

Editor's note: Appealed -- aff'd, sub nom. Leavitt v. U.S., Civ. No. A 78-287 (D.Alaska)

SILAS NEGOVANNA et al

IBLA 74-235

Decided June 5, 1974

Appeals from Bureau of Land Management decisions F-474 etc., rejecting Native allotment applications covering lands in Naval Petroleum Reserve No. 4.

Affirmed, except as to F-13031--dismissed; F-14617--vacated.

Alaska: Native Allotments

Lands in Naval Petroleum Reserve No. 4 are not available for Alaska native allotments.

APPEARANCES: William D. Rives, Esq., of Davis, Wright, Todd, Riese and Jones, Seattle, Washington, for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE FRISHBERG

This is a consolidated appeal from Bureau of Land Management decisions rejecting Alaska Native allotment applications, listed in the Appendix hereof, because the lands under application are within Naval Petroleum Reserve No. 4 (Pet 4), established by Executive Order 3797-A of February 23, 1923, and not open for native allotments.

Loila T. Itta, F-13031, died prior to the perfection of her appeal. Since the allotment right is personal and does not survive the deceased, her appeal is dismissed. Larry W. Dirks, Sr., 14 IBLA 401 (1974).

Frieda Elavgak, F-14606, born in 1902, occupied the land until 1947 in "Full time residence with members of my family." But the residence of a minor child in company with parents or guardians does not qualify under the Allotment Act. Arthur C. Nelson, 15 IBLA 76 (1974). Since she is not shown to have had five years exclusive use and occupancy before age 21 and prior to 1923, her application must be rejected. Arthur C. Nelson, *supra*. Accordingly, it is not necessary to discuss the effect, if any, of the termination of her residence in 1947.

Ina Kalayauk, F-14617, born in 1894, asserts residence with other family members from 1910 to the present time. Since she indicates more than five years occupancy and use prior to the withdrawal the rejection of her application was premature. In accordance with the Secretarial directive of October 18, 1973, her application is entitled to further consideration. In this connection we point out that a valid, subsisting settlement or entry existing on February 23, 1923, and continuing to the present would be excepted from the withdrawal of that date.

In the remaining cases each appellant asserted that settlement had been effected on Pet 4 lands after these lands were withdrawn in 1923, or that settlement had been initiated less than five years prior to the withdrawal. Situations of this type were fully considered in Georgianna A. Fischer, 15 IBLA 79 (1974), which held that lands in Naval Petroleum Reserve No. 4 are not available for Alaska native allotments. For the reasons therein stated the rejection of all the remaining cases is affirmed.

Therefore, pursuant to the authority delegated by the Secretary to the Board of Land Appeals, 43 CFR 4.1, appeal F-13031 is dismissed; BLM decision F-14617 is vacated; and the decisions in the remaining cases of this consolidated appeal are affirmed.

Newton Frishberg
Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

APPENDIX

<u>CASE NUMBER</u>	<u>APPELLANT</u>
F-13031	Loila T. Itta
F-14617	Ina Kalayauk
F-474	Silas Negovanna
F-13030	Harold K. Itta
F-13495	Mildred Akpik
F-13510	May Ahtuanguaruak
F-13578	Sadie B. Neakok
F-14606	Frieda Elavgak
F-16271	Weir T. Negovanna
F-19455	Greta Akpik
F-14356	Henry Peetuk
F-14595	Myrtle Akootchook
F-14599	Walter Akpik, Sr.
F-14610	Lollie Hopson
F-14612	Doreen Itta
F-14614	Mary K. Itta
F-14616	Noah E. Itta
F-14627	Caleb Nayukok
F-14650	Vera Panigeo Olemaun
F-15259	Raymond T. Aguvluk
F-15498	Dora Elavgak
F-15499	Joseph Elavgak
F-15500	Joe Ericklook
F-15507	Cora Leavitt
F-15508	Luther Leavitt
F-15509	Mae M. Leavitt
F-15510	Molly Leavitt
F-15512	Martha Matumeak
F-15513	Marchie Nageak
F-15514	Nina Nayukok
F-15515	Kate Negovanna
F-15516	Edward Olemaun
F-15517	Margaret Leavitt Opie
F-15518	Henry Panigeo
F-15519	Joseph Panigeo
F-15520	Joseph Panigeo, Jr.
F-15521	Mabel Panigeo
F-15524	David Simmonds
F-15525	Samuel Simmonds
F-15527	Dora Stine
F-16256	Lizzie Aguvluk
F-16258	Barry N. Bodfish

F-16265	Morris A. Kagak
F-16266	Byrd Kayutak
F-16267	Andrew Matoomealook
F-16270	Irving A. Negovanna
F-16272	Martha Ogeaktuk
F-16276	Glenn N. Shoudla
F-16280	Emily Ungudruk
F-16281	Steve Ungudruk
F-16294	Mary Edwardsen
F-16311	Luke F. Kagak
F-16312	Richard Kagak
F-17167	Gregg A. Tagarook
F-17444	May A. Panigeo
F-17447	David K. Elavgak
F-17453	Samuel Nayukok
F-17454	Thomas Panningona

