

ELSIE BERGMAN
(ON RECONSIDERATION)

IBLA 75-492

Decided May 26, 1982

Appeal from the Fairbanks District Office, Bureau of Land Management, rejecting in part Alaska Native allotment application F-14260.

Petition for reconsideration granted; Elsie Bergman, 23 IBLA 233 (1975), and decision appealed from vacated; case remanded.

1. Alaska: Native Allotments

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve -- Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

APPEARANCES: Carmen L. Massey, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Elsie Bergman has appealed from that part of a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated March 27, 1975, which rejected parcel A of her Native allotment application F-14260, aggregating

80 acres, under the Alaska Native Allotment Act (Act), as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970). The application was rejected in part because BLM had determined that the applicant was a minor at the initiation of the asserted use and occupancy and had not used or occupied the land as contemplated by the Act. Appellant had not been given an opportunity for hearing. In Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), the court held that Native allotment applicants were entitled to notice and opportunity for hearing where there was an issue of fact with respect to an applicant's qualifications. Appellant filed a petition for reconsideration in light of this decision.

[1] At the present time, however, we must consider the following provision of the Alaska Native Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435, enacted on December 2, 1980:

Sec. 905. (a)(1) Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve -- Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

Those other paragraphs describe circumstances under which the application would remain subject to adjudication under the Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). In this case, it appears that the only circumstance that would bar automatic approval would be the filing of a protest under section 905(a)(5), before the end of the 180-day period. 1/

The record shows no reason why parcel A of appellant's allotment application should not be approved under this statutory provision. There appear to be no valid existing rights in conflict with the application, and the land was not reserved on December 13, 1968. Appellant's application was pending before the Department on December 18, 1971. Where a Native allotment applicant meets the requirements of subsection 905(a)(1), failure to provide adequate evidence of use and occupancy does not bar approval of the allotment

1/ In addition to the filing of a protest, such circumstances include a determination that the land is valuable for certain minerals, or a determination that the application describes land in a previously established unit of the national park system or in a state selection but where the allotment is not within the core township of a Native village.

application. The State Office, therefore, should hold appellant's application parcel A for approval, subject to any action which may have arisen before the end of the 180-day period which would preclude approval under subsection 905(a)(1) and required adjudication pursuant to the provisions of the Native Allotment Act. Jack Gosuk (On Reconsideration), 54 IBLA 306 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision in Elsie Bergman, *supra*, and the decision appealed from are vacated, and the case remanded for further action consistent with this opinion.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

