



INTERIOR BOARD OF INDIAN APPEALS

In Re Choctaw Nation of Florida

59 IBIA 231 (11/10/2014)

Related Board case:
57 IBIA 195



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 CHOCTAW NATION OF)	Order Docketing and Dismissing
FLORIDA)	Petition
)	
)	
)	Docket No. IBIA 15-022
)	
)	
)	November 10, 2014

On November 3, 2014, the Board of Indian Appeals (Board) received a letter “re-petitioning” for Federal recognition of the Choctaw Indian Nation of Florida, and requesting a hearing on the matter. The petition was submitted by Bernadette Running Doer Rodgers as “Representative . . . on behalf of these Indigenous people.” Petition at 1 (unnumbered). Previously, in a Final Determination signed on April 21, 2011, the Assistant Secretary – Indian Affairs (Assistant Secretary) denied an application by the Choctaw Nation of Florida for acknowledgment as an Indian tribe within the meaning of Federal law. *See* 76 Fed. Reg. 23621 (Apr. 27, 2011). The Choctaw Nation of Florida sought reconsideration by the Board and, to the extent of our jurisdiction, we affirmed the Final Determination. *In Re Federal Acknowledgment of the Choctaw Nation of Florida*, 57 IBIA 195 (2013).¹ We docket but dismiss Rodgers’s new petition for lack of jurisdiction.

The Board is an administrative appellate review body located within the Office of Hearings and Appeals (OHA), Office of the Secretary. The Board is not part of the Office of the Assistant Secretary, which includes the Office of Federal Acknowledgment, or the Bureau of Indian Affairs (BIA). The Board’s jurisdiction is prescribed by regulation, and is generally limited to reviewing petitions for reconsideration from final acknowledgment determinations made by the Assistant Secretary under 25 C.F.R. Part 83; adjudicating appeals from final actions or decisions, and appeals based on inaction, of certain BIA officials; and deciding matters referred to the Board by the Secretary, Assistant Secretary, or OHA’s Director. *See* 25 C.F.R. § 2.4(e); 43 C.F.R. §§ 4.1(b)(1), 4.330. Under the

¹ We note that Rodgers, who apparently was the daughter of the petitioning group’s chief, made submissions to the Board in support of the petition for reconsideration. *See* 57 IBIA at 197 n.4.

existing regulations governing the Federal acknowledgment procedures in 25 C.F.R. Part 83, once the Board issues a decision on a petition for reconsideration of the Assistant Secretary's final determination, the Board's decision is not subject to reconsideration by the Board. *See* 25 C.F.R. § 83.11(e)(7). Thus, to the extent that Rodgers is seeking to have the Board reconsider its decision in 57 IBIA 195, we would lack jurisdiction to do so.

To the extent that Rodgers may possibly be seeking to re-petition for Federal acknowledgment based on *proposed* amendments to 25 C.F.R. Part 83, which “would allow, in very limited circumstances, a petitioner previously denied under the regulations to re-petition under the revised rules,” 79 Fed. Reg. 30766, 30767 (May 29, 2014), the proposed rules have not been promulgated as final rules of the Department, are not enforceable, and convey no jurisdiction on the Board.

Under the existing acknowledgment regulations, the Board has no authority to consider or act on a letter of intent to petition or “re-petition” for Federal acknowledgment. *See* 25 C.F.R. § 83.4. As explained above, the Board's role in the Federal acknowledgment process is limited to reviewing requests for reconsideration of final determinations made by the Assistant Secretary, which the Board has already done with respect to the Choctaw Nation of Florida and may not now revisit. *See id.* § 83.11.

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 the petition.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge