

PETER ANDREWS, SR.  
v.  
BUREAU OF LAND MANAGEMENT

IBLA 86-134

Decided September 15, 1986

Appeal from a decision of Administrative Law Judge E. Kendall Clarke finding that Native allotment application A-54486 was involuntarily and unknowingly relinquished and reinstating it.

Reversed.

1. Alaska: Native Allotments -- Applications and Entries:  
Relinquishment -- Rules of Practice: Appeals: Hearings  
The decision of an Administrative Law Judge finding that a Native allotment applicant unknowingly and involuntarily relinquished his Native allotment in 1966 will be reversed on appeal where the Judge relies on the self-serving testimony of the applicant, characterizing it as unrebutted, and disregards more reliable evidence, specifically a memorandum prepared by a Bureau of Land Management employee on the same day the relinquishment was secured and a 1976 letter written by the applicant.

APPEARANCES: Colleen DuFour, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for Peter Andrews, Sr., appellee; John M. Allen, Esq., Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management, appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Bureau of Land Management (BLM) has appealed from the September 18, 1985, decision of Administrative Law Judge E. Kendall Clarke finding that Peter Andrews, Sr., had involuntarily and unknowingly relinquished his Native allotment application, A-54486, and directing that the application be reinstated.

Procedural and Factual Background

In a decision dated June 29, 1983, the Alaska State Office, BLM, denied the request of Peter Andrews, Sr., that his Native allotment application, A-54486, be reinstated because his September 29, 1966, relinquishment had been involuntary and unknowing. Andrews appealed to the Board. In a November 30, 1983, decision the Board affirmed the BLM decision to the

extent the Native allotment application included patented land; however, the Board ruled that as to those lands within the application which had not been conveyed, there was an issue of material fact whether the relinquishment had been knowing and voluntary. Peter Andrews, Sr., 77 IBLA 316 (1983). Therefore, the Board referred the case to the Hearings Division for resolution of that issue.

On January 30, 1984, Andrews petitioned the Board for reconsideration of its decision as to the patented land. On November 7, 1984, the Board reaffirmed its earlier decision. Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (1984). However, on June 20, 1986, the Board issued a decision, Matilda Titus, 92 IBLA 340 (1986), which overruled Peter Andrews, Sr. (On Reconsideration), as well as Kenai Natives Association, 87 IBLA 58 (1985), to the extent they had held that BLM had no authority to consider a request to reinstate a Native allotment application for patented land. In Titus we stated at pages 344-45 that where a Native allotment applicant seeks reinstatement for an application for lands patented to another based on a claim that the relinquishment was involuntary and unknowing, the Department has an obligation to investigate that allegation and, if deemed appropriate, pursue recovery of the land. Thus, in this case if we determine Andrews' relinquishment was involuntary and unknowing, reinstatement would relate to his entire claimed acreage on the date of the relinquishment.

Judge Clarke convened a hearing on July 22 and 23, 1985, in Dillingham, Alaska, and on July 24, 1985, in Anchorage, Alaska. He subsequently issued his decision which is the subject of this appeal.

Certain facts in this case are undisputed. In 1958 at the age of 33 Andrews moved to the Native village of Aleknagik in southwestern Alaska (Tr. 29). On April 9, 1961, Andrews applied for a Native allotment of approximately 160 acres lying within unsurveyed T. 10 S., Rs. 55 and 56 W., Seward Meridian, near the village of Aleknagik. His application was submitted to BLM on May 17, 1961. On May 24, 1961, certain residents of the Lake Aleknagik area, including Andrews, filed a petition seeking the establishment of a Native townsite (Exh. A). Andrews' allotment claim conflicted in part with lands sought for the townsite. It also overlapped 5 acres under application by Slim Yako for a homesite.

On September 17, 1966, three BLM officials, Sherman Berg, Darryl Fish, and Al Steger, traveled to Aleknagik to discuss with the residents resolution of the various conflicts (Exhs. F and H). The three men met with Andrews in his house. At that time Andrews signed a relinquishment of his Native allotment. The relinquishment, drafted by Berg, was on a BLM form -- "Entry Relinquishment" (Exh. 5).

Nearly 10 years later on August 23, 1976, Andrews wrote to BLM concerned that the Aleknagik City Council was contemplating a resolution to dissolve the pending townsite. Andrews stated therein, "I cancelled my application in favor of the proposed townsite which never came through. And since the Council here wish to resolve [sic] the townsite application, I would like to have my original application for the 160 acres restored" (Exh. 6). By letter dated November 16, 1976, BLM denied the request to reinstate. However, in 1977 the townsite was patented to the townsite

trustee and in October 1981 Andrews received a trustee deed for 4.1 acres around his house (Tr. 103). Notwithstanding the earlier denial, on July 14, 1981, BLM reinstated Andrews' application, pending further determination in light of section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634 (1982). On June 29, 1983, BLM determined Andrews had voluntarily and knowingly relinquished his allotment, and, therefore, it was not subject to reinstatement. Andrews' appeal followed.

#### Administrative Law Judge's Decision

In resolving this case Judge Clarke recounted the testimony presented at the hearing and set forth his discussion and conclusion as follows:

The basic problem presented in the factual matters received in this hearing deal with the conflict between Mr. Peter Andrews' letter to the BLM in 1976 where he seems to express an understanding of his relinquishment of his Native allotment and asked to have it reinstated and his testimony that when he signed the relinquishment in September 1966, he did not understand the import of what he was doing.

Sherman Berg the BLM realty specialist testified concerning the care that he tried to exercise to make sure that the Natives whom he had sign a relinquishment understood what they were doing and that he was not causing them to do something that they did not desire to do. He understood the cultural differences he stated. On the one hand he felt at the time of meeting that Mr. Andrews understood what he said even though it is fairly clear that no questions were asked by Mr. Andrews and very little discussion was had. He must have clearly known that the other Natives he discussed these matter [sic] with simply did not understand what he was talking about.

It appears that the most important thing in Mr. Berg's mind was the problem solving which was necessitated by the conflict between the townsite and Native allotments. It must be bore [sic] in mind that there is a 10 year gap between the time Mr. Andrews wrote the letter in 1976 and the time he signed the relinquishment in 1966 and during this time he well may have received an education in what effect such actions [had] and what course of action was necessary from the white man's standpoint to get back to the point where he was at the time he signed the relinquishment.

The unrebutted testimony, of course, in this hearing is that Mr. Andrews did not understand what he did in 1966. He states he did not know what he did. The other Natives who testified certainly did not know the effect of what they did.

Mr. Berg's intuition that Peter Andrews understood what he was doing certainly is not enough to overcome Andrews' testimony that he did not know what he was doing. Nor did his wife know what he was doing. It seems clear that if Mr. Berg and the BLM had wanted to make sure these Natives understood what they were

doing and the legal impact of what they were doing they would have insisted that they have an interpreter and a lawyer or at least a representative from BIA [Bureau of Indian Affairs] present before accepting a signed relinquishment. At the very least it appears that they should have had a representative from the BIA present advising the Natives as to the effect of what they were doing. Relinquishing a property right such as a claim under the Native allotment is a serious matter. Here there was not even any time provided for reflection. If there is any doubt it would appear that there should be an insistence on other advisors being present.

For the reasons stated above I find that Mr. Peter Andrews Sr.'s relinquishment of September 1966 was unknowing and involuntary and his application is reinstated for further adjudication with respect to that portion of the allotment application which has not been otherwise patented. [Emphasis in original.]

(Decision at 9-10).

#### Discussion

BLM asserts on appeal that Judge Clarke erred in characterizing Andrews' testimony as "unrebutted" and in disregarding more reliable evidence. It also charges that Judge Clarke relied on evidence "both prejudicial and irrelevant" regarding the level of understanding of other Natives and the circumstances of other relinquishments (Statement of Reasons at 2). Andrews strongly disagrees with BLM's assertions and argues that Judge Clarke properly found that his relinquishment was involuntary and unknowing.

Based on our review of the record, we conclude that Judge Clarke failed properly to evaluate the evidence. That evidence supports the conclusion that Andrews' relinquishment in 1966 was, in fact, voluntary and knowing.

At the hearing Andrews testified at times through an interpreter. He indicated he still has some problems understanding English, but that his level of understanding has increased considerably since his earlier years (Tr. 111). Andrews' wife, Sassa, also testified that there are a lot of English words Andrews does not understand (Tr. 162). He has only an eighth grade education (Tr. 110). However, he was employed in the school system in Manokotok for 3 years by the Bureau of Indian Affairs as an instructor's aide (Tr. 266-67). He also was hired by the State of Alaska as a bilingual aide to teach in Aleknagik, where he taught for 3 years (Tr. 266-68). Both schools conducted their classes in English, although in Aleknagik some of his teaching was done in Yupik, the Native language (Tr. 267-68). Andrews wrote a number of letters to BLM concerning his allotment and his subsequent appeal (Exhs. 4, 6, 9, 11, 12). 1/ The letters were drafted by him in his own hand

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1/ On Apr. 15, 1986, counsel for BLM filed with the Board a motion for leave to submit a supplemental exhibit. The exhibit is a letter allegedly written by Peter Andrews, Sr., on Jan. 28, 1981, in his capacity as mayor of

(Tr. 36, 55, 61, 67, 112). In response to the question whether anyone had helped him write the letters or made any suggestion about what words should go in the letters, he responded through the interpreter: "No one has written letters for him. He has looked at or looked the words up in dictionary and whatever sources of information that may look good" (Tr. 112).

On August 29, 1961, BLM wrote to Andrews explaining that there was a conflict between his allotment and the 5-acre homesite application of Slim Yako. 2/ Andrews responded in a letter (Exh. 4) in his own hand received by BLM on September 12, 1961, as follows:

Dear Sirs:

This is in answer to your letter of Aug. 29, concerning my land allotment Serial No. 054486.

I am willing to withdraw my application to the 5 acres claimed by Slim Yako (050718).

Sincerely, Yours,

[signature] [ 3/ ]

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fn. 1 (continued)

Aleknagik, to the BLM townsite trustee, which counsel asserted he had only recently discovered. Counsel for Andrews responded with a motion to strike the exhibit, arguing that it was not offered in a timely fashion, that it is not relevant to the issue in this case, and that it lacks a proper foundation to establish that it was actually conceived and written by Andrews. We grant the motion to strike. No consideration was given to the letter in our review of the case.

2/ After explaining the conflict, the letter stated:

"You are allowed 30 days from receipt of this notice within which to initiate a contest against the prior claim, if you believe that claim to be invalid, or to withdraw your application as to the portion in conflict.

"If you do not take one of the above actions within the time allowed, the portion in conflict will be closed of record in this office.

"Please refer to your assigned serial number in connection with inquiries concerning your filing."  
(Exh. 3).

3/ At page 3 of his decision Judge Clarke states that "[p]rior to 1966, Mr. Andrews had never relinquished any portion of his allotment and was unfamiliar with the process." While it is true Andrews had not "relinquished" any portion of his allotment, he had "withdrawn" his application as to these 5 acres. As counsel for BLM points out, Judge Clarke did not explain the distinction between "relinquish" and "withdraw" (Statement of Reasons at 7). We note, however, that in capsulizing the testimony presented at the hearing by Bobby Andrew, the President of Aleknagik Native, Limited, a resident of Dillingham, and a Yupik language instructor, Judge Clarke stated: "Mr. Andrews [sic] explained that there is no specific word for 'relinquishment' in the Yupik language. That term would have to

Andrews testified that he remembered talking to the BLM employees who came to his house on September 17, 1966, but "it's been so far back I -- I've -- I can't recall what was talked about during that time" (Tr. 38). He did not recall whether BLM told him the paper he signed was a relinquishment, although they might have. However, through the interpreter he stated he "probably did not fully understand what it was about" (Tr. 40). They did describe something, but he did not remember "exactly what they were talking about" (Tr. 39). He did not fully realize what the consequences of the relinquishment would be (Tr. 40). At the time he was busy with "some church work" and as "a church participant he placed his trust to those people" (Tr. 41). Andrews also testified that he was taught to conform to the wishes of those in authority and in this situation he placed his trust in BLM (Tr. 70).

Andrews understood that by giving up his Native allotment, he would get the land within the townsite where his house was located (Tr. 45). He also thought he would get land outside the townsite and that BLM would take care of all the necessary paperwork, including selecting the land for him (Tr. 43, 45, 87). <sup>4/</sup> He later admitted, however, that the BLM employees could have explained in detail that he could refile a Native allotment claim on any available land and that he had misunderstood that (Tr. 102). Also he stated he did not really expect BLM to do all the work, but that he believed they would send him something with instructions (Tr. 103). He further stated that in 1976 he wrote to BLM because he was concerned that he was not going to get any land, but he did not indicate in the letter that "I was worried or anything like that" (Tr. 88, see also 55). The August 23, 1976, letter prepared by Andrews stated in pertinent part:

Dear Sir,

The city council here at Aleknagik made plans to make a resolution to dissolve [sic] the pending townsite North Shore Aleknagik. If this resolution goes through I would like to retain the land I applied for before the proposed townsite was planned. I had applied for 160 acres and had received a number

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fn. 3 (continued)

be translated so that the person would understand that they are withdrawing their interest in a specific piece of property (Tr. 146)." (Emphasis added.) Thus, the testimony of Bobby Andrew indicated that "relinquishment" would be explained to a Native in terms of withdrawing interest in property. Moreover, in testimony concerning the conflict with Yako's homesite, Andrews stated, through the interpreter, "He took the action of the relinquishment because Slim Yako has been there already and he's heard that people have cases as -- or that would have cases as Slim Yako's would have a better chance to win" (Tr. 96 (emphasis added)).

<sup>4/</sup> Judge Clarke states in his decision at page 2: "He [Andres] testified that he did not realize that by signing the paper he was giving up his right to receive a Native allotment." (Emphasis added.) As pointed out by counsel for BLM, this statement is erroneous. Andrews was not giving up his right to receive a Native allotment. The Native Allotment Act, 43 U.S.C. § 207-2 (1970), was not repealed until 1971. 43 U.S.C. § 1617 (1982).

for it, but the copy of the paper I received from your office has been misplaced and cannot be found. I hope that you have a record of that in your office. I cancelled my application in favor of the proposed townsite which never came through. And since the council here wish to resolve [sic] the townsite application, I would like to have my original application for the 160 acres restored. I have not applied for no other land, and since some people have been applying for land and I understand that we can't stop them from doing so, I want to re-apply for the land where we are living now. As it is now if all the land is grabbed all around my house our children will have to go somewhere else for land.

(Exh. 6).

Two Native residents of Aleknagik, Pavela Chuckwuk and James S. (Slim) Yako, testified on Andrews' behalf, through an interpreter. Chuckwuk also signed a relinquishment of his Native allotment on September 17, 1966; however, he did not recall meeting with BLM employees at his home on that date (Tr. 123). He seemed to remember something about a meeting in the old territorial school and signing paperwork that changed his land to townsite status (Tr. 122-23). When shown a copy of his relinquishment (Exh. 13), he recognized his signature but could not read nor understand what was written thereon (Tr. 124-25).

Yako testified about his land in Aleknagik and about a Native allotment he had in another area. He did not know what type of application he had filed for the land in Aleknagik (Tr. 133). He identified his land on a map of the Aleknagik area (Tr. 135). He did not know that it was in conflict with Andrews' allotment and he did not remember whether Andrews had told him that Andrews had relinquished (i.e., withdrawn his application as to) the land in conflict with his (Tr. 136). Yako provided testimony concerning his allotment in another village. He thought he signed a paper deleting 40 acres from the 160 acres for which he applied (Tr. 137). His only explanation or understanding for having done so was that "the land man" told him to (Tr. 143). It was not established what Yako signed, why he signed, or who persuaded him to sign or for what reason (Tr. 138-43).

Bobby Andrew, the President of Aleknagik Native, Limited, the village corporation, testified concerning his experience as an instructor in the Yupik language and about his knowledge of the circumstances of Andrews' relinquishment. Andrew was born in Aleknagik and lived there until 1955 when he moved to Dillingham. Following graduation from college in 1966 he returned to Dillingham and at the time of the hearing he resided there and was employed by the State of Alaska as a loan officer for the rural housing loan program (Tr. 145). His Yupik language instructor experience was in association with the University of Alaska for 4 years and with the Dillingham City School District for 4 years (Tr. 145).

He testified that in the past there were problems with Natives signing documents which were never really translated to the individuals, and individuals signed the documents without a thorough understanding of what they were

signing (Tr. 147). The basis for this was the trust these Natives placed in Government officials (Tr. 147). Andrew stated that during one of the board meetings of Aleknagik Native, Limited, Andrews, who was on the Board of Directors, "brought very briefly to my attention that he had signed a document with the understanding that he was going to receive lands in a different location" (Tr. 148). Andrew did not state the date upon which that encounter took place.

Another witness for Andrews, Stan Williams, a BIA Indian Rights Protection Specialist, testified concerning BIA's role in reviewing allotment relinquishments and his personal experience with relinquishments. He had 3 years experience in such work (Tr. 169). Prior to that time, he served in BIA for 12 years in a law enforcement capacity (Tr. 183). He did not know what BIA policy regarding allotment relinquishments was in 1966 (Tr. 183). Williams testified that in reviewing relinquishments, BIA checks them to determine if there was BIA involvement; if not, reinstatement is requested (Tr. 167). Williams considered one of the major problems encountered in relinquishment review to be the "knowingly and willingly aspect" of them (Tr. 172).

In his opinion one of the factors involved in relinquishments is the difficulty in translating certain concepts to Natives (Tr. 180). Williams testified that relinquishment to a Native "probably means I've got to give up something to get something," while to a non-Native, it means "[t]o relinquish your rights and quit the -- in this particular case, the land" (Tr. 181).

Williams was asked what he looks for in determining whether a Native actually understands what he is signing when he is asked to sign a relinquishment (Tr. 169). He responded:

When you walk in the door or when you knock on the door it's -- it becomes readily obvious whether they understand or not, you know. When you say hello and they say shmi (ph) or, you know, or -- you know, that's a -- it's a little different. If they come out to you and say relatively speaking, this is a fine day isn't it, you know. I mean it's -- it's not hard to really discern whether or not they're understanding or not. [Emphasis added.]

(Tr. 169-70). Williams testified that if he determined the Native did not understand, he would secure the services of an interpreter (Tr. 170). He does not always require an immediate signature in either case. If there is any doubt, he gives "them a self-addressed envelope, we always do and say when you're comfortable and feel like you understand it drop this in the mail" (Tr. 171).

He stated that in the Bristol Bay area, which encompasses Aleknagik, allotment applications were relinquished to alleviate conflicts with townsites (Tr. 172, 175). In some cases "the [townsite] trustee allegedly made promises that in the opinion of the allottee were not kept" (Tr. 173).

BLM called as witnesses two of the three men who traveled to Aleknagik in September 1966 and secured the relinquishment at issue, Sherman Berg and

Darryl Fish. Fish, a realty specialist in 1966 at the time of the visit to Aleknagik, provided only brief testimony. He was included in the trip principally for the purpose of indoctrinating him to field procedures (Tr. 257). Although he could recall no details of the meeting with Andrews, he was sure Berg must have gone "out of his way to explain things carefully so as to make an example" (Tr. 257). His general recollection regarding Berg's procedure was that Berg

made it clear that you had to be very careful on field trips into the remote villages on how you posed questions to people, how you posed situations to people and he went out of his way \* \* \* in all cases I'm aware of to try not to put words in people's mouths. Ask a question in such a way that they could give an honest answer. He didn't lead, and he made a point of stressing it in all my dealings with him.

(Tr. 256).

Berg, who in 1966 was the Bristol Bay Resource Area Manager for BLM and who at the time of the hearing was a BLM realty specialist, testified that on September 17, 1966, he and two other BLM employees visited Aleknagik for the purpose of resolving problems with Native allotments and the Aleknagik townsite petition (Tr. 188, 191). During the visit, they met with three individuals, Andrews, Chuckwuk, and Yako (Tr. 191).

Berg stated he did most of the talking in the meeting with Andrews. He had status records with him and he explained Andrews' options to him in English (Tr. 192). He testified that no interpreter was present, and Andrews spoke in English (Tr. 193). He had no reason at all to feel Andrews did not understand him (Tr. 193). Berg's belief was based only on his "personal feeling" (Tr. 248). He did not ask Andrews whether he needed an interpreter, nor did Andrews request one (Tr. 229). He believed Andrews spoke as well as or better than most Natives he had dealt with and in his experience "in that country and the way I'd been taught is that if I had any -- any doubt at all then I got an interpreter. And I -- that had been my standard practice" (Tr. 193).

Berg indicated that he explained to Andrews that he had the option of pursuing his allotment application, and he outlined the approval process, *i.e.*, field examination, evidence of use and occupancy, effect of a conflict with areas of community use, etc. (Tr. 193-94). He did not believe that he would have gone into great depth to ascertain whether Andrews' use and occupancy predated others in the townsite (Tr. 216). He testified he also explained the option of relinquishing the allotment and applying for land under the townsite act, and Andrews seemed to understand (Tr. 195). He was "very certain" he explained the pros and cons of signing a relinquishment and that he informed Andrews that by signing he would get only the land described on the relinquishment form and, and if he wanted other land, he would have to file a new Native allotment application (Tr. 228).

Berg stated that in 1966 he was very much aware of the problem of Natives relinquishing land when they did not understand what they were doing (Tr. 195-96). Berg testified:

The fellow that had broken me into the work in that area had been very explicit and his point was phrase your questions carefully and now this is my wording -- phrase your questions carefully when you're working over there. The people are very friendly. If they think you want a yes answer they're going to give you a yes answer. If they think you want a no answer they're going to give you a no answer. So be very careful in how you ask a question. Repeat the question several times in different ways if you can and be sure in your own mind that the individual understands and that the answer he's giving you is from his knowledge and not -- not your perception.

(Tr. 196; see also 212).

Berg stated that it did not matter to him which option was chosen by Andrews (Tr. 196). He was sure he had not promised Andrews that he would take care of any paperwork to get Andrews a new allotment (Tr. 199-200). He explained that BIA, in any event, would have been working with Natives in filing allotments (Tr. 199).

Berg testified he drafted the relinquishment and that it was "probably at Mr. Andrews' request" because "I have always felt that it was best in the case of a relinquishment to have the individual signing it to write everything" (Tr. 202). He did not recall any reluctance on Andrews' part to sign the relinquishment. If he had, "I would have returned it to him. I wouldn't have left the place if I felt in any way that he didn't understand what he was signing or he had a reluctance to sign it" (Tr. 203). He could not recall any questions or statements made by Andrews, although he is sure he got responses to his explanation of the situation (Tr. 231).

Berg also prepared a memorandum to the file, dated September 17, 1966, recounting the trip to Aleknagik (Exh. H). That memorandum states:

Pavela Chuckwuk and Peter Andrews were contacted individually at Mosquito Point [Aleknagik] early in the afternoon on this date and the status situation in the area was discussed with them.

Darryl Fish and Al Steger accompanied me on the trip.

After I explained the current status, both individuals stated they wanted to relinquish their allotment applications and proceed to title under the provisions of the townsite act.

I was very careful to explain their rights to them, especially the fact that they could proceed under their Allotment Applications, and I was careful to ascertain that they fully understood the situation that would exist if they relinquished them.

Andrews realized that he would be reducing the size of the area that he would eventually get "title" to in this area.

I explained to him that he could re-file for a Native allotment in any area that was available.

The area he wants to proceed to title to under the allotment act has not, at the moment of writing of this memo, been described in terms of metes and bounds, but it has been sketched on the mosaic photo which has been made part of the townsite casefile.

The area he wants is a tract of land approximately shown below: [Diagram of area subsequently patented to Andrews]

The area claimed by Pavela Chuckwuk has also been sketched on the photo, but acreage remains unchanged. 5/

Berg did not contact BIA prior to the trip to Aleknagik. However, after Andrews' relinquishment was obtained, it was sent to BIA on November 28, 1966 (Tr. 204; Exh. G). Berg did not ask Andrews if he had an attorney or advise him to contact an attorney prior to making the decision to relinquish the allotment (Tr. 235).

#### Conclusions

[1] The single issue for resolution is whether or not Andrews voluntarily and knowingly relinquished his allotment in 1966. His testimony at the hearing was that he did not because he understood little of what was explained to him due to his limited knowledge of the English language. Judge Clarke accepted this testimony as "unrebutted" and found Andrews' relinquishment had not been voluntary and knowing.

The origin of the terms voluntarily and knowingly, as they relate to the relinquishment of Native allotments may be found in section 905(a)(6) of ANILCA, 43 U.S.C. § 1634(a)(6) (1982). In accordance with that subsection, Native allotment applications which were pending before the Department on or before December 18, 1971, and were voluntarily and knowingly relinquished were not subject to the automatic allotment approval provided for

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5/ In another contemporaneous memorandum dated Oct. 5, 1966, one of the BLM employees who met with Andrews, Alfred P. Steger, Realty Specialist, recalled:

"Our first stop was at the house of Peter Andrews, who had of record a 160 acre Native Allotment claim which covered a considerable portion of the land described in the townsite petition. The house was framed, well built, and well furnished.

"Mr. Andrews was aware of the townsite petition but he did not seem to realize that his native allotment claim embraced some houses belonging to other native villagers. He was entirely in favor of the townsite petition, and when Area Manager Berg explained the townsite plan to him, he freely decided to relinquish his allotment. He designated on an aerial photo of the area the boundaries of the tract he wished to acquire under the townlot regulations. This tract covers 500 ft. of lake shore and runs back several hundred feet from the shore to the edge of a swamp." (Exh. F).

in 43 U.S.C. § 1634(a)(1) (1982). The legislative history of ANILCA, as it relates to section 905(a)(6), provides: "In cases of doubt concerning the effectiveness of a relinquishment, the ordinary legal standards requiring that the relinquishment be given knowingly and voluntarily apply." S. Rep. No. 413, 96th Cong. 1st Sess. 285, reprinted in 1980 U.S. Code Cong. & Ad. News 5229. Black's Law Dictionary contains similar definitions for "knowingly" and "voluntarily." "Knowingly" is defined as "[w]ith knowledge; consciously; intelligently; willfully; intentionally." Black's Law Dictionary 784 (5th Ed. 1979). The definition of "voluntarily" is "[d]one by design or intention, intentional, proposed, intended, or not accidental. Intentionally without coercion." Id. at 1412.

Berg testified that at the 1966 meeting he explained the various options available to Andrews and he had no reason to believe Andrews did not understand him. He testified to his awareness in 1966 of the problems of communication with Natives, but that there were no such problems in the discussion with Andrews. Berg memorialized his recollection of the meeting in a memorandum dated the same day as the trip to Aleknagik (Exh. H). Judge Clarke, however, discounted Berg's testimony, ignored Exhibit H, and characterized Andrews' testimony as "unrebutted." Judge Clarke concluded that Berg was most interested in resolving the conflict between the townsite application and the allotment applications and that if he really had wanted to make sure the Natives understood, he would have insisted that an interpreter and a lawyer or, at least, a BIA representative be present before accepting a relinquishment.

While it is true that Berg testified that he went to Aleknagik for the purpose of resolving conflicts, he specifically stated that he had no stake in the conflicts being resolved one way or the other and that his purpose was to explain the available options. Berg's testimony concerning his approach, and his feeling regarding Andrews' understanding of the 1966 meeting, are consistent with the testimony of Williams, the BIA employee, regarding his dealings with Native relinquishments. Williams testified that "it becomes readily obvious whether they understand [the English language] or not \* \* \*" (Tr. 169). Despite Andrews' claim at the hearing regarding his lack of understanding of English, the preponderance of evidence in the record indicates otherwise. As early as 1961, he responded to a letter from BLM regarding a conflict with the Yako homesite by submitting a letter to BLM withdrawing his application as to the conflicting acreage (Exh. 4). The letter from BLM, set forth in part at note 1, granted Andrews 30 days to respond, yet in less than 2 weeks Andrews provided an appropriate response in what must be described as very good penmanship without help from any other person. While it may be argued that this example shows only an understanding of the written word, the testimony at the hearing concerning Andrews' employment in various school systems demonstrates a comprehension of the spoken English language. The record, as a whole, indicates that despite his limited formal education, he had acquired English skills greater than the average Native. The record provides no basis for concluding that Berg should have secured the services of an interpreter in his dealings with Andrews in 1966, other than Andrews' self-serving statements at the hearing.

Review of Andrews' own testimony does not support Judge Clarke's conclusion that Andrews did not understand what he did in 1966. First, Andrews

testified he understood that by giving up his allotment he would receive land within the townsite where his house was located (Tr. 45). He also thought he would get land outside the townsite, but that BLM would take care of all the paperwork. His memory of the meeting with the BLM employees, however, was very poor, and he stated he could not "recall what was talked about at that time" (Tr. 38).

Andrews' testimony establishes he realized he was giving up his Native allotment to receive a townsite lot and that he was not giving up his right to receive an allotment for other available land. The misunderstanding, if any, was over who would take care of filing the new Native allotment application. Berg had no doubt whatsoever that he had not promised that BLM would initiate new allotment application.

In 1976 Andrews wrote to BLM stating, "I cancelled my application in favor of the proposed townsite which never came through" (Exh. 6). He stated he had applied for no other land and wanted to reapply for the land he was living on. The letter was apparently precipitated by his fear that Aleknagik was going to withdraw its townsite application. However, the townsite was approved in 1977, and no further correspondence from Andrews regarding his allotment appears in the record until after BLM reopened the allotment application in 1982.

In the 1976 letter, Andrews did not indicate his 1966 relinquishment was involuntary and unknowing. In fact, he admitted he had given up the allotment in favor of the townsite. He raised no question concerning the filing of a new allotment application by BLM, rather he stated he had not applied for any other land.

Judge Clarke's explanation that by 1976 time may have educated Andrews as to the effect of his actions in 1966 is merely speculation. Moreover, the letter is only 10 years removed from the event, rather than the nearly 20 years at the time of the hearing. While Andrews testified he could not recall the specifics of the meeting, it is clear that at the time of the hearing he had to be aware that in order to have his allotment application reinstated the involuntary and unknowing nature of his relinquishment would have to be established. In that regard we find the 1976 letter to be more probative of Andrews' intent in 1966 than his self-serving testimony at the 1985 hearing.

Judge Clarke's consideration of Andrews' relinquishment appears to have been influenced by the other witnesses for Andrews to the extent Judge Clarke apparently concluded that Natives generally are incapable of understanding the relinquishment process without the benefit of interpreters, lawyers, and/or BIA representatives, and since Andrews is a Native and had no interpreter, lawyer, or BIA representative present, Andrews did not understand what he was doing. To reach that conclusion, Judge Clarke had to ignore the specific evidence surrounding Andrews' relinquishment.

Moreover, the testimony of Chuckwuk and Yako is not probative of what Andrews' state of mind was. Chuckwuk could not recall meeting with the BLM employees and although he stated, when shown a copy of his relinquishment at

the hearing, that he could not read or understand it, his relinquished Native allotment application was for the exact acreage he acquired under the townsite provisions. Yako's testimony established nothing more than that he had signed a paper deleting 40 acres from his 160-acre Native allotment application, that application having been for land in an area other than Aleknagik. Other general testimony concerning the relinquishment process in other areas likewise was not probative in this case in the face of the evidence concerning Andrews' relinquishment.

The evidence supports the conclusion that in 1966 Andrews' relinquishment was voluntarily and knowingly given. Judge Clarke's conclusion to the contrary must be reversed. The BLM decision of June 29, 1983, denying reinstatement was proper.

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 reversed.

Bruce R. Harris  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge