

GUSTAV O. WIEGNER

IBLA 76-272

Decided July 30, 1976

Appeal from a decision of the Alaska State Office, Anchorage, Alaska, Bureau of Land Management, rejecting appellant's application to purchase and canceling headquarters site claim AA-2469.

Affirmed.

1. Alaska: Headquarters Sites

One who files an application to purchase a headquarters site claim has the burden of showing compliance with 43 U.S.C. § 687a (1970), and the applicable regulations in order to establish entitlement to the land.

2. Alaska: Headquarters Sites

A headquarters site application is properly rejected where the appellant fails to produce any probative evidence that the land claimed as a headquarters site was used in connection with a productive industry within the meaning of the headquarters site law.

APPEARANCES: Gustav O. Wiegner, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gustav O. Wiegner has appealed from an Alaska State Office, Bureau of Land Management, decision dated September 9, 1975, which rejected his application to purchase headquarters site claim AA-2469 pursuant to the Act of March 3, 1927, as amended, 43 U.S.C. § 687a (1970). The decision also canceled the claim.

The pertinent part of 43 U.S.C. § 687a (1970) reads as follows:

\* \* \* any citizen of the United States twenty-one years of age who is himself engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands, \* \* \* in Alaska, as a homestead or headquarters, under rules and regulations to be prescribed by the Secretary of the Interior, \* \* \*.

On November 6, 1972, appellant filed an application to purchase headquarters site claim AA-2469. In the application appellant listed the nature of the commercial operation on the site as "guide service."

Departmental regulation 43 CFR 2563.1-1(a) requires that the application to purchase show, inter alia:

- (2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

\* \* \* \* \*

- (4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation is engaged.

- (5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose as a homestead or headquarters.

[1] In order to comply with 43 CFR 2563.1-1(a) appellant must show that he was using the land claimed as a headquarters site for a "productive industry" and other facts demonstrating the site's adaptability for the purpose of a headquarters. The burden of establishing entitlement to the land claimed as a headquarters site rests with the applicant. Vernon L. Nash, 17 IBLA 332 (1974). He must show compliance with the statute and regulations. Id.

By notice dated February 2, 1973, appellant was notified that additional information was required concerning his application. It was indicated that such information should consist of, but need not be limited to, the following:

- (1) Copies of income tax or other accounting records showing the nature and source of the applicant's income from the business in connection with which the site is used and maintained.
- (2) Copies of business licenses and/or advertisements for the business in connection with which the headquarters site is used or maintained.
- (3) Statement from other persons in the area who have knowledge that the applicant has used the land as required in connection with his own business or that of his employer.
- (4) Statement from persons, if any, who have used the facilities on the land involved. These statements should contain a showing as to the amount paid for the use of the facilities.

On February 27, 1973, in support of his application to purchase, appellant submitted four 35mm color slides of the claim and a letter indicating that no tax papers were being enclosed because "I have only had a loss to date." In a letter sent to BLM on July 10, 1972, prior to the filing of his application to purchase, appellant stated that:

The cabin has a large sign over the door "Chris Anderson," registered Guide. This cabin is also used by Mr. Anderson and I work for him, when possible, as an Assistant guide to enable me to learn and qualify for a full guides [sic] license.

Again by letter dated March 15, 1973, BLM informed appellant that the evidence submitted to that date was insufficient to establish compliance with the headquarters law. BLM reiterated the list of information that should be submitted.

On April 2, 1973, BLM received a letter from appellant stating that he had kept no receipts concerning the business and enclosing a 1968 Transporter and Assistant Guide License and a 1969 Motor Freight and Warehousing License both issued by the State of Alaska to appellant at a cost of \$ 25.00 each.

The BLM decision dated September 9, 1975, found that the applicant had not shown that the land claimed had been used as a headquarters site. For that reason, BLM rejected appellant's application to purchase and canceled his headquarters site claim.

On appeal appellant states that his business was stopped after he was "warned by the BLM against possible loss due to native land claims." He asserts that the business was started in good faith and that there is a large fully equipped cabin on the ground. However, no evidence to support his claim to the land was included, although he did state that "notarized statements may be obtained on my tracked vehicle operation from" two named individuals. 1/

[2] The record is devoid of evidence to support appellant's claim. Neither the statute nor the regulations require that appellant show a profitable business, but only that the site be used in connection with a productive industry. Even assuming a good faith attempt by appellant to comply with the statute and regulations, his assertions concerning the operation of a business on the site, without at least some evidence of customer trade and gross receipts, cannot support the requirement of showing a productive industry. A headquarters site application is properly rejected where the appellant fails to produce any probative evidence that the land claimed as a headquarters site was used in connection with a productive industry within the meaning of the headquarters site law. Kathleen M. Smyth, 8 IBLA 425 (1972).

Herein, appellant had ample opportunity to present the necessary facts and failed to do so. BLM correctly rejected the application to purchase and canceled the claim.

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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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1/ In appellant's application to purchase his business operation on the site was listed as "guide service." His first reference to his business as a "tracked vehicle operation" was in his statement of reasons for appeal.

