

JAMES O. JONES

IBLA 83-120

Decided August 22, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting Indian allotment application. N-36109.

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, 336 (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(a) is properly rejected.

APPEARANCES: James O. Jones, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

James O. Jones has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated October 19, 1982, rejecting his Indian allotment application N-36109.

On April 5, 1982, appellant filed an Indian allotment application for 160 acres of land situated in the NE 1/4 sec. 7, T. 26 S., R. 59 E., Mount Diablo meridian, Clark County, Nevada, pursuant to section 4 of the General Allotment Act of February 8, 1887, as amended, 25 U.S.C. §§ 334, 336 (1976). In its October 1982 decision, BLM rejected appellant's application because appellant failed to submit a certificate of eligibility, as required by 43 CFR 2531.1(b), or a petition for classification, as required by 43 CFR 2531.2(a), with his application.

With his notice of appeal appellant attached a petition for classification but no certificate of eligibility. In his statement of reasons for appeal, appellant contends that rejection of his Indian allotment application does not comport with the rights of Indians under the "statutes at large" and "the Fifth Amendment to the U.S. Constitution."

[1] Public lands in Nevada (as well as other western states) were "withdrawn from settlement, location, sale or entry, and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of [the] act of June 28, 1934 [as amended, Taylor Grazing Act, 43 U.S.C. § 315 (1976)]" by Exec. Order No. 6910 of November 26, 1934, subject to valid existing rights. 1/ Such land is not subject to settlement under section 4 of the General Allotment Act until such settlement has been authorized by classification. 2/ 43 U.S.C. § 315f (1976); 43 CFR 2530.0-3(c). It is well recognized that no rights of Indians are violated by withdrawal of the public lands from settlement and the requirement that such lands be classified pursuant to section 7 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315f (1976), before the public lands can be allotted to an Indian under section 4 of the General Allotment Act. Samuel Lee Gifford, 53 IBLA 23, 27 (1981), and cases cited therein.

Further, it appears from the copy of the master title plat in the file that the township in which the land in appellant's allotment application is located has been affected by a classification (N-1575) of the land as suitable for retention in Federal ownership for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C.A. §§ 1411-1418 (West Supp. 1982) (statute superseded). The notice of such classification published in the Federal Register expressly segregated the land from appropriation under the agricultural land laws, including 25 U.S.C. §§ 334, 336. 34 FR 14084 (Sept. 5, 1969).

The applicable regulation, 43 CFR 2531.2(a), provides, in relevant part, that

[a]ny person desiring to receive an Indian allotment * * * must file with the authorized officer, an application, together with a petition on forms approved by the Director, properly executed,

1/ In his allotment application, appellant claims a "bona fide settlement," which was established by posting notice of his claim, recorded in the Office of the Recorder, Clark County, Nevada, on Sept. 4, 1980. However, there is nothing in the record to indicate that appellant physically settled upon the lands prior to their withdrawal under Exec. Order No. 6910, which would give rise to any valid existing rights. 2/ Item 10 of the application form (Form 2530-1 (July 1977)) states: "Public land withdrawn by Executive Orders 6910 * * * of November 26, 1934, * * * is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended until classified as suitable."

together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and eligible for allotment, as specified in § 2531.1(b). [Emphasis added].

The right to an Indian allotment is limited by statute to land "not otherwise appropriated." 25 U.S.C. §§ 334, 336 (1976). Accordingly, where an application is filed for land not classified as suitable for Indian allotment and is not accompanied by a petition for classification of the land, the application is properly rejected. Mary Frances Stiles, 64 IBLA 361 (1982). Similarly, where an application is not accompanied by a certificate of eligibility, the application is properly rejected. Litha Muriel Bryant Smith, 66 IBLA 150 (1982). In the present case, appellant's application was not accompanied by either a certificate of eligibility, as required by 43 CFR 2531.1(b), or a petition for classification, as required by 43 CFR 2531.2(a). Accordingly, we conclude that BLM properly rejected appellant's Indian allotment application. Phyllis Inez Maston Bartlett, 71 IBLA 1 (1983).

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.

Gail M. Frazier
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing,
Administrative Judge

