

**Editor's note: Reconsideration granted; decision affirmed -- 83 IBLA 344 (Nov. 7, 1984)**

PETER ANDREWS, SR.

IBLA 83-870

Decided November 30, 1983

Appeal from decision of Alaska State Office, Bureau of Land Management, denying a petition for reinstatement of Alaska Native allotment application, A 054486.

Affirmed as modified in part; set aside in part and hearing ordered.

1. Alaska: Native Allotments--Alaska Native Claims Settlement Act--Patents of Public Lands: Effect

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, no hearing is appropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

APPEARANCES: David C. Fleurant, Esq., Anchorage, Alaska, for appellant; John M. Allen, Esq., Anchorage, Alaska for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Peter Andrews, Sr., appeals the June 29, 1983, decision of the Alaska State Office, Bureau of Land Management (BLM), which denied his request that his application for an Alaska Native allotment, A 054486, be reinstated because Andrews knowingly and voluntarily relinquished the application September 29, 1966, and accordingly cannot be given the benefits offered by the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, section 905, 94 Stat. 2371, 2435. <sup>1/</sup>

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<sup>1/</sup> Section 905 of ANILCA, 94 Stat. 2435, provided statutory approval "subject to valid existing rights" of Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended). This approval was subject to certain exceptions and did not apply to "any application pending before the Department of the Interior on or before Dec. 18, 1971, which was knowingly and voluntarily relinquished by the applicant." Section 905(a)(6), 94 Stat. 2436 (emphasis added).

The Andrews application was filed May 17, 1961, for a tract of approximately 160 acres in unsurveyed T. 10 S., R. 55 and 56 W., Seward meridian, Alaska. In the subsequently filed relinquishment of his application, Andrews stated "I will obtain that area enclosed within the boundaries of a tract of land extending 250 feet from both sides of my house, and from the lake to the edge of the swamp \* \* \* in the Mosquito Point Townsite."

U.S. Survey No. 4873 of the townsite of Lake Aleknagik, Alaska, was made in June and July 1967, with the Plat of Survey being accepted November 4, 1970, by the Director, BLM.

On October 27, 1981, the trustee for the townsite of Aleknagik issued a Native Restricted Trustee Deed for Block 12, Tract "A", as shown on the official plat of U.S. Survey No. 4873, to Peter Andrews and Sassa Andrews, husband and wife.

On August 26, 1976, BLM received a letter from appellant requesting reinstatement of his Native allotment application. BLM responded by letter of November 19, 1976, explaining that the application could not be reinstated at that time because section 18 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617 (1976), repealed the Native Allotment Act as of December 18, 1971, subject only to pending applications. As appellant's application was not pending on December 18, 1971, BLM explained that it could not be reinstated.

Appellant now states that the relinquishment of his Native allotment claim was submitted to BLM without any approval or review by the Bureau of Indian Affairs. He asserts the townsite plans are being dissolved and as he has not applied for any other lands, he desires to obtain the land for which he originally applied, less the approximately 5 acres in the homesite of Slim Yako, which he relinquished in 1961 in favor of Yako. On July 14, 1981, BLM apparently reopened the file for application A 054486 to consider whether there was a knowing and voluntary relinquishment. Appellant requested BLM to give expeditious consideration to his application as others were encroaching upon the land to his detriment. A field report on his application, in December 1982, was favorable, indicating that Andrews began using the land in 1958, and had resided on the land since then.

Appellant argues that nothing in the record supports the BLM assertion that his relinquishment in 1966 was "knowing and voluntary." Appellant now contends that BLM did nothing to ascertain if he was fully aware of the facts when he signed the relinquishment. Appellant suggests that he was promised, by some BLM employees, other lands of equal value in return for the relinquishment of his application on Lake Aleknagik, and that he did not voluntarily relinquish his allotment. He asserts he has been denied the due process protection set out in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976).

BLM has replied to appellant's statement of reasons, saying at the outset, the appeal raises two questions: (1) What makes a relinquishment not "knowing and voluntary?" (2) Whose burden is it to prove?

Giving some background facts, BLM states a village had existed at Aleknagik at the turn of the century, but it was devastated by an influenza epidemic in 1919. In 1940, people began returning so that in 1958 there was a sizeable community of Natives and non-Natives living there. As with most of rural Alaska, little attention was paid to land titles. In 1961, the advent of Statehood for Alaska, and a State selection application filed May 2, 1961, prompted three Native allotment applications, several homesite applications, and a townsite petition to be filed within the same week, and with overlapping land descriptions. Andrews was one of the Native allotment applicants. He subsequently relinquished 5 acres in favor of the homesite of Slim Yako, who had been on the land since 1944. BLM took no action on the applications because of the conflicts between them. Resolution of the conflicts required disposing of the issue of whether some individuals would be entitled to large chunks of land for an allotment, while the others would receive only townsite lots. Most of the allotment applicants relinquished their claims in favor of the townsite.

BLM contends the relinquishments were the product of a village process, facilitated by BLM, and were a reasonable and fair solution to the village problem. Why should one person get title to 160 acres in a village where many people live, some of whom had been there for a longer period of time?

BLM concedes that Andrews was probably told that he could make another allotment application if he relinquished the one in conflict with the townsite application. Andrews did receive a trustee deed for 4 acres in the townsite. However, as Andrews did not file another allotment application, he lost his right to refile with the passage of ANCSA, P.L. 92-203, 85 Stat. 688, in December 1971. Section 18 of that Act, 43 U.S.C. § 1617 (1976), repealed the Allotment Act. All vacant land around Aleknagik was withdrawn for selection by the Aleknagik Village Corporation (of which Andrews and all of his family living in 1971 are shareholders). 43 U.S.C. § 1610 (1976). The townsite trustee, on March 4, 1977, received patent to the bulk of the townsite of Aleknagik, including land relinquished by Andrews. In 1980, the portion of the Andrews claim outside of the townsite was conveyed to the Aleknagik Village Corporation.

Counsel for BLM argues that Andrews' own admission, prior to 1983, confirms his relinquishment was "knowing and voluntary." He admitted his relinquishment was in favor of the townsite, but when the town council proposed to dissolve the townsite, he sought to have his allotment application reinstated because others were grabbing the land around his house. His own failure to file another allotment application earlier has not been explained.

In conclusion, BLM suggests a relinquishment must be presumed to be knowing and voluntary unless the contrary is clearly shown. In this case, BLM argues that Andrews gave many statements that his relinquishment was intentional, knowing, and voluntary, all of which are amply supported by the evidence of surrounding circumstances.

Review of the record discloses that a substantial part of the land embraced in appellant's Native allotment application was conveyed on

February 15, 1980, by Interim Conveyance Number 286 to the Native village corporation, Aleknagik Natives, Limited, pursuant to ANCSA. Excluded from the conveyance was land within United States survey 4873. The records, including the master title plat and the historical index for the relevant townships, disclose that Tracts A and B within United States survey 4873 which conflicted in part with appellant's application were patented to the townsite trustee on March 4, 1977 (patent number 50-77-0073). It does not appear from the record that Tract C of U.S. survey 4873, which also conflicts in part with appellant's application, has been patented.

[1] To the extent that the land within appellant's application has been patented, the Department has no jurisdiction over such land. Germania Iron Company v. United States, 165 U.S. 379 (1897). Interim conveyance and patents are generally considered as documents of equal significance in granting title under ANCSA. Thus, upon interim conveyance the Department loses jurisdiction to adjudicate interests in the land conveyed. See Appeal of Chickaloon Moose Creek Native Association, Inc., 4 ANCAB 250, 87 I.D. 219 (1980).

A narrow exception to this rule has been recognized where patent has issued in error in violation of the rights of a party claiming rights in the land through the United States. A recommendation of suit to cancel a patent issued in error may be proper where the rights of a party to whom the United States has an obligation have been adversely affected by issuance of the patent. Dorothy H. Marsh, 9 IBLA 113 (1973). Conveyance of land embraced in a pending, unadjudicated Native allotment application would require a hearing regarding the validity of the allotment application in order to determine whether action should be taken to cancel the patent. See Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979).

Appellant relinquished his Native allotment application in 1966. Subsequently, section 18 of ANCSA, 43 U.S.C. § 1617 (1976), repealed the Alaska Native Allotment Act on December 18, 1971, subject to allotment applications pending before the Department of the Interior on that date. Since appellant had previously relinquished his application, BLM had no authority to entertain his application after December 18, 1971, (prior to enactment of section 905 of ANILCA). Thus, BLM was correct when it responded to appellant's request to reinstate the application in 1976 that it had no authority to consider his allotment application. Accordingly, from repeal of the Native Allotment Act through the time of the patent to the townsite trustee and the interim conveyance to the Native village under ANCSA, appellant had no viable Native allotment application. The decision of BLM refusing to reinstate his application as to patented lands must be affirmed.

With respect to those lands in appellant's application which have not been patented, we find that the conflicting allegations of appellant and of BLM give rise to an issue of material fact as to whether the relinquishment was knowing and voluntary. An evidentiary hearing is properly ordered where there are outstanding issues of material fact not resolved by the record. See 43 CFR 4.415. Thus, as to those lands within appellant's application

which have not been conveyed, the BLM decision is set aside and the case is transferred to the Hearings Division for assignment of an Administrative Law Judge. The decision of the Administrative Law Judge, after notice to the parties and a hearing, shall be final for the Department in the absence of further appeal to this Board.

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 as modified in part; and set aside in part and a hearing ordered.

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Douglas E. Henriques  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

