

NELLIE BOSWELL BEECROFT

IBLA 75-659

Decided May 31, 1979

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, rejecting appellant's Native allotment application. F 18852

Set aside and remanded.

1. Alaska: Native Allotments

The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen for himself (or as head of a family) and not as a minor, dependent child occupying or using the land in the company of his parents. This does not mean that a minor may not establish qualifying use or occupancy -- the issue is the nature of the use and occupancy. It must be achieved by an independent citizen in his own right and it must be at least potentially exclusive of others.

2. Administrative Procedure: Generally -- Alaska: Native Allotments -- Contests and Protests

Where an applicant for an Alaska Native allotment was a minor at the time she alleges the initial use and occupancy of the land, but not so young as to preclude any possibility that she was then capable of doing so as an independent citizen in her own right to the potential exclusion of others, prior to rejection of her application on the basis of her youth BLM should provide notice and an opportunity for hearing.

APPEARANCES: Pamela Herman, Esq., and James H. Holloway, Esq., Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Nellie Boswell Beecroft has appealed from a May 30, 1975, decision of the Fairbanks District Office, Bureau of Land Management (BLM), rejecting her Native allotment application. The basis for the rejection was that the applicant used and occupied the lands as a dependent child in common with her parents and not as an independent citizen. In addition, BLM found the supplemental statement filed by the applicant indicated that the statutory requirement of substantial use and occupancy for a period of 5 years had not been met.

Appellant filed an Alaska Native allotment application for certain tracts of land on January 15, 1971, pursuant to the Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1976) (repealed subject to pending applications); Alaska Native Claims Settlement Act, P.L. 92-203, section 18(a), 85 Stat. 710 (1971); and the implementing regulations at 43 CFR 2561. Use and occupancy of the lands was alleged since June 17, 1963. A BLM letter of April 22, 1974, advised her of findings of a field report that her use of the land was as a dependent child in the company of her parents upon which a rejection of her application would be based unless effective rebuttal evidence was submitted. Appellant responded alleging use of the land applied for in her own right since August 1971. She stated that she had returned to the land at that time after going away to attend school and to work.

Appellant has submitted additional evidence in the form of her affidavit on appeal and has requested a hearing to afford a "more accurate presentation of the essential facts on appeal." In her statement of reasons appellant contends that as a minor child she established use and occupancy for an allotment. Appellant claims 3 parcels of land which she asserts she began using, respectively, at ages 13, 16, and 17. One of these parcels she states that her parents did not use at all. She claims that once she began to provide her own subsistence from the land to her family she was looked upon as an equal and could spend her own money as she pleased.

Although this appeal was timely filed with the Board June 11, 1975, the case has been suspended pending the outcome of related litigation involving legal issues affecting the rights of all Native allotment applicants. With the issuance of Pence v. Andrus, 586 F. 2d 733 (9th Cir. 1978), this case may now be considered.

The Native Allotment Act of May 17, 1906, supra, authorized the Secretary of the Interior to allot not more than 160 acres of land in Alaska to an Indian, Aleut, or Eskimo who is both a resident and a Native of Alaska. The Act also requires that the applicant must make satisfactory proof to the Secretary of the Interior of "substantially continuous use and occupancy of the land for a period of five years."

[1] The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen for himself (or as head of a family) and not as a minor dependent of his parents. Arthur C. Nelson (On Reconsideration), 15 IBLA 76 (1974). This does not mean that a minor may not establish qualifying use or occupancy -- the issue is the nature of the use and occupancy. Sarah F. Lindgren, 23 IBLA 174 (1975). It must be achieved by an independent citizen in his own right and it must be at least potentially exclusive. John Nanalook, 17 IBLA 355 (1974); 43 CFR 2561.0-5(a).

[2] Appellant was not so young as to preclude any possibility that she was then capable of using and occupying the land as an independent citizen in her own right. The factual determination of whether appellant's use and occupancy is sufficiently independent in this case to qualify can best be determined after relevant evidence is elicited at a hearing. John Moore et al., 40 IBLA 321, __ I.D. __, (1979). In Moore, supra, we again pointed out that the appropriate framework for hearings for such Native claims is the use of the Departmental contest procedure set forth in 43 CFR 4.451-1 to 4.452-9. These contests procedures as first applied to Native claims in Donald Peters, 26 IBLA 235, 80 I.D. 308, (1976), reaffirmed; Donald Peters (On Reconsideration), 28 IBLA 153, 80 I.D. 564, (1976), have been approved as proper due process by the courts in Pence v. Andrus, supra, and Eluska v. Andrus, supra.

Therefore, we remand this case to BLM to review the facts, and if it is determined the Native has not qualified for an allotment, BLM should initiate contest proceedings in accordance with the guidelines of Donald Peters, supra, to allow appellant an opportunity to prove the facts of her use and occupancy. The State of Alaska and any other parties asserting an interest in the land should be notified of the initiation of the proceedings.

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 set aside and the case remanded for further proceedings consistent with this decision.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

