

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N 35276.

Affirmed.

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

Where land has been designated for specific disposal pursuant to statutory authority, the land is "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and not available for Indian allotment.

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

An application for Indian allotment on the public domain pursuant to sec. 4 of the General Allotment Act that is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) is properly rejected.

APPEARANCES: Ella Mae Jones, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Ella Mae Jones appeals from the August 3, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting Indian allotment application N 35276, filed for her minor child, Travis Dale Jones. The application was filed pursuant to the General Allotment Act of February 8, 1887, with BLM on August 14, 1980, for 160 acres in the SW 1/4 sec. 26, T. 23 S., R. 60 E., Mount Diablo meridian, Clark County, Nevada. In response to questions in the application concerning whether the land was occupied by the applicant and whether there were improvements on the land, appellant responded "no." The record includes a petition for classification of the land but does not disclose that a certificate of eligibility was provided by appellant.

BLM rejected the application because no certificate showing the eligibility of the applicant to be entitled to an allotment was included, concluding that the application was inadequate.

Appellant submitted a statement of reasons almost identical to those presented to the Board by numerous other Indian allotment applicants. See George L. Clay Lee, 70 IBLA 196, 198 (1983). The statement reads in relevant part:

I feel I have the right to appeal on behalf of my son, Travis Dale Jones, of Indian decent [sic] for federal public domain land. (8 U.S.C. 1401), 5-14 amendments to the U.S. Constitution. See: Choate v. Trapp, 224 U.S. 413 [sic] (1912). Cramer v. U.S. States v. Arenas, 9th Cir. 158 F. 2d 730 (1946). McKay v. Kalytron, 204 U.S. 248, 468 (1907). U.S. v. Holliday, 3 Wall 407, 419 (p. 497). Leecy v. U.S. (C.C.A. 8) 190 F. 289. Jones v. Meekham, 1889 - 175 U.S. 1. and Bryan v. Itasco Co., Minn. June 14, 1976.

[1] Section 4 of the General Allotment Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where they have made settlements upon public lands "not otherwise appropriated." However, an application for Indian allotment is properly rejected when filed for land not available for settlement and disposition under the General Allotment Act when the application is filed. Lewis Quentin Garver, 67 IBLA 140 (1982). That is the situation in this case.

The essential contention raised in the statement of reasons is that the Department of the Interior cannot use the agricultural land laws, i.e., 43 U.S.C. § 315f (1976), to take away appellant's right to an allotment on the public domain.

First, appellant is incorrect as to the authority which segregates the land at issue from appropriation under the General Allotment Act. The land in question was segregated by P.L. 95-586. That law was enacted "to provide for the orderly disposal of Federal lands in Clark County, Nevada, and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin." P.L. 96-586, § 1(b), 94 Stat. 3381 (1980). Congress expressly declared: "The Secretary of the Interior * * * is authorized and directed to dispose of [certain designated] lands under the jurisdiction of the Bureau of Land Management in Clark County, Nevada." Id. at § 2(a). The statute provides that the revenues generated by the sale of those lands are to be used in the purchase of desired lands in the Lake Tahoe Basin.

Congress had the plenary power to dispose of territory and property belonging to the United States. U.S. Const. Art. IV, § 3, cl. 2. The Federal Land Policy and Management Act declares that it is the policy of the United States that "Congress exercise its constitutional authority to withdraw or otherwise designate or declare Federal lands for specific purposes." 43 U.S.C. § 1701(a)(4) (1976). The Department lacks the authority to contravene P.L. 96-586 by disposing of the land in such manner as would not produce funds as contemplated by the statute. Classification for sale of the lands designated pursuant to P.L. 96-586 is beyond review by this Board.

Second, contrary to appellant's belief that her child is entitled to an allotment in light of the due process afforded Indians by the Fifth Amendment

to the U.S. Constitution and the doctrine set forth in Choate v. Trapp, 224 U.S. 665 (1912), the mere filing of an application or receipt of certificate showing an Indian to be eligible to receive an allotment under the General Allotment Act does not create a present right to have the application considered favorably. The Act does not confer a vested right to an allotment. George L. Clay Lee, supra. BLM properly rejected the application.

[2] Furthermore, BLM records reflect that appellant did not file a certificate of eligibility for allotment as required by 43 CFR 2531.1(b). The failure of an applicant to provide the certificate of eligibility requires rejection of the application. Phyllis Inez Maston Bartlett, 71 IBLA 1 (1983); Litha Muriel Bryant Smith, 66 IBLA 150 (1982). Moreover, there is nothing in the record to indicate that applicant physically settled upon the lands prior to their segregation for sale under P.L. 96-586.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

