

KATHRON F. WRIGHT BELBEN

IBLA 82-1278

Decided November 8, 1982

Appeal from the decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N-29221.

Affirmed.

1. Applications and Entries: Generally -- Indian Allotments on Public Domain: Generally

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

APPEARANCES: Kathron F. Wright Belben, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 11, 1980, Kathron F. Wright Belben filed an application for an Indian allotment pursuant to section 4 of the General Allotment Act, 25 U.S.C. § 334 (1976). By decision dated January 18, 1982, the Nevada State Office, Bureau of Land Management (BLM), rejected the application in part with respect to land which had been transferred from Federal ownership and thus was not subject to entry under the public land laws. The decision noted that the remaining 120 acres sought by appellant are subject to application under the allotment act, but that a person filing an application for an Indian allotment must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is Indian and is entitled to an allotment, citing 43 CFR 2531.1(b). The decision further advised appellant that a petition for classification must also be submitted pursuant to 43 CFR 2531.2(a) before her application could be processed further. The decision provided appellant with 30 days in which to submit the required documentation. Appellant submitted no information, and on March 31, 1982, the Nevada State Office issued a decision rejecting appellant's application. This latter decision is the subject of the appeal.

[1] In her statement of reasons for appealing BLM's decision, appellant only states that she is of Indian blood and that she will be able to prove this upon hearing. This relates to appellant's eligibility, a matter which must be determined by the Commissioner of Indian Affairs before filing an allotment application, since the certificate of eligibility must accompany the application. Thus, appellant still has not cured the defects in her application which led BLM to reject it, namely the absence of a petition for classification of the land as well as her certificate of eligibility. An application for an Indian allotment filed pursuant to section 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by both the certificate of eligibility required by 43 CFR 2531.1(b) and the petition for classification required by 43 CFR 2531.2(a) is properly rejected. 1/ Roy M. Miller, Jr., 52 IBLA 52 (1981); see also Mary Frances Stiles, 64 IBLA 361 (1982); Wanda Lois Lee McKinney, 53 IBLA 279 (1981); Samuel Lee Gifford, 53 IBLA 23 (1981).

Therefore, 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 affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

Jerry F. Muskrat  
Administrative Judge  
Alternate Member

---

1/ Where the lands have already been classified as suitable and open to this form of disposition, no petition for classification is required. 43 CFR 2531.2(a).

