

PRINCE A. RYAN, JR.

IBLA 75-140

Decided January 2, 1975

Appeal from decision rejecting homesite purchase application AA 272.

Affirmed.

1. Alaska: Homesites

Under the Homesite Act of May 26, 1934, 48 Stat. 809, 43 U.S.C. § 687a (1970), an applicant must occupy land in a habitable house not less than five months each year for three years. Even if a two-year credit is allowed for military service there must be five months of occupancy for one year. Totalling lesser periods of occupancy over a number of entry years is not sufficient to meet the requirement.

2. Alaska: Homesites

An applicant's statement that he resided on a homesite claim only on weekends for a substantial portion of a five-month period does not constitute the five-months occupancy required for a homesite under the Act of May 26, 1934, and an application which shows on its face that the requirements have not been met is properly rejected.

APPEARANCES: Prince A. Ryan, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Appellant, while serving in the military at the Elmendorf Air Force Base, filed notice of location AA 272 on September 16, 1966, for a "hunting and fishing headquarters." On September 13, 1971, he applied to purchase the tract as a trade and manufacturing site. When advised that the patent requirements for trade and manufacturing

sites might preclude the issuance of a patent, appellant amended his application as one to purchase under the homesite law, 43 U.S.C. § 687a (1970); 43 CFR 2563. His application was held for rejection because appellant failed to show he had resided on the homesite claim for a five-month period in any one of the years from 1966 through 1971.

Appellant makes two basic arguments. First, he contends that the law and regulations do not require that there be five consecutive months residence, and that the dates of residence he submitted on his application constitute five months. Those dates are:

October 1, 1966 to December 5, 1966
August 15, 1967 to September 17, 1967
July 4, 1968 to September 6, 1968
July 11, 1970 to August 15, 1970.

While those dates total over five months, they also cover a four-year period. The Homesite Act of May 26, 1934, 48 Stat. 809, 43 U.S.C. § 687a (1970), is explicit. An applicant must occupy land "in a habitable house, not less than five months each year for three years" to be entitled to purchase. Although appellant has military service for which a credit of two years of occupancy may be given, he must meet the requirements for one year, 43 CFR 2096.1-3. In other words, the required occupancy of five months in a habitable house must fall within a given entry year. Totalling lesser periods of time of occupancy over a number of years is not sufficient to meet the requirement.

Appellant's next argument is, in effect, a modification of his application. He states that the dates given above were times when he spent 24 hours upon the claim, but that he had a five-month period of residency from September 16, 1966, through February 20, 1967. However, he states:

But in counting this five-month period as consecutive, it must be understood that I commuted to my duty base at Elmendorf Air Force Base 100 miles away during the week and returned to my homesite on the week-ends, holidays and one leave from October 1, 1966 to December 5, 1966.

Even accepting this statement as an amendment of his application, this showing does not meet the requirements of the law. It is evident that during a substantial portion of the five-month period, appellant did not reside at the homesite during the major part of the week. Therefore, during the entry year the entire time of occupancy could not total five months. Because his application and

supplemental showing on appeal on their face do not show that the requirements of the Act of May 26, 1934, have been met for a homesite, appellant's application for a homesite under the Act is properly rejected. Cf. Lois A. Mayer, 7 IBLA 127 (1972); Gene L. Brown, 7 IBLA 71 (1972). This conclusion makes it unnecessary to discuss whether his application is deficient in other respects, and other questions concerning his claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

