INTERIOR BOARD OF INDIAN APPEALS

Charles Hoskin v. Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs

63 IBIA 204 (07/07/2016)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CHARLES HOSKIN,	)	Order Affirming Decision
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 15-080
ACTING EASTERN OKLAHOMA	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellee.	)	July 7, 2016

A provision in the Indian Land Consolidation Act (ILCA) requires the Bureau of Indian Affairs (BIA) to accept in trust, from an individual Indian or a tribe, certain interests in "trust or restricted lands, at least a portion of which is in trust or restricted status on November 7, 2000, and located within a reservation." 25 U.S.C. § 2216(c). Charles Hoskin (Appellant), a Cherokee, acquired a restricted interest in real property in eastern Oklahoma after November 7, 2000, and it is undisputed that the property was entirely in fee status on and before that date. Therefore, and on that ground alone, we affirm a decision by the Acting Eastern Oklahoma Regional Director (Regional Director) that BIA was not required, as a matter of law, to accept Appellant's restricted interest in trust.[1]

Discussion

Appellant acquired a 100% interest in a 0.496-acre parcel of land in Craig County, Oklahoma, through a deed executed on December 29, 2000, and approved by BIA on February 7, 2001.[2] Decision at 1; Special Form Warranty Deed, Feb. 7, 2001 (Deed) (AR 1). Before the property was acquired by Appellant, it was owned by trustees of a private trust in unrestricted fee status. *See* Deed at 1. The parties agree that because Appellant acquired the property with restricted funds and with BIA's approval, Appellant acquired the real property in restricted fee. *See* Opening Brief (Br.), July 14, 2015, at 1;

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[1] *See* Letter from Regional Director to Appellant, Mar. 31, 2015 (Decision) (Administrative Record (AR) 11).

[2] The property is described in the Decision as part of the NE¼ of Section 13, Township 24 North, Range 19 East, Craig County, Oklahoma. Decision at 1.

Answer Br., Aug. 13, 2015, at 2; *see also* Deed at 2-3 (unnumbered) (citing Acts of May 27, 1908, 35 Stat. 312; May 10, 1928, 45 Stat. 495; and August 4, 1947, 61 Stat. 731).

Appellant asked BIA to accept his restricted fee interest in trust, arguing that BIA was legally required to do so under ILCA, 25 U.S.C. § 2216(c). Application for Restricted to Trust [Acquisition of] Individual Indian Land, June 12, 2014 (AR 2); (Proposed) Warranty Deed, June 12, 2014 (AR 3). Section 2216(c) provides:

> An Indian, or the recognized tribal government of a reservation, in possession of an interest in trust or restricted lands, at least a portion of which is in trust or restricted status on November 7, 2000, and located within a reservation, may request that the interest be taken into trust by the Secretary. Upon such a request, the Secretary shall forthwith take such interest into trust.

On March 31, 2015, the Regional Director denied Appellant's request, relying in part on the fact that the property was not in trust or restricted status on November 7, 2000. Decision at 2. This appeal followed.

The Board of Indian Appeals (Board) applies a *de novo* standard when reviewing questions of law. *Manistee County Board of Commissioners v. Midwest Regional Director*, 53 IBIA 293, 296 (2011). The Regional Director's determination that Appellant's property did not meet the criteria for a mandatory trust acquisition under § 2216(c) is a question of law, and thus we review that determination *de novo*. *State of Minnesota v. Acting Midwest Regional Director*, 47 IBIA 122, 125 (2008), *aff'd and complaint dismissed*, *Mahnomen County v. Bureau of Indian Affairs*, 604 F. Supp. 2d 1252 (D. Minn. 2009).

Appellant contends that the Regional Director misconstrued or misapplied § 2216(c) in several respects, but does not dispute the Regional Director's assertion, Answer Br. at 2, that no portion of the property was in trust or restricted status on November 7, 2000. That fact is dispositive in determining that BIA was not required to accept Appellant's interest in trust under § 2216(c), because § 2216(c) applies only to interests in "trust or restricted lands, at least a portion of which is in trust or restricted status on November 7, 2000." Appellant's property does not satisfy that requirement and thus does not qualify as a mandatory trust acquisition under § 2216(c). On that ground alone, we may conclude that the Regional Director correctly denied Appellant's application, and we need not address the parties' other arguments.[3]

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[3] Appellant asked BIA to accept his property in trust as a mandatory acquisition under § 2216(c). *See*, *e.g.*, AR 3. The Regional Director did not purport to consider or deny

(continued…)

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 March 31, 2015, decision.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

(…continued)
Appellant's application under the regulatory provisions governing discretionary trust acquisitions found at 25 C.F.R. Part 151. *See* Answer Br. at 2 n.1.