

HOWARD M. SMITHSON

IBLA 82-760

Decided January 13, 1983

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N-32840.

Affirmed.

1. 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), is properly rejected where the applicant has refused to provide a certificate of eligibility required by 43 CFR 2531.1(b).

APPEARANCES: Howard M. Smithson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

On October 17, 1980, Howard M. Smithson filed an application for an Indian allotment pursuant to section 4 of the General Allotment Act, as amended, 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 stated that the remaining 145 acres sought by appellant were 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 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 appeal was subsequently filed.

In his statement of reasons, appellant states:

The classification, rejection and scope and effect of the decision is based upon powers derived from the Statutes, in particular 43 USC 415f, (Section 7, of the Taylor Grazing Act.) 1/ 43 USC 415f, is used as a facade by the Department of Interior to sterilize claims to allotments and in particular is used as a facade to sterilize the provisions of 25 US Code Sections 332, 334 and 415. Indian allotment claims taken on the public domain are taken with the same restrictions and in the same manner as for Indians residing upon reservations (25 US Code 334) and the use Indian allotments can be used for is contained in 25 US Code Section 415. 25 US Code 415 should be read in light of U.S. Constitutional Amendment Five and the doctrine of *Choate vs. Trapp* 224 U.S. 665, 32 S. Ct. 565, 56 L. Ed. 941. [Emphasis in original.]

[1] The decision rendered by BLM relates to appellant's eligibility, a matter which must be determined by the Commissioner of Indian Affairs before the filing of an allotment application, since the certificate of eligibility must accompany the application. Since appellant failed to cure the defect in his application, namely the absence of his certificate of eligibility, the application was properly rejected. 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 a certificate of eligibility required by 43 CFR 2531.1(b) is properly rejected. Kathron F. Wright Belben, 68 IBLA 179 (1982); Samuel Lee Gifford, 53 IBLA 23 (1981). Despite appellant's reference in his statement of reasons to the classification of the land, this is not an issue in light of his failure to provide evidence of eligibility for an allotment.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

1/ Section 7 of the Taylor Grazing Act is properly cited as 43 U.S.C. § 315f (1976).

