

DEACON'S LANDING, INC.

IBLA 83-922

Decided May 16,

Appeal from a determination of the Area Director, Bureau of Indian Affairs, to issue a certificate of ineligibility to Deacon's Landing, Inc., for status as a Native group. AA-11718.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances: Native Groups  
--Indians: Alaska Natives: Generally

A determination by the Bureau of Indian Affairs to issue a certificate of ineligibility to a Native corporation claiming status as a Native group under sec. 14(h)(2) of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1613(h)(2) (1982) because the members of the corporation do not compose more than one family or household as required by 43 CFR 2653.6(a)(5) will be affirmed on appeal where the facts show that on the critical census date the four Native members were grandparents and two adult grandchildren, and that the living situation at the group locality was that of a single family or household with the grandfather as head of that family or household.

APPEARANCES: Judith K. Bush, Esq., Alaska Legal Services, Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Indian Affairs.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On December 18, 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, 43 U.S.C. §§ 1601-1627 (1982), to provide a "fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." 43 U.S.C. § 1601(a) (1982). As part of the claims settlement, 43 U.S.C. § 1613(h)(2) (1982) (section 14(h)(2) of ANCSA) authorizes the Secretary of the Interior to "withdraw and convey to a Native group that does not qualify as a Native village, if it incorporates under the laws of Alaska, title to the surface estate in not more than 23,040 acres surrounding the Native group's locality" from "2 million acres of unreserved and unappropriated public lands located outside of the areas withdrawn by sections 1610 and 1615 of this title." "Native group" is defined in

43 U.S.C. § 1602(d) (1982) as "any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality," and is distinguished from a "Native village" on the basis that the group has insufficient numbers to qualify as a village. Cf. 43 U.S.C. § 1602(c) and (d) (1982). The Secretary has promulgated regulations regarding eligibility of Alaska Natives incorporated pursuant to section 14(h)(2) of ANCSA. Among other things, the regulations give an eligible Native group the right to select up to 7,680 acres of land. 43 CFR 2653.6(b). A Native group is "composed of less than 25 but more than 3 Natives." 43 CFR 2653.0-5(c).

Deacon's Landing, Inc. (the Group), filed Native group application AA-11718 with the Alaska State Office, Bureau of Land Management (BLM), on September 21, 1976, pursuant to section 14(h)(2) of ANCSA, for 1,280 acres of land approximately 75 miles south of McGrath along the Kuskokwim River, Alaska. This site lies between the communities of Stony River and McGrath, in the west 1/2 sec. 31, T. 28 N., R. 36 W., Seward Meridian. Deacon and Agnes Deaphon, now deceased, moved to the site in 1945 and the name "Deacon's Landing" is derived from use of the location by Deacon to cut wood for steamboats that used to travel on the Kuskokwim River.

A field investigation of the Group's locality was conducted on September 14-15, 1982, by a Bureau of Indian Affairs (BIA)-ANCSA Realty Specialist and a Field Investigator. Their findings are included in a Claims Examiner's Report for Deacon's Landing Group (Report) BLM AA-11718.

By decision dated April 28, 1983, the Area Director, BIA, found the Group to be an ineligible Native group because the corporation was composed of a single family living as a single household and therefore did not meet the criterion of 43 CFR 2653.6(a)(5) which provides in part: "The group must have the character of a separate community, distinguishable from nearby communities, and must be composed of more than a single family or household."

According to the Report, four members were enrolled to the Group and living in the locality on the critical census date, April 1, 1970. These were Deacon and Agnes Deaphon and their grandchildren, Wassillie Evan and Deacon Evan. Also living there were two non-enrolled Natives, Martha Evan and Elya Evan. <sup>1/</sup>

In 1970 there were two cabins and some outbuildings on the site. One of the cabins no longer exists and the other is unused. A third cabin, built in 1973 or 1975, is used by the grandchildren.

In 1970 Wassillie Evan was 20 years old. In his affidavit, he listed himself as a member of the household headed by his grandfather, Deacon

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<sup>1/</sup> Elya Evan answered "yes" in his affidavit of Sept. 14, 1982, to BIA's question: "Are you an Alaskan Native enrolled to Deacon's Landing?" This answer is contradicted by the enrollment report furnished by Doyon Regional Corporation; BIA's investigative report (at page 8), and appellant's statement of reasons (at pages 1-2).

Deaphon. Deacon Evan, about 18 years old in 1970, also listed himself as a member of Deacon Deaphon's household. The affidavit of Elya Evan lists the grandparents, Wassillie and Deacon Evan, as well as Martha and Elya Evan, as members of one household with Deacon Deaphon as head of that household. Presently, Deacon Evan is the only individual who uses the site and his use is seasonal, according to the BIA report.

The issue in this appeal is whether BIA properly determined that the Group was composed of only a single family or household on April 1, 1970.

Appellant argues that BIA should not have considered the Group as a single family or household inasmuch as the household included adult grandchildren. As such, argues appellant, it constituted a clan or extended family. In addition, appellant contends that if BIA's decision is allowed to stand the Group will be disenfranchised from receiving any benefits under ANCSA.

In its answer, counsel for BIA asserts that BIA's determination of ineligibility was fully consistent with ANCSA and the applicable regulation, and that contrary to appellant's contention, the Group members will not be disenfranchised or left landless. Counsel points out that Agnes and Deacon Deaphon and Wassillie Evan filed applications for a "primary place of residence," pursuant to section 14(h)(5) of the Act. BIA's answer further states that both applications are still pending and that they contain certification that the applicants will not receive title to any lands under the Native group provisions of section 14(h)(2) of ANCSA. 2/ In addition, BIA requests that its motion to dismiss, made earlier in the proceeding, be addressed. 3/

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2/ The pertinent paragraph on the application reads in part: "I FURTHER CERTIFY that I will not receive title to any other tracts of land pursuant to Section 14(c)(2), 14(h)(2) or 18 of the Alaska Native Claims Settlement Act." Notwithstanding that Agnes and Deacon Deaphon are deceased, counsel for BIA asserts:

"The BIA has conducted a field investigation and issued a Certificate of Eligibility for the primary place of residence application of Agnes and Deacon Deaphon \* \* \*. In accordance with the BIA's favorable certification, the BIA has processed the Deaphon's application to the point where a conveyance decision can issue after the resolution of this appeal." (Answer at 4.)

3/ On Sept. 16, 1983, counsel for BIA filed a motion to dismiss the appeal as untimely filed. In support of this motion, counsel filed return receipts showing that service of the decision under appeal was apparently completed on an authorized agent of appellant no later than July 7, 1983. Since appellant's notice of appeal was not filed until Aug. 17, 1983, it would appear that appellant's notice of appeal was untimely. See 43 CFR 4.411 and 4.401(a). However, appellant filed information indicating that the individual who accepted service in July 1983 was not its authorized agent. By order dated Sept. 27, 1983, the Board directed appellant to file further information bearing on this question and any other question raised by the motion to dismiss. With her statement of reasons, counsel for appellant has submitted

[1] As we stated in Savonoski, Inc., 80 IBLA 231, 235 (1984), involving similar facts, Native group eligibility must hinge on the family or household status at the particular group locality. The mere fact that various members of the household may be adults does not preclude them from being considered, under the circumstances, as part of one household or family. Savonoski, supra; Neechootaalichaagat Corp., 79 IBLA 301 (1984). Here, the four individuals shown by the record to have been residents of Deacon's Landing and enrollees to the Group were clearly members of a single household. No dispute exists as to who headed the household. Nor is there any evidence of any separate family or household situation at the Group locality. As no factual issues pertinent to this case are in dispute, appellant's request for a hearing is denied.

Accordingly, 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.

Wm. Philip Horton Chief  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge.

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fn. 3 (continued)

an affidavit by Deacon Evan indicating that he is the authorized agent for the Group and that he received BIA's notice of ineligibility on July 13, 1983, while incarcerated in the Bethel jail. He further states that he contacted James Mery at Doyon, Ltd., on July 15, 1983, and asked him to arrange for an appeal to be filed. Subsequently, Deacon Evan entered an alcohol treatment program and had no further "contact with the outside world until Nov. 1, 1983." The record shows that appellant's notice of appeal was received by BIA in Juneau on Aug. 17, 1983, having been mailed on Aug. 11, 1983. It was therefore received within the 10-day grace period allowed by 43 CFR 4.401(a). BIA's motion to dismiss is denied.

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