

Editor's note: Reconsideration denied by order dated March 17, 1975; Supplemental order correcting March 17 order issued May 5, 1975; Appealed -- settled, Civ. No. A75-111 (D.Alaska May 30, 1980)

SUSIE ONDOLA

IBLA 73-315 A

Decided October 29, 1974

Appeal from decision, Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment application AA 7561.

Affirmed.

1. Alaska: Native Allotments

An allotment application under the Act of May 17, 1906, must be rejected where it was filed after December 18, 1971, because that Act was repealed by section 18 of the Alaska Native Claims Settlement Act on that date.

2. Alaska: Native Allotments

Withdrawn and reserved lands are not open to appropriation under the Alaska Native Allotment Act. No rights may be initiated under the Alaska Native Allotment Act by occupation and use of lands not open to appropriation.

3. Alaska: Native Allotments

Where a native has initiated and completed substantial use and occupancy of vacant, unappropriated and unreserved land in Alaska for five years prior to withdrawal or reservation of the land, the allotment may be granted under appropriate circumstances, even though the land is still withdrawn at the time of application. No credence will be given an applicant's averment that she had commenced

substantial use and occupancy to the potential exclusion of all others at the age of two years and had completed five years use prior to attaining age seven.

APPEARANCES: Susie Ondola, pro se; Paul Kirton, Esq., Office of the Solicitor, Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Susie Ondola filed Alaska Native Allotment application, AA 7561, pursuant to the provisions of the Alaska Native Allotment Act of May 17, 1906, 43 U.S.C. § 270-1 (1970). Her application was certified by Delores N. Roullier, Bureau of Indian Affairs (BIA), realty specialist, on April 5, 1972. The application was received in the Bureau of Land Management (BLM), on April 10, 1972. The record fails to disclose when the application was actually received in BIA. ^{1/} Nonetheless, BLM considered it and rejected the application for the reason that the land applied for was withdrawn when applicant stated she had initiated use and occupancy.

[1] The Alaska Native Allotment Act was repealed on December 18, 1971, by section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (Supp II, 1972). But applications pending before the Department of the Interior on that date may be processed to patent, all else being regular. It follows that appellant's application must be rejected if it was filed after December 18, 1971.

Susie Ondola was born on May 2, 1936. Her application described lands which were withdrawn for military purposes on August 4, 1942, by Public Land Order No. 20 and have not been open to settlement, use and occupancy since then. She asserts that use and occupancy was initiated prior to 1942.

[2, 3] Appellant asserts initiation of use and occupancy of the land under application prior to the date of withdrawal, commencing first alongside her parents and then for herself. This

^{1/} BIA reported the application of George Ondola, AA 7560, was filed with it in April 1972. It, too, was certified on April 5, 1972, by Mrs. Roullier and filed in BLM on April 10, 1972.

Board has previously considered substantially similar statements. An allotment right is personal to one who has fully complied with the law and regulations, and the native who applies for withdrawn lands must show that he complied with the law prior to the effective date of the withdrawal; he may not tack on his deceased parents' use and occupancy to establish a right for himself prior to the withdrawal. Larry W. Dirks, Sr., 14 IBLA 401 (1974). A person who has initiated a claim under the public lands laws but has not fully complied with the law is subject to having his claim defeated where the land is withdrawn under statutory authority. David Capjohn, 14 IBLA 330 (1974); United States v. Norton, 19 F.2d 836 (5th Cir. 1927). With respect to segregated or withdrawn land, if a Native has completed the five-year period of statutory substantial use and occupancy prior to the effective date of withdrawal or segregation, the allotment may be granted under appropriate circumstances even though the land is still segregated at the time of application. However, where a Native has not completed the five-year period of statutory use and occupancy prior to the effective date of withdrawal or segregation, the allotment application must be rejected. Thomas Akootchook, 17 IBLA 345 (1974). Georgianna A. Fischer, 15 IBLA 79 (1974); Silas Negovanna, 15 IBLA 408 (1974); Secretary's Instruction of October 18, 1973.

For the purposes of this decision only, we will assume that the allotment application was timely filed. Further assuming all assertions of appellant are true, we summarily reject the assertion that she used or occupied the lands under application to the potential exclusion of all others since the tender age of two. Assertions to the effect that a child two years of age exerts independent control and use of land to the exclusion of her parents, siblings and others, flies in the face of reason. Helen F. Smith, 15 IBLA 301 (1974); Arthur C. Nelson, 15 IBLA 76 (1974).

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision rejecting Native Allotment application AA 7561 is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

