

THOMAS AKOOTCHOOK

IBLA 73-133

Decided October 29, 1974

Appeal from Bureau of Land Management decision rejecting Native allotment application F 14596.

Affirmed as modified.

1. Alaska: Native Allotments

Lands in the Arctic National Wildlife Range may not be made available for Native allotment unless the allotment applicant initiated substantial use and occupancy more than five years prior to the withdrawal of the land.

APPEARANCES: William D. Rives, Esq., of Davis, Wright, Todd, Riese & Jones, Seattle, Washington, for appellant; Paul Kirton, Esq., Loretta C. Douglas, Esq., Office of the Solicitor, Department of the Interior, for respondent, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal is from a decision dated August 30, 1972, by the Manager of the Fairbanks, Alaska, District and Land Office, Bureau of Land Management, rejecting Thomas Akootchook's Native allotment application F 14596 filed November 24, 1971, which claimed occupancy of certain land from 1948 to 1969. The rejection was because the land was withdrawn by Public Land Order 82 on January 22, 1943, and was later included in Public Land Order 2214 of December 6, 1960, for the Arctic National Wildlife Range, so that the land was not open to settlement for a Native allotment since 1943.

Extensive briefs in this case have been filed in behalf of appellant. Certain of the arguments advanced concerning the effect of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1601 et seq. (Supp. II, 1972), upon allotment applications filed under the Native Allotment Act of May 17, 1906, as

amended, 43 U.S.C. § 270-1 (1970), 1/ for lands withdrawn for wildlife, and of claims of rights based upon aboriginal occupancy or the occupancy of a Native's parents or others, warrant no discussion as they have been answered contrary to appellant's contentions in Christian G. Anderson, 16 IBLA 56 (1974); Georgianna A. Fischer, 15 IBLA 79 (1974); and Larry W. Dirks, Sr., 14 IBLA 401 (1974).

[1] More significantly, appellant now asserts that he actually occupied the land prior to 1943 and, in effect, desires to amend his application and to submit proof to show such occupancy prior to the withdrawal of the land. The brief from the Office of the Solicitor, among other matters, takes the position that an allotment may not be made of withdrawn land. If land is not excepted by language in a withdrawal order from the effect of the order, that abstract position may be true. However, Secretarial Instruction of October 18, 1973, provides that a withdrawal may be revoked and an allotment granted if a Native has completed the five-year period of statutory substantial use and occupancy prior to the effective date of the withdrawal. Christian G. Anderson, supra. Therefore, lands withdrawn for an agency of this Department, including those in the Arctic National Wildlife Range, may be revoked in accordance with this instruction where the circumstances so warrant. But such lands may not be made available unless the applicant initiated substantial use and occupancy more than five years prior to such withdrawal. Id.

Based upon the showings in appellant's application before him, the Manager's decision was correct, as occupancy and settlement initiated after a withdrawal would not entitle a Native allotment applicant to an allotment. Id. Because of appellant's request and assertions on appeal, however, he may be afforded additional time to substantiate his claim of occupancy prior to the withdrawal of the land. Id.; Mary T. Akootchook, 17 IBLA 189 (1974). We do not at this time decide whether his asserted use of the land would be sufficient occupancy and use to warrant a revocation of the withdrawal and allowance of his allotment application. Such a determination will be made by the Bureau of Land Management upon consideration of further proofs and showings offered by appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed as modified to allow appellant to submit

1/ Repealed by Sec. 18 of the Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. II, 1972), which preserved applications for Native allotments pending at that date.

further evidence in support of his application. The evidence must be submitted to the Alaska State Office, Bureau of Land Management, in Anchorage, on or before December 1, 1974, or within a further reasonable period as may be allowed by the State Director, failing in which the decision below will be allowed to stand.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

