

KAREN (JOHNSON) BRADSHAW

IBLA 82-1023

Decided August 31, 1983

Appeal from the decision of the Nevada State Office, Bureau of Land Management, rejecting desert land application N-29750.

Affirmed.

1. Desert Land Entry: Applications--Federal Employees and Officers:  
Interest in Lands

The Bureau of Land Management properly rejects an application for a desert land entry, in accordance with 43 CFR 7.3, where the applicant indicates in her application that she is an employee, or the spouse or agent of an employee, of the Department of the Interior. In addition, where an individual seeking allowance of a desert land entry accepts employment with the Bureau of Land Management while her application is pending, such application must be rejected even if it is not reached for adjudication until after her employment with the Bureau has been terminated.

APPEARANCES: Karen (Johnson) Bradshaw, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Karen Bradshaw has appealed for review of the June 21, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting her application for a desert land entry filed April 2, 1980. BLM rejected the application because appellant had indicated an affirmative response to the question whether she was an employee, or spouse or agent of an employee of the Department, and such a person was prohibited under 43 CFR 7.3 (1981) 1/ from voluntarily acquiring an interest in the lands or resources administered by BLM.

In her statement of reasons in support of her appeal, appellant asserts that she was not employed by the Department at the time she submitted her application for a desert land entry. Her statement goes on to explain that she married a temporary employee of BLM in June 1980, but that her husband's employment ended in September 1981. Appellant admits that she was employed by BLM, in three successive positions, from May 1980 through April 16, 1982, but argues that she was neither an employee nor the spouse of an employee at the time she submitted her application.

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1/ Effective Dec. 31, 1981, the provisions of 43 CFR Part 7 were revised and incorporated into 43 CFR Part 20. 46 FR 58420, 58439 (Dec. 1, 1981).

[1] Section 7.3(a)(1) of 43 CFR prohibited an employee of the Department, or the spouse of such an employee, from voluntarily acquiring an interest in the lands or resources administered by BLM. The information presented in appellant's application for a desert land entry indicated that she was subject to this prohibition; therefore, BLM properly rejected the application. 2/

Even if appellant were considered as having been eligible for a desert land entry when she filed her application, as she urges in her statement of reasons, her marriage to a BLM employee before the adjudication of her application would have terminated her eligibility, in accordance with the prohibition of 43 CFR 7.3(a)(1), in the absence of a showing of circumstances permitting an exception to the general prohibition as provided in 43 CFR 7.4. See Donald E. and Nancy R. Janson (On Reconsideration), 19 IBLA 154, 82 I.D. 93 (1975); Frederick W. Goldsmith, A-28704 (Aug. 22, 1961). No such circumstances were shown in this case. That appellant and her spouse may have terminated their employment with the Department prior to BLM's rejection of the application, as appellant also asserts in her statement of reasons, does not affect this conclusion. Appellant could not be allowed, consistent with the proscriptions of 43 CFR 7.3, to maintain a priority status under her pending application while subject to those proscriptions. If appellant is now eligible to apply for a desert land entry, she may reapply for entry on the land covered by her rejected application.

For the foregoing reasons, and 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.

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James L. Burski  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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2/ Question 3f. of the desert land entry application is: "Are you an employee, the spouse, or an agent of an employee of the Department of the Interior?" The answer to this question provided in appellant's application is "Yes." It appears on the application that a "No" answer was originally provided and then erased. Consistent with the presumption of regularity accorded the actions of Department personnel (e.g., L. L. Anderson, 69 IBLA 304 (1982)), it must be assumed that the change was made either by appellant or at her direction. As noted in the text, however, even had the answer been in the negative, employment by appellant prior to adjudication of the application necessitates rejection of it.

