

DONALD F. NIELSEN
ETHEL ADCOX

IBLA 75-498A

Decided August 11, 1975

Appeals from separate decisions of the Alaska State Office, Bureau of Land Management, rejecting Native allotment applications AA-7345 and 7527.

Vacated and remanded.

1. Alaska Native Allotments -- Classification and Multiple Use Act of 1964

When a Native has initiated use and occupancy of land prior to the date of its classification under the Classification and Multiple Use Act of 1964, such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, all else being regular, even though the classification remains in effect.

APPEARANCES: Henry W. Cavallera and Frederick Torisi, Esqs., of Alaska Legal Services Corporation, for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE FRISHBERG

In separate decisions of March 13 and 28, 1975, the Alaska State Office, Bureau of Land Management, rejected appellants' applications filed pursuant to the Alaska Native Allotment Act, 43 U.S.C. § 270-1 through 270-3 (1970), because the applicants had failed to complete five years use and occupancy prior to the segregation of the land pursuant to a classification under the Classification and Multiple Use Act, 43 U.S.C. § 1411 et seq. (1970).

In Katie Wassillie, 20 IBLA 330 (1975), we invited attention of all parties to the May 16, 1975, Supplement to the Secretarial Guidelines of October 13 and 19, 1973, that:

When a Native has initiated use and occupancy of the land prior to the date of classification under the Act of September 19, 1964 (43 U.S.C. 1411-1418), such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, even though the classification encompassing the land is still in effect.

Appellants' applications must be considered in accordance with the quoted guidelines. Of course, the requisite use and occupancy must be demonstrated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are vacated and the cases remanded for further appropriate processing.

Newton Frishberg
Chief Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

