

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Native group selection application, AA-11847.

Dismissed.

1. Administrative Practice -- Appeals -- Practice Before the Department: Persons Qualified to Practice -- Rules of Practice: Appeals: Dismissal

An appeal brought by a person who does not fall within the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

APPEARANCES: Mike J. Pavlik, Yakutat, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Mike J. Pavlik has filed an appeal on behalf of Ganawas Corporation from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated April 18, 1984, which rejected Native group selection application AA-11847 in its entirety because the application was improperly filed and lacked required information. Prior to this decision, the registered agent for Ganawas Corporation was notified by BLM several times regarding the deficiencies in the application but no response was received.

[1] The file and the statement of reasons do not reflect that Pavlik is qualified to represent appellant before the Department pursuant to 43 CFR 1.3. <sup>1/</sup> Pavlik does not identify his relationship to appellant except that

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<sup>1/</sup> 43 CFR 1.3 defines who may practice before the Department:

"(a) Only those individuals who are eligible under the provisions of this section may practice before the Department, but this provision shall not be deemed to restrict the dealings of Indian tribes or members of Indian tribes with the Department.

"(b) Unless disqualified under the provisions of § 1.4 or by disciplinary action taken pursuant to § 1.6:

"(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1963, shall be permitted to practice before the Department.

"(2) Attorneys at law who are admitted to practice before the courts of any State, the District of Columbia, the Commonwealth of Puerto Rico, American

he begins the statement of reasons with "[w]e of the Ganawas Corp. request." However, no list of the members belonging to this Native group has ever been provided for the record. Further, the only records submitted for Ganawas Corporation's application show the original incorporators and board of directors, and Mike Pavlik is not among those listed. An appeal brought by a person who does not fall within any of the categories of persons authorized by the regulation to practice before the Department is subject to dismissal. Thomas L. Tuttle, 71 IBLA 265 (1983), and cases cited therein. While we may speculate on possibilities for his appearance here, we cannot accurately identify Mike Pavlik as qualified to represent Ganawas Corporation in this appeal. Therefore, it is dismissed. Although this regulation may seem harsh for occasionally penalizing an otherwise qualified appellant, its enforcement is necessary to protect those who do business with the Department against the risk of inadequate or false representation. J. C. Trahan, 74 IBLA 15, 16 (1983). 2/

By way of dicta, the Board observes that were we to consider this appeal on its merits, we would affirm the decision below. The record on appeal demonstrates that the application filed by Ganawas Corporation failed to satisfy several Departmental requirements.

Under section 14(h)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(2) (1982), the Secretary may convey land to an incorporated Native group. Departmental regulations implementing section 14(h)(2) provide that a Native group selection application must be submitted on an approved form before December 31, 1976, and include a description of the

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fn. 1 (continued)

Samoa, the Trust Territory of the Pacific Islands, or the District Court of the Virgin Islands will be permitted to practice without filing an application for such privilege.

"(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; (ii) a partnership of which he is a member; (iii) a corporation, business trust, or an association, if such individual is an officer or full-time employee; (iv) a receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (v) the lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney; (vi) a Federal, State, county, district, territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or (vii) an association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter."

See Act of July 4, 1884, 23 Stat. 101, 43 U.S.C. § 1464 (1982).

2/ A memorandum in the BLM case file, dated Jan. 26, 1984, states that the writer was informed by the "Department of Commerce" that the Ganawas Corporation was involuntarily dissolved effective Dec. 2, 1981, "for failure to file documents and taxes." If this is true, it constitutes an additional reason both for BLM's rejection of the selection application and our dismissal of this appeal. See Sky Pilots of Alaska, Inc., 40 IBLA 355 (1979).

Native group's locality, the names of the Native members, a list of permanent improvements, and a listing of the periods of use of the locality by the members. 43 CFR 2653.2(a) (read with 2650.2(a)), 2653.4(b), 2653.6(a)(2). <sup>3/</sup> Such an application must also be accompanied by written concurrence from the affected regional corporation and include that regional corporation's recommendation of the amount of land which should be conveyed to the Native group. 43 CFR 2653.2(b). On July 1, 1976, Ganawas Corporation submitted a description of lands it selected for a Native group conveyance, the articles of incorporation for Ganawas Corporation, and several corporate resolutions authorizing the selections. BLM requested Ganawas Corporation, in a letter dated August 17, 1976, sent to its registered agent, to submit the following items in order to properly complete a selection application:

1. Application, on the correct form, filed in duplicate, signed, and dated by the authorized land selection representative.
2. Concurrence by the regional corporation (Sealaska) as to the group's selection application.
3. Recommendation by Sealaska regarding maximum acreage to be allotted to each Native group member.
4. Location of the group identified by section, township, and range.
5. List of the names of the Native members of the group.
6. List of permanent improvements and periods of use of the locality by members.

A response to this letter and a followup letter dated February 25, 1977, was not received. Because of these uncorrected deficiencies, the application was properly rejected by BLM in its April 18, 1984, decision. Duly promulgated regulations have the force and effect of law and are binding on the Department. Joseph J. C. Paine, 83 IBLA 145, 147 (1984), and cases cited therein. BLM, therefore, could not overlook the failure of the application to satisfy the requirements established in the Department's regulations.

Although the period for filing a Native group selection application has expired, Ganawas Corporation still has an opportunity to resubmit a completed application and request consideration under 43 CFR 2650.0-8. Under this regulation, the Secretary may, in his discretion, waive nonstatutory requirements imposed by the regulations, such as timely filing, provided the rights of third parties will not be impaired. Cf. Theodora M. Witham, 1 AN CAB 20, 24, 83 I.D. 449, 451 (1975).

Finally, it was asserted in the statement of reasons that BLM should have notified Ganawas Corporation much sooner about the situation. Apparently, Ganawas Corporation's registered agent, James F. Peterson, disappeared,

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<sup>3/</sup> The period for filing Native group selection applications was originally scheduled to expire on Dec. 31, 1975. 43 CFR 2653.4(b) (1974). The closing date was ultimately extended to Dec. 31, 1976. 41 FR 44041 (Oct. 6, 1976).

leaving the selection application without an active proponent, and, it is argued, as a consequence the Native group was unaware of inadequacies in the application. Under 43 CFR 1810.2(b), BLM is obligated to correspond with or serve its decisions upon an affected party at its last address of record. The articles of incorporation submitted by Ganawas Corporation as part of its application established the address of the corporation as that of its registered agent. See Ganawas Corporation Articles of Incorporation, Art. VII. Nowhere else has an address been identified for receipt by the corporation of required communications from BLM. Consequently, the registered agent was the addressee of record and BLM was obligated to deliver its notices to that address only. See Nabesna Native Corp., Inc. (On Reconsideration), 83 IBLA 82, 83 (1984); Victor M. Onet, Jr., 81 IBLA 144, 146 (1984); Arthur M. Solender, 79 IBLA 70, 72-73 (1984). From a review of the record, there is no reason to suspect that BLM was aware of any problems between Ganawas Corporation and its selected representative. When the April 18, 1984, decision was returned undelivered, BLM exceeded the obligations imposed upon it and forwarded the decision to the address of the corporation's secretary/treasurer shown in the articles of incorporation. In the statement of reasons, it is stated that Pavlik and others knew of Peterson's disappearance with his files on the application over 2 years before the April 18, 1984, decision. However, no effort was made by the Native group to inquire about the application or to effectuate a change in address. The responsibility is upon the applicant to keep BLM aware of its intended address and not upon BLM to speculate where it should send required communications. See Arthur M. Solender, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Franklin D. Arness  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

