

Appeals from decisions of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native allotment applications AA-6072, AA-8142.

Set aside and remanded.

1. Res Judicata – Rules of Practice: Appeals: Generally

The principle of res judicata does not operate to bar consideration of a new Alaska Native allotment application under 43 U.S.C. §§ 270-1 through 270-3 (1970), despite previous denial of a prior application, when the initial adjudication was confined to a single issue, which issue is irrelevant under a later interpretation of the statute.

2. Administrative Procedure: Hearings – Alaska: Native Allotments – Rules of Practice: Hearings

When an Alaska Native allotment applicant alleges there has been substantial use and occupancy of vacant, unappropriated, and unreserved public land in Alaska for a period of at least 5 years pursuant to 43 U.S.C. §§ 270-1 to 270-3 (1970) and 43 CFR Subpart 2561, if Bureau of Land Management determines the application should be rejected because the land was not so used and occupied, the Native is entitled, under contest procedures, 43 CFR 4.451, to notice and an opportunity for a hearing prior to rejection of his application.

APPEARANCES: Alaska Legal Services Corporation, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Two appeals are consolidated for the purpose of this decision. Both appellants filed timely Native allotment applications pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970) (repealed subject to pending applications, section 18(a), Alaska Native Claims Settlement Act, 43 U.S.C. § 1617 (1976)), and the implementing regulations at 43 CFR Subpart 2561. The Alaska State Office, Bureau of Land Management (BLM), rejected both applications, holding that they were barred by administrative res judicata. Appellants' prior applications for the same land were adjudicated on a single issue – that at the time the applications were filed, the land was withdrawn under PLO No. 4582, dated January 17, 1969. The applications were declared invalid on that basis. Appeals to the Solicitor were dismissed, not on the merits but because no timely statement of reasons was filed. The previous rulings, however, were based on a Departmental interpretation which has since been changed. A withdrawal under PLO No. 4582 does not bar an application if the required substantial use and occupancy was initiated prior to such withdrawal. Memorandum from Assistant Secretary, Water Resources, to Director, Bureau of Land Management and Office of Hearings and Appeals, "Adjudication of Applications for Alaska Native Allotments," January 21, 1976. Further, according to affidavits and other information submitted in support of the new applications, Bureau of Indian Affairs, as appellant's agent, may have mistakenly listed appellants' date of filing of the applications as their date of initial occupancy.

[1] Generally, once a Departmental decision has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and issues. However, the principle of res judicata does not operate to bar consideration of a new application where the initial adjudication was confined to a single issue, which issue is no longer relevant under the present interpretation of the statute. The Department has also held that where there are compelling legal and equitable reasons, a reconsideration would be appropriate. George Rodda, Jr., 27 IBLA 186 (1976); T. T. Cowgill, 19 IBLA 274 (1975).

The Native allotment law is now interpreted in a different manner than at the time of denial of appellants' previous applications, and various affidavits have been submitted which on their face would indicate that appellants have complied with the law as presently interpreted by the Department. Since the applications are presently subject to reinterpretation, the decision denying the applications should be set aside. The applicants should be allowed, as others have been, an opportunity to demonstrate why their corrected applications should be entitled to further consideration. E.g., Thomas Akootchook, 17 IBLA 345 (1974).

[2] If adjudication of a Native allotment application presents a factual issue as to the applicant's compliance with the use and occupancy requirements of the statute and implementing regulations, then before denying an application BLM must initiate a contest according to the procedures outlined in 43 CFR 4.451 (1976). Mary Bobby, 41 IBLA 44 (1979); Donald Peters (On Reconsideration), 28 IBLA 153, 83 I.D. 564 (1976). This gives the applicant notice of the specific reasons for the proposed rejection and opportunity to present evidence at a hearing as required by the Court of Appeals for the Ninth Circuit. Pence v. Andrus, 586 F.2d 733 (1978); Pence v. Kleppe, 529 F.2d 135 (1976).

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 remanded for further proceedings.

Joseph W. Goss
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

I concur in the result:

Frederick Fishman
Administrative Judge

