarizing the process); *see also* 25 C.F.R. § 83.4 (Filing a letter of intent).

¹⁰ It does appear that Kozlowicz and Gardner served copies of their Letter of Intent and Notice of Removal (Petition for Federal Acknowledgment) on the Secretary.