Editor's note: 88 I.D. 244

MARY PATRICIA ANNE NEWMAN GIBSON ET AL.

IBLA 80-172, etc. Decided January 30, 1981

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications. N-25501, etc.

Affirmed.

1. Act of February 8, 1887--Indian Allotments on Public Domain: Lands Subject to--Patents of Public Lands: Effect

   The effect of the issuance of a patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Where BLM's records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

APPEARANCES: Each appellant named in the Appendix, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The persons listed in the appendix hereto have appealed from decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting their applications filed for Indian allotments on alleged public lands in Clark County, Nevada, pursuant to section 4, Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976). Because of the similarity of issues and the obvious relationship among these appellants, the Board, sua sponte, has consolidated the appeals for consideration.

On each application form the applicants checked "no" in response to the question whether the land was occupied by the applicant or the minor child. All applicants, except in N-25506, stated that there were no improvements on the land. In N-25506 the applicant stated that there were improvements on the land, but does not describe these improvements. In response to the question, "Do you or the minor child claim a valid bona fide settlement?" all applicants checked "no."

BLM rejected applications N-25501, N-25504, and N-25505 because the applicant had failed to submit certification from the Commissioner of Indian Affairs that he was eligible for an Indian allotment as required by 43 CFR 2531.1(b) and 43 CFR 2531.1(d) when he was filing on behalf of a minor child.

BLM rejected all the applications in issue because the lands requested in the applications have been transferred from Federal ownership and are not subject to entry under the public land laws.

In her statement of reasons, Mary Patricia Anne Newman Gibson presents the following contentions:

> This claim was not filed under the 4th Section of the Act of Feb. 8-1887 only. But also under 43 U.S. Code 190, (Act of July 4-1884 C 180 Sec 1 Stat. 96) 43 U.S. Code (Act of March 3-1875 C 131 and 15, 18 Stat. 420) Section 4 of the Act of Feb. 8-1887 (24 Stat. L 388) as amended by the Act of Feb 28-1891 (26 Stats. L 794) and the act of June 25-1910 (36 Stats. L 855 Et. Seq where applicable and in pari materia with my tribes' treaty committments with the United States of America) Said rights being reserved to me under the Indian Citizenship Act because of my Indian Descent under the act of June 2-1924 (43 Stats. 253) See 8 U.S.C. 1401 25 U.S.C. 332, 334, 345, 346, 190, 337, 43 U.S.C., 190, 189, etc.
>
> It seems most of them are being over looked. They are all recorded on this claim.
>
> See - Choats v. Trapp 224 U.S. 413 (1912) [1/]
>
> See - U.S.C.A. Const. Amend. 5.

The appeals of the other applicants present essentially the same arguments. Cathy Sue Slowey and Phyllis L. Slowey Evans also refer to Part 3, 43 CFR 2212. 2/ Further, these two applicants state that BLM did not notify them in its decisions that they had the right to appeal.

1/ We note that the Indian allotment case reported at 224 U.S. 413 is Heckman v. United States. Choate v. Trapp appears at 224 U.S. 665.

2/ 43 CFR Subpart 2212 deals with miscellaneous state exchanges.

First, we note that BLM should have notified the applicants in its decisions that they had the right to appeal. However, we do not feel that the applicants were prejudiced by this omission as they did in fact appeal and their appeals are being considered by the Board in this decision.

The case files in N-25339, N-25493, N-25501, N-25502, N-25504, N-25505, N-25506, and N-25613 contain a copy of patent No. 1133536, issued December 28, 1951, by the United States to the Husite Company for certain lands including the lands sought by appellants. The remaining 5 case files contain a copy of patent No. 1137526 issued January 27, 1953, by the United States to the same company for certain lands including those sought by appellants.

[1] In a case in which Federal officers have acted within the scope of their authority, a patent for land once issued passes beyond the control of the Executive Branch of Government. Germania Iron Co. v. United States, 165 U.S. 379 (1897); United States v. State of Washington, 233 F.2d 811 (9th Cir. 1956). The effect of the issuance of a land patent is to transfer the legal title from the United States. Robert Dale Marston, 51 IBLA 115 (1980); Federal-American Partners, 37 IBLA 330 (1978); State of Alaska, 35 IBLA 140 (1978); Basille Johnson, 21 IBLA 54 (1975). Appellants have not asserted that the patents involved were improperly issued.

The Department has held where BLM's records show lands have been patented, the United States does not have title to them, and an Indian allotment application for such lands is properly rejected. Maudra June Underwood Lentell, 49 IBLA 317 (1980); Anquita L. Kluenter, A-30483 (Nov. 18, 1965). Since the above discussion is dispositive of these appeals, it is unnecessary to reach the issue of appellant's eligibility to file the applications.

The authority cited by appellants is not in point because the instant cases involve lands which had been transferred from Federal ownership at the time appellants' applications were filed.

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 affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX

IBLA Docket Number	BLM Number of Application	Name of Applicant	Description of Land Sought
IBLA 80-172	N-25502	Mary Patricia Anne Newman Gibson	SW 1/4 sec. 32, T. 20 S., R. 59E.
80-175	N-25501	Jerry Wayne Gibson for Cindy Kay Gibson, a minor child	NE 1/4 sec. 32, T. 20 S., R. 59 E.
	N-25504	Jerry Wayne Gibson for Theresa Ann Gibson, a minor child	NW 1/4 sec. 32, T. 20 S., R. 59 E.
	N-25505	Jerry Wayne Gibson for Gayla Culleen Gibson, a minor child	SE 1/4 sec. 29, T. 20 S., R. 59 E.
	N-25506	Jerry Wayne Gibson	SE 1/4 sec. 32, T. 20 S., R. 59 E.
80-181	N-25485	Jimmy Lorn Gibson for Lori Christine Gibson a minor child	NW1/4 sec. 30 T. 20 S., R. 59 E.
	N-25486	Jimmy Lorn Gibson for Kelly Renee Gibson	SW1/4 sec. 30 T. 20 S., R. 59 E.
	N-25488	Jimmy Lorn Gibson for Dana Michelle Gibson	NE1/4 sec. 30 T. 20 S., R. 59 E.
80-250	N-25611	Phyllis Louise Slowey Evans for James Lee Evans, a minor child	SW 1/4, sec. 31, T. 20 S., R. 59 E.
	N-25612	Phyllis Louise Slowey Evans for Jimmy Lorn Evans, a minor child	NW 1/4 sec. 31, T. 20 S., R. 59 E.
	N-25613	Phyllis Louise Slowey Evans	SE 1/4 sec. 31, T. 20 S., R. 59 E.
80-252	N-25493	Cathy Sue Slowey	NE 1/4 sec. 31, T. 20 S., R. 59 E.
80-334	N-25339	Jerry Weldon Underwood	NW 1/4 sec. 5, T. 21 S., R. 59 E.