

Appeal from decision of Albuquerque District Office, Bureau of Land Management, rejecting appellant's color-of-title application NM 40472.

Affirmed.

1. Color or Claim of Title: Generally -- Color or Claim of Title:
Applications -- Color or Claim of Title: Good Faith

An application for a class 1 color-of-title claim requires that the land has been held in good faith and in peaceful adverse possession by the claimant or his predecessors in title. Good faith requires that the claimant and his predecessors in title honestly believe that they were invested with title. Possession of a grazing lease by an applicant constitutes acknowledgement of Federal ownership which negates the requisite good faith.

2. Color or Claim of Title: Generally -- Color or Claim of Title:
Cultivation -- Color or Claim of Title: Improvements

In order to establish a class 1 color-of-title claim, an applicant must prove, among other requirements, that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation.

3. Color or Claim of Title: Generally -- Color or Claim of Title:
Applications

An applicant under the Color of Title Act has the burden of proof to establish to the satisfaction of the Secretary of the Interior that each of the requirements under the Act has been met. A failure to carry the burden of proof with respect to any one of the requirements is fatal to the application.

APPEARANCES: Felix F. Vigil, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Felix F. Vigil has appealed from a decision of the Albuquerque District Office, Bureau of Land Management (BLM), dated May 30, 1984, rejecting his color-of-title application NM 40472.

BLM's rejection of Vigil's color-of-title application was premised on two bases: (1) he failed to submit evidence establishing satisfaction of title requirements, and valuable improvement or cultivation requirements; and (2) he failed to meet the good faith requirement contained in 43 CFR 2540.0-5(b) because he has held grazing privileges on the subject land since 1970.

Vigil submitted his class 1 color-of-title application to BLM on March 17, 1980, to purchase portions of lots 2, 3, 4, and 9 in sec. 9, T. 20 N., R. 10 E., New Mexico Principal Meridian, consisting of 100 acres, more or less. His application stated that he inherited the subject land from Leandro T. Vigil in 1970.

The application omitted certain facts, and on October 28, 1983, BLM sent Vigil a letter requesting the additional information. ^{1/} In his statement of reasons for appeal, Vigil asserts that he never received that letter. However, the non-receipt of the letter would not be a sufficient basis to reverse BLM's decision because it was Vigil's obligation to properly complete the application form and to provide the requisite information to establish the color-of-title requirements in the first instance. BLM's letter was merely a courtesy rather than a requirement. In any event, even if Vigil did not receive the letter, he was not prejudiced thereby, as will be shown.

[1] The Color of Title Act, 43 U.S.C. § 1068 (1982), provides in part:

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation * * * issue a patent for not to exceed one hundred and sixty acres of such land * * *.

^{1/} BLM requested further proof of title in the form of an abstract of title, additional deeds, or other documentary evidence establishing ownership of the land. BLM advised Vigil that his application did not indicate valuable improvements or cultivation. BLM requested proof of ownership prior to February 1926 because the land was withdrawn under Secretarial Order No. 70, Water Power Designation No. 1, New Mexico No. 1. 43 CFR 2540.0-5(b) provides that "[a] claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes." Thus, in order to prove a valid color-of-title claim, appellant also was obliged to establish evidence of title prior to Feb. 4, 1926.

An essential element of a color-of-title claim is the good faith requirement. Kim C. Evans, 82 IBLA 319, 321 (1984); Lawrence E. Willmorth, 64 IBLA 159, 160 (1982). Good faith under the Color of Title Act requires that a claimant and his predecessors honestly believe that they were invested with title. E.g., Hal H. Memmott, 77 IBLA 399, 403 (1983); Carmen M. Warren, 69 IBLA 347, 350 (1982); Lawrence E. Willmorth, *supra*. In order to determine whether the claimant honestly believed that he was seized with title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to the claimant. E.g., Hal H. Memmott, *supra*; Carmen M. Warren, *supra*; Minnie E. Wharton, 4 IBLA 287, 295-96, 79 I.D. 6, 10 (1972), *rev'd on other grounds*, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975).

If the appellant knew that he was not acquiring title to the subject land, then he is barred from relief under the Color of Title Act. Kim C. Evans, *supra* at 321; Jacob Dykstra, 2 IBLA 177, 180 (1971). Knowledge of Federal ownership of the land negates the requisite good faith. 43 CFR 2540.0-5(b); United States v. Wharton, *supra* at 408; Day v. Hickel, 481 F.2d 473, 476 (9th Cir. 1973). In the instant case, appellant has held Federal grazing privileges on the land since 1970, prior to which they were held by his father. Possession of a Federal grazing lease by a claimant constitutes acknowledgement of ownership of the land by the United States. Carmen M. Warren, *supra* at 350; Joe I. Sanchez, 32 IBLA 228, 232 (1977). "[T]here can be no such thing as good faith in an adverse holding, where the party knows he has no title, and that, under the law, which he is presumed to know, he can acquire none by his occupation." Deffebach v. Hawke, 115 U.S. 392, 407 (1885), *cited in Purvis v. Vickers*, 67 I.D. 110 (1960). Thus, appellant's grazing privileges indicate his knowledge of Federal ownership of the land, which negates the requisite good faith.

[2] Another defect revealed in appellant's color-of-title application is the lack of improvements or cultivation on the land. In order to establish a class 1 claim, an applicant must prove, among other requirements, that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation. E.g., 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5(b); Kim C. Evans, *supra*. For improvements to qualify as valuable improvements, they must have existed on the land at the time the application was filed, and must enhance the value of the land. E.g., Malcolm C. & Helena M. Huston, 80 IBLA 53, 57 (1984); Pedro A. Suazo, 75 IBLA 212, 214 (1983); Lester & Betty Stephens, 58 IBLA 14, 19 (1981). In the instant case, the BLM field examination did not reveal any valuable improvements or cultivation of the land. Appellant's application asserted that "fencing," valued at \$40, on the land constituted valuable improvements. However, appellant's assertion of valuable improvements is contrary to BLM's finding, and appellant has failed to submit any evidence of existing fences. ^{2/} Appellant's application did not claim that the land had been cultivated. We therefore conclude that appellant failed to establish either valuable improvements or cultivation of the land. Thus, Vigil's class 1 color-of-title application was properly rejected.

^{2/} The file includes the affidavit of a 90-year-old man who recalls the existence of a juniper and pinon fence on the land when he was 10 or 15 years old. He states, "You can still tell where the fence used to be."

[3] It is well established that applicants under the Color of Title Act, 43 U.S.C. § 1068 (1982), have the burden of proof to establish to the satisfaction of the Secretary of the Interior that each of the statutory conditions under the Act have been met. E.g., Paul Marshall, 82 IBLA 298, 301 (1984); Kim C. Evans, supra at 323; Lawrence T. Abraham, 82 IBLA 285, 287 (1984). A claimant's failure to carry the burden of proof with respect to any one of the elements of proof is fatal to the application. E.g., Paul Marshall, supra at 301; Kim C. Evans, supra at 323. In the instant case, appellant has failed to carry his burden of proof on several elements. Therefore, BLM properly rejected his color-of-title claim.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Bruce R. Harris
Administrative Judge

