

ANGELINE GOODEN

IBLA 75-556

Decided January 6, 1976

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, rejecting in part Native allotment application F-17974.

Affirmed.

1. Alaska: Native Allotments

In order to qualify for an allotment an Alaska Native applicant must show substantially continuous use and occupancy of the land for a period of 5 years. When there is no evidence that the applicant used and occupied the land as required, the application must be rejected.

APPEARANCES: Pamela Herman, Esq., Alaska Legal Services Corporation, Kotzebue, Alaska.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Angeline Gooden has appealed from an April 7, 1975, decision of the Fairbanks District Office, Bureau of Land Management (BLM), rejecting in part her Native Allotment application filed pursuant to the Native Allotment Act of May 7, 1906, 43 U.S.C. § 270-1 through § 270-3 (1970).

Appellant's application embraced two parcels of land near Kiana, Alaska, designated Parcel A and Parcel B. Each encompassed approximately 80 acres. Appellant claimed seasonal use and occupancy of the land for subsistence hunting, fishing, and berrypicking commencing in May 1948 and continuing to the present time. Parcel B was examined in August 1972 by the BLM. It was found to be proper for allowance and a survey was requested. The April 7, 1975, BLM decision concerned only the rejection of Parcel A.

A field examination of Parcel A was conducted on September 11, 1972. The applicant accompanied the BLM Realty Specialist. During the joint examination the examiner could find no evidence of use and the applicant was unable to show him any signs of use and occupancy. In addition, the examiner reported that certain witnesses in Kiana, Alaska, stated that the applicant had not used the parcel.

On November 21, 1974, BLM notified the applicant that it appeared that she was not qualified to receive Parcel A and that if she had additional evidence she should present it within 60 days. No evidence was received and the April 7, 1975, decision was issued rejecting Parcel A because the applicant failed to use and occupy the land.

[1] In order to qualify for an allotment an applicant must show substantially continuous use and occupancy of the land for a period of 5 years. 43 CFR 2561.2(a). 43 CFR 2561.0-5(a) states:

The term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

There is no evidence in the record that applicant used and occupied the land in question. She was personally unable to show the land examiner any evidence of use and occupancy on Parcel A. Though afforded sufficient opportunities to submit proof to support her application, she has failed to do so. The application as it related to Parcel A was properly rejected.

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

Joan B. Thompson
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

