



INTERIOR BOARD OF INDIAN APPEALS

Leo Pergson v. Eastern Regional Director, Bureau of Indian Affairs

62 IBIA 248 (03/04/2016)



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

LEO PERGSON,)	Order Affirming Decision
Appellant,)	
)	
v.)	Docket No. IBIA 16-044
)	
EASTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	March 4, 2016

Leo Pergson (Appellant), as Chief of the Su-Quah-Natch-Ah Band of Choctaw of Mississippi,¹ appealed to the Board of Indian Appeals (Board) from a December 14, 2015, email from the Eastern Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Regional Director’s email declined to take action on a proposed constitution for Appellant’s group and referred Appellant to the Office of Federal Acknowledgment and to the process under 25 C.F.R. Part 83 for obtaining Federal acknowledgement as an Indian tribe. Appellant also asserted that the Regional Director was required to provide him counsel, under 25 C.F.R. § 2.9(b), to assist him with the appeal.

Upon receipt of the appeal, the Board ordered Appellant to show cause (i.e., explain) why—assuming, without deciding, that the Regional Director’s email constitutes final appealable action by BIA—it should not be summarily affirmed as correct. The Board noted that Appellant’s notice of appeal did not allege any errors by the Regional Director in his December 14, 2015, email. In particular, Appellant did not contend that the Su-Quah-Natch-Ah Band is a Federally recognized tribe, nor did Appellant identify a legal basis for the Regional Director to review a proposed constitution from a group that is not Federally recognized. In addition, the Board denied Appellant’s request for appointment of counsel, for purposes of this appeal or for the petition for acknowledgment, as without basis under 25 C.F.R. § 2.9(b) or any other law or regulation.

¹ It appears from information that Appellant included with his notice of appeal that the group known as the Su-Quah-Natch-Ah Band was formerly known as Choctaw Allen, a petitioner for Federal acknowledgment (Petitioner #276).

On February 29, 2016, the Board received Appellant’s response to the Board’s order. Appellant recites his version of the history of the Su-Quah-Natch-Ah Band’s petition and reiterates, without further explanation, that the December 14, 2015, “adverse Administrative Action” by the Regional Director should be “reversed, or the counsel to this tribe . . . be affirmed.” Affidavit of Notice of Appeal, Feb. 22, 2016, at 4. Appellant also requests, from BIA, “technical assistance” on “the best course of action . . . to seek [F]ederal recognition, or to seek adoption into the Mississippi Band of Choctaw.”² *Id.* at 5.

We summarily affirm—to the extent, if any, that it is a final appealable action—the Regional Director’s decision. Appellant bears the burden of proving that the Regional Director erred, and Appellant does not make any allegations of error in his appeal to the Board. The Board has consistently held that an appellant who fails to make any allegation of error in a Regional Director’s decision, much less any argument in support of such an allegation, has not carried his burden of proof. *Schall v. Northwest Regional Director*, 61 IBIA 271, 272 (2015); *Little v. Acting Southern Plains Regional Director*, 50 IBIA 248, 248-49 (2009); *Steve Her Many Horses v. Acting Great Plains Regional Director*, 47 IBIA 71, 71-72 (2008). Because Appellant has made no allegations of error in the Regional Director’s decision, he has not met his burden of proof.

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 Regional Director’s December 14, 2015, decision.

I concur:

// original signed
Thomas A. Blaser
Administrative Judge

//original signed
Steven K. Linscheid
Chief Administrative Judge

² The Board notes that the Regional Director has already referred Appellant to the Office of Federal Acknowledgment for assistance with the petition. *See also* 25 C.F.R. § 83.5(c).