



INTERIOR BOARD OF INDIAN APPEALS

Verna Mae Clinton, Neomi Clinton, and Rose Mae Clinton;

Caroline Tohannie, Shirley Tohannie, Rena Babbitt Lane, Zena Lane, Jerry Lane, Mary Lane, John Benally, Johnson Tohannie, Glenna Begay, Salina Begay, Vicki R. Kee, and Mary R. Kee; and

Bobby Chaat, Bonnie Whitesinger, Robert P. Chaat, Rachael Chaat, Jerena Chaat, Lamesha Benally, Renae S. Chaat, and Jaron P. Chaat

v.

Western Regional Director, Bureau of Indian Affairs

63 IBIA 243 (07/20/2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

VERNA MAE CLINTON, NEOMI)	Order Vacating Decision in Docket
CLINTON, AND ROSE MAE)	No. IBIA 15-087 and Remanding, and
CLINTON,)	Order Dismissing Remaining Appeals
Appellants,)	
)	
CAROLINE TOHANNIE, SHIRLEY)	
TOHANNIE, RENA BABBITT LANE,)	
ZENA LANE, JERRY LANE, MARY)	
LANE, JOHN BENALLY, JOHNSON)	
TOHANNIE, GLENNA BEGAY,)	
SALINA BEGAY, VICKI R. KEE, AND)	
MARY R. KEE,)	
Appellants, and)	Docket Nos. IBIA 15-086
)	15-087
)	15-088
BOBBY CHAAT, BONNIE)	
WHITESINGER, ROBERT P. CHAAT,)	
RACHAEL CHAAT, JERENA CHAAT,)	
LAMESHA BENALLY, RENAE S.)	
CHAAT, AND JARON P. CHAAT,)	
Appellants,)	
)	
v.)	
)	
WESTERN REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	July 20, 2016

To have standing (i.e., be entitled) to appeal to the Board of Indian Appeals (Board), an appellant must demonstrate that their own legally protected interest was adversely affected by the decision being appealed.¹ The Bureau of Indian Affairs (BIA) issues interim livestock grazing permits to certain eligible Navajo tribal members who reside on Hopi Partitioned Lands (HPL) on the Hopi Tribe's reservation. In three separate, but substantively identical decisions, BIA's Western Regional Director (Regional Director)

¹ *Preservation of Los Olivos v. Pacific Regional Director*, 58 IBIA 278, 296-97 (2014) (POLO).

concluded that interim grazing permits issued to three Navajo individuals who had since died—Ida Mae Clinton, Bert Tohannie, and Pauline Whitesinger—were no longer valid and were terminated because the regulation does not contemplate that such permits survive the death of the permittee or are transferrable.²

In these appeals to the Board, only one appellant—Caroline Tohannie—contends that she was also named as the permittee under one of the three permits the Regional Director determined had terminated. In response to her appeal, the Regional Director seeks a remand, acknowledging that the decision must be reconsidered because the permit was issued jointly to Bert and Caroline Tohannie, and Caroline's rights were not considered in the decision. We grant the Regional Director's request, vacate the decision regarding Bert Tohannie's permit, and remand. Our action renders moot the appeals by other appellants from the decision regarding Bert Tohannie's permit, who also have failed to demonstrate their standing to appeal that decision, and we dismiss those appeals accordingly.

With respect to the two remaining decisions, regarding the Ida Mae Clinton and Pauline Whitesinger interim permits, none of the appellants contend that they were named as a permittee on either permit, and none contend that BIA's regulations governing interim grazing permits on the HPL granted them a legally protected interest in those permits. Thus, we dismiss these appeals for lack of standing because the appellants challenging the decisions regarding these two permits have not demonstrated that they have a legally protected interest that was adversely affected by the Regional Director's determination that the two permits terminated upon the death of the permittee.

Background

The HPL are lands that were partitioned to the Hopi Tribe (Tribe) pursuant to the 1974 Navajo-Hopi Settlement Act, 25 U.S.C. § 640d *et seq.* Navajo Tribal members who are residents of the HPL and who meet certain criteria are eligible for interim grazing allocations and permits issued by BIA.³ 25 C.F.R. § 168.6(b). Under the regulations,

² See Letter from Regional Director to Ida Mae Clinton, c/o Family of Ida Mae Clinton, Apr. 24, 2015 (Administrative Record (AR) at C-198 to C-199); Letter from Regional Director to Bert Tohannie, c/o Caroline Tohannie, Apr. 24, 2015 (AR at T-198 to T-199); Letter from Regional Director to Pauline Whitesinger, c/o Ruby W. Benally, Apr. 24, 2015 (AR at W-198 to W-199).

³ Among the requirements for eligibility for a BIA interim permit is that the permittee be a "person awaiting relocation" from the HPL, *see* 25 C.F.R. §168.6(b), which is a term defined in the regulations, *see id.* § 168.1(o).

“[n]o interim permit will be issued for a term greater than one year,” although permits “may be reissued upon application and redetermination of eligibility.” *Id.* § 168.6(b)(4). “When a Navajo permit holder discontinues grazing livestock . . . whether by reason of his relocating or for any other reason, his grazing permit will be cancelled and no permit will be issued in lieu thereof.” *Id.* § 168.6(b)(4).

On April 24, 2015, after being informed that interim permit holders Ida Mae Clinton, Bert Tohannie, and Pauline Whitesinger were deceased, the Regional Director issued three substantively identical decisions concluding that because the permittee was deceased, the respective interim permit was no longer valid and was terminated. The Regional Director concluded that interim grazing permits for Navajo Tribal members on the HPL are only valid for 1 year and that the regulation does not contemplate that such permits are transferrable.

These appeals to the Board followed. We first briefly summarize the doctrine of standing, and then address each appeal in turn.

Discussion

I. An Appellant Must Demonstrate Standing to Bring an Appeal

The Board’s regulations incorporate the doctrine of “standing,” under which a party seeking to appeal from a BIA decision must satisfy the requirement to show that he or she is an “interested party” whose own legally protected interest was adversely affected by the decision being appealed. *POLO*, 58 IBIA at 296-97. The Board’s standing requirements correspond to the requirements of constitutional standing: an appellant must make a showing of an actual (concrete and particularized) injury to (adverse effect on) the appellant’s (own) legally protected interests; which was caused by the BIA decision being appealed; and which is redressable by a Board decision, e.g., by setting aside the challenged decision. *Id.*

The burden is on an appellant to demonstrate that he or she has standing. *Parker v. Southern Plains Regional Director*, 45 IBIA 310, 317 (2007); *Skagit County, Washington v. Northwest Regional Director*, 43 IBIA 62, 70 (2006).

II. We Dismiss the Appeal by the Clinton Appellants (Docket No. IBIA 15-086)

Verna Mae Clinton, Neomi Clinton, and Rose Mae Clinton (collectively, “Clinton Appellants”) appealed to the Board from the Regional Director’s decision regarding Ida Mae Clinton’s interim permit. The Clinton Appellants identify themselves as children of

Ida Mae Clinton, and express opposition to any BIA decision “that claims the authority to deprive us of our property rights to our ancestral homeland.” Clinton Appellants Notice of Appeal, May 21, 2015.

The Clinton Appellants did not file an opening brief. The Regional Director filed a motion to dismiss the Clinton Appellants’ appeal for failure to state a claim upon which relief can be granted and for lack of standing. The Regional Director contends that the Clinton Appellants failed to identify any injury to a legally protected interest held by them, resulting from the Regional Director’s determination that Ida Mae Clinton’s permit is no longer valid.

The Clinton Appellants state that they “are concerned about impoundment, confiscation and relocation conducted by [BIA],” and object to any BIA decision that “claims the authority to deprive” them of their “property rights to [their] ancestral homeland.” Clinton Appellants Notice of Appeal. But their notice of appeal fails to articulate how those concerns and objections relate to the Regional Director’s decision that Ida Mae Clinton’s interim permit expired upon her death. And as noted, the Clinton Appellants did not file an opening brief, and their notice of appeal contains no allegations of fact upon which we could conclude that they have any legally protected interest that was adversely affected by the Regional Director’s determination that Ida Mae Clinton’s permit terminated upon her death.

We agree with the Regional Director that the Clinton Appellants have failed to demonstrate that they have standing to appeal from the decision regarding Ida Mae Clinton’s interim permit. As the Regional Director argues, the Clinton Appellants did not provide any additional information outlining the basis of their appeal. Nor did they file a reply. Thus, we dismiss their appeal for lack of standing.

III. We Grant the Regional Director’s Motion for a Remand of the Bert Tohannie Interim Permit Decision, and Dismiss the Appeals from That Decision in Remaining Part (Docket No. IBIA 15-087)

Caroline Tohannie, Shirley Tohannie, Rena Babbitt Lane, Zena Lane, Jerry Lane, Mary Lane, John Benally, Johnson Tohannie, Glenna Begay, Salina Begay, Vicki R. Kee, and Mary R. Kee appealed to the Board from the Regional Director’s decision regarding the interim permit issued to Bert Tohannie. Caroline is Bert’s surviving spouse. Shirley Tohannie and Johnson Tohannie are adult children of Bert and Caroline; the other appellants do not contend that they are related to Bert or to Caroline.

After Caroline Tohannie filed her opening brief, the Regional Director filed a motion requesting a remand, stating that while the interim permit to Bert is no longer valid

due to his death, the rights of Caroline Tohannie must be reconsidered because the permit was issued at various times in both of their names, as described in Caroline's opening brief. Regional Director Motion Requesting Remand and Dismissal of Appellant Caroline Tohannie's Appeal, Apr. 28, 2016.

We grant the Regional Director's request and remand for further proceedings and issuance of a new decision addressing the rights of Caroline Tohannie. Although the Regional Director reiterates his position that the interim grazing permit issued to Bert Tohannie is no longer valid due to his death, we vacate his decision to ensure that Caroline's rights may be fully considered in the context of a permit that had previously and on various occasions been issued in both Bert and Caroline's names. But we decline Caroline's request that we remand the matter with prescriptive instructions regarding the issuance or reissuance of a permit to her. *See* Caroline Tohannie Reply Brief (Br.), May 28, 2016, at 2-4. Such action would implicate the underlying merits with respect to the issuance or reissuance of a permit to Caroline, which were not addressed in the Regional Director's decision. Those issues are not within the scope of this appeal, *see* 43 C.F.R. § 4.318, and are properly left for the Regional Director to decide in the first instance on remand.

We dismiss the appeal, with respect to the remaining Appellants, because by vacating the decision and remanding, any claims raised pertaining to the interim permit issued to Bert are rendered moot. Moreover, as is the case with the Chaat/Whitesinger Appellants, and for the same reasons discussed below, the remaining Appellants who challenged the decision regarding Bert Tohannie's permit have failed to show that they have standing to do so. To the extent these Appellants have sought to raise other claims in this appeal, e.g., complaints about the Hopi-Navajo relocation program or issues pertaining to the regulation of grazing on the HPL, none of those issues are within the scope of the appeal.

We note that with one possible exception—Shirley Tohannie—both the Regional Director and Caroline Tohannie agree that none of the additional individuals who appealed from the decision regarding Bert's interim permit have standing to appeal from that decision. The Regional Director contends that Shirley also lacks standing. Caroline does not make that contention, but neither does she argue any basis upon which Shirley would have standing.⁴ We express no opinion on whether Shirley may qualify to be issued an interim permit in her own right. It appears that Shirley submitted a request to be issued such a permit. *See* Caroline Tohannie, et al. Notice of Appeal, May 22, 2015, Exhibit (Ex.) (Letter from Snow to Regional Director, Mar. 18, 2015 (Request for Issuance of New Grazing Permit for Shirley Tohannie)); Chaat/Whitesinger Reply Br., June 30, 2016, Ex. 6

⁴ Caroline and Shirley are represented in these proceedings by different counsel.

(Declaration of Shirley Tohannie, June 25, 2016, ¶ 37 (“I want the BIA to issue me a grazing permit.”)). That request was not the subject of the Regional Director’s decision and is not within the scope of this appeal.⁵

IV. We Dismiss the Chaat/Whitesinger Appeals For Lack of Standing
(Docket No. IBIA 15-088)

Bobby Chaat, Bonnie Whitesinger, Robert P. Chaat, Rachel Chaat, Jerena Chaat, Lamesha Benally, Renae S. Chaat, and Jaron P. Chaat (Chaat/Whitesinger Appellants), appealed to the Board from the Regional Director’s decision regarding Pauline Whitesinger’s interim permit. *See* Chaat/Whitesinger Notice of Appeal, May 22, 2015.⁶ The Chaat/Whitesinger Appellants and Shirley Tohannie filed a joint opening brief, in which they state that they “disagree with the relocation program.” Chaat/Whitesinger Opening Br. at 2. The Chaat/Whitesinger Appellants contend that the “BIA Hopi Agency” has issued “notices and threats” to revoke or cancel their livestock permits, or impound or confiscate their livestock. Chaat/Whitesinger Opening Br. at 3-4.

The Regional Director moved to dismiss the Chaat/Whitesinger Appellants’ appeal for lack of standing. We agree that the Chaat/Whitesinger Appellants have failed to demonstrate any basis upon which they would have standing to appeal from the Regional Director’s decisions at issue in these appeals.⁷

⁵ Shirley Tohannie also contends that her grazing permit “was cancelled,” *see* Chaat/Whitesinger Opening Br., Jan. 25, 2016, at 12, in apparent reference to the decision regarding Bert Tohannie’s permit. Our vacatur of that decision would render her claim moot, though it remains unclear on what ground, if any, Shirley claims to have had any legally protected interest in Bert’s permit. We leave it to the Regional Director to consider the merits of any issues presented by Shirley concerning her rights, and address them, as appropriate in the decision regarding Caroline’s rights or in a separate decision on Shirley’s request.

⁶ The Chaat/Whitesinger Appellants’ notice of appeal refers to all three of the Regional Director’s decisions, but the only permit to which they claim some connection, through their relationship with Pauline Whitesinger, is the interim permit issued to her.

⁷ The Chaat/Whitesinger Appellants also argue that their due process rights were violated because BIA did not give them notice of the decision regarding Pauline Whitesinger’s permit. But it is apparent that the Chaat/Whitesinger Appellants did receive notice of the decision, and they timely appealed to the Board after receipt of the decision. Thus, the Chaat/Whitesinger Appellants have not explained how they were injured by BIA’s alleged failure to send them copies of the decision.

The Chaat/Whitesinger Appellants express their opposition to the Hopi-Navajo relocation program, contend that they inherited a collective interest in Pauline Whitesinger's livestock upon her death as a matter of Navajo law, and request that the Board order BIA to issue a permit to Bobby Chaat or to the family. Although the Chaat/Whitesinger Appellants may have benefited while Pauline Whitesinger held her permit, through the family's collective use of livestock she was permitted to graze, none has identified any legally protected interest that he or she held in the permit itself, or any other legally protected interest that was adversely affected by the Regional Director's decision that when Pauline Whitesinger, as the permittee, died, her interim permit terminated. None contends that the regulations governing interim permits gave rise to any legally protected interest held by them as individuals. And the decision did not purport to affect the inheritance or ownership of the livestock.

On appeal, the Chaat/Whitesinger Appellants ask that the Board order BIA to issue a permit to Bobby or to the family. *See* Chaat/Whitesinger Reply Br., Ex. 1 (Declaration of Bobby Chaat, June 26, 2016, ¶ 20 (“I want the BIA to issue my family a grazing permit.”)); *Id.*, Ex. 4 (Declaration of Jerena Chaat, June 26, 2016, ¶ 6 (requesting that BIA issue a permit to Bobby)).⁸ But the Regional Director's decision did not purport to take any action on an application from one or more of the Chaat/Whitesinger Appellants to be issued a permit based upon their own individual eligibility or rights, and that issue is outside the scope of this appeal.

In addition, the Chaat/Whitesinger Appellants repeatedly cite a notice sent in 2014 by the Regional Director requesting that the family of Pauline Whitesinger remove all livestock from their HPL premises, but they fail to acknowledge that the notice was expressly rescinded by the Regional Director. *See* Chaat/Whitesinger Reply Br. at 2, 6, 8 (citing Letter from Regional Director to Family of Ms. Pauline Whitesinger, Nov. 17, 2014 (AR at W-196)); Letter from Regional Director to Ms. Pauline Whitesinger, Dec. 19, 2014 (rescinding Nov. 17, 2014, notice) (AR at W-197). To the extent that the Chaat/Whitesinger Appellants contend that they have a legally protected interest, based on their *own* right to graze livestock on the HPL, that issue was not addressed in the Regional Director's decision and provides us with no basis to find that they have standing to challenge the decision regarding Pauline Whitesinger's permit. Similarly, their complaints that Hopi Rangers or BIA Hopi Agency employees have impounded, or threatened to impound, livestock owned by Shirley Tohannie or the Chaat/Whitesinger Appellants, are

⁸ It is not apparent that Bobby has even applied for a permit from BIA.

outside the scope of the Regional Director's decisions and not properly before the Board in these appeals.⁹

Whatever general objections the Chaat/Whitesinger Appellants may have to the relocation program, or specific interest in having a new permit issued to Bobby or other family members, they fail to demonstrate how they were adversely affected by the Regional Director's decision finding that Pauline Whitesinger's interim permit terminated upon her death. Thus, we dismiss their appeal for lack of standing or as outside the scope of an appeal from the Regional Director's decisions.

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 grants the Regional Director's motion in Docket No. IBIA 15-087, vacates the April 24, 2015, decision regarding Bert Tohannie's permit, and remands for further proceedings to address Caroline Tohannie's rights. We dismiss the remaining appeals as moot or for lack of standing.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

⁹ The Board lacks jurisdiction over appeals from actions of tribal officials. *In re Ute Tribal Water Compact*, 50 IBIA 250 (2009). And with exceptions not relevant here, the Board lacks jurisdiction over appeals from decisions by BIA superintendents, which must first be appealed to a BIA regional director. *Northern Cheyenne Livestock Ass'n v. Acting Superintendent, Northern Cheyenne Agency*, 43 IBIA 24 (2006).