

SAMUEL LEE GIFFORD ET AL.  
(ON RECONSIDERATION)

IBLA 80-513

Decided May 21, 1981

Petition for reconsideration of Board decision remanding in part Indian allotment application N 25503.

Petition for reconsideration granted; Samuel Lee Gifford, 53 IBLA 23 (1981), modified insofar as it set aside and remanded in part Indian allotment application N 25503; decision of Nevada State Office, Bureau of Land Management, rejecting that application 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 legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM 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: Jerry Wayne Gibson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

In Samuel Lee Gifford, 53 IBLA 23 (1981), we considered appeals from the rejection of 16 Indian allotment applications by the Nevada State Office, Bureau of Land Management (BLM). We affirmed the rejection of Jerry Wayne Gibson, N 25503, was affirmed in part and set aside and remanded in part.

BLM rejected Gibson's application because the lands applied for had been transferred from Federal ownership and thus were not subject to entry under the public land laws. Gibson had applied for lands in the SW 1/4 sec. 29, T. 20 S., R. 59 E. The case file included a copy of a patent which included some of that land, but there was no evidence to show that the NW 1/4 SW 1/4 was patented. Although we affirmed the rejection of the application to the extent that there was evidence showing that the land had been patented, we remanded the case for consideration of whether the NW 1/4 SW 1/4 was still available. With its request for reconsideration, BLM has provided a copy of another patent issued to the Husite Company, patent No. 1137526, which includes the NW 1/4 SW 1/4.

[1] We held in our previous decision that in a case in which Federal officers have acted within the scope of their authority, a patent for land, once issued, passes it beyond the control of the executive branch of the Government. 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). 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. Klunter, A-30483 (Nov. 18, 1965).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision rejecting Indian allotment application N-25503 is affirmed.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Bruce R. Harris  
Administrative Judge

