

LUCY LINCOLN

IBLA 86-1188

Decided May 5, 1988

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, accepting relinquishment and denying petition for reinstatement.  
F-026210.

Set aside and referred to hearing.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments--Applications and Entries: Relinquishment

An evidentiary hearing is ordered where an Alaska Native alleges that a purported relinquishment of her Native allotment application was unknowing and involuntary.

APPEARANCES: Kimberly Hueter, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant; Bruce E. Schultheis, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Lucy Lincoln has appealed from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated April 17, 1986, accepting her relinquishment of 120 acres of land described in Native allotment application F-026210 and denying her petition for reinstatement of this application. BLM took this action because it found that appellant failed to provide sufficient evidence that her relinquishment was involuntary and unknowing.

Application F-026210 was initially filed with BLM on July 13, 1960, describing by metes and bounds 160 acres in protracted T. 9 S., R. 24 W., Kateel River Meridian. On August 29, 1962, BLM issued a decision approving this application as to 30 acres and rejecting it as to the remaining 130 acres. This decision noted that the approved 30 acres "adequately encompasses the area actually used, occupied, and needed by the applicant." No appeal was taken by Lincoln.

Some 9 years later, 1/ appellant filed an amended application describing by the rectangular system approximately the same area 2/ as sought in the original application. These lands were field-examined on July 4, 1977, and BLM concluded from the examination that appellant showed evidence of occupancy of 40 acres. The report noted that Lincoln claimed use of the lands since 1955 as a fishing and berry camp. Four tents and tent frames, one open-sided fish drying rack/combo storage shed, one log-constructed cache, one clothesline frame, one willow frame fish drying rack, and one outhouse were found by BLM as evidence of occupancy.

Because the field report concluded that Lincoln had occupied no more than 40 acres, BLM issued a notice to appellant on June 11, 1980, granting her 60 days to file information showing she had used all the acreage sought. In this notice, BLM suggested that Lincoln might submit witness statements from persons familiar with her use of the land. The notice concluded by stating that in the absence of information contradicting the field report, BLM would issue a Government contest against the 120 acres on which it found no evidence of occupancy.

Appellant's response to this notice is dated June 24, 1980. In it she states: "I received the notice on 'additional evidence of use and occupancy required' dated June 11 regarding Native allotments. Since I use only 40 acres for my campsite I will be happy to keep my allotment at 40 acres. Please keep me posted on any changes." (Emphasis supplied.)

A copy of appellant's response was then sent by BLM to BIA with the following cover letter:

The attached letter was received from Mrs. Lucy Lincoln in response to our Notice dated June 11, 1980.

We are considering it a relinquishment of the 120 acres where no signs of use and occupancy were found.

As soon as we receive your approval of acceptance of this relinquishment we will continue to process the remaining 40 acres that are recommended for allotment. [Emphasis supplied.]

The file copy of this cover letter does not indicate that appellant was copied with this letter.

1/ Appellant recites in her statement of reasons that her amended application was filed with the Bureau of Indian Affairs (BIA) in May 1971 and submitted to BLM on Apr. 14, 1972.

2/ The lands so described are located in secs. 9, 10, 15, and 16, T. 9 S., R. 24 W., Kateel River Meridian.

BIA responded to BLM on November 10, 1980:

The policy of the Bureau is to encourage the fullest acreage entitlement that a person may receive under the 1906 Act.

Since this is Mrs. Lincoln's application and she knows her use of [sic] occupancy of the land better than anyone else, this Agency will concur with her desire in the further processing of her application.

On February 10, 1981, BLM informed appellant that her Native allotment application had been approved for 40 acres. Survey was anticipated within 2 years, BLM noted, and upon approval and filing of the survey, BLM would take further action to issue appellant her allotment certificate.

Following this exchange of correspondence, the State of Alaska, acting pursuant to section 905(a)(5)(B) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. | 1634(a)(5)(B) (1982), filed a pro- test against legislative approval of F-026210, contending that the allotment lands were necessary for access. This protest was later withdrawn by letter of October 16, 1981, and summarily dismissed on November 27, 1981.

The present controversy arose when appellant filed with BIA an affidavit, dated March 9, 1983, that BIA described as "attesting" to the involuntary and unknowing nature of appellant's relinquishment. By letter of May 5, 1983, BIA forwarded this affidavit to BLM and asked that BLM consider it to be a request for reinstatement of F-026210 in full. BIA stated that its approval of a relinquishment was necessary and that it had received no notice of appellant's relinquishment. In her affidavit, appellant set forth the circumstances of her purported relinquishment in these words:

(8) [A]bout six years ago, some BLM men came down the river in a little rubber boat. One of them got out by our camp and he asked to look at our land. I showed him around and told him how we use it.

(10) After that I got another letter from the BLM saying that I only needed 40 acres for my campsite and that is all I should get. They said I could send more evidence, but I didn't know what else I could tell them. I was tired of fighting them, so I decided that 40 acres was better than nothing so I wrote back agreeing to the change.

(11) I said in my letter that I use only 40 acres for my campsite, but I have always used the rest of the land for picking berries and greens and I have been trying to tell them this all along. I still use all of the land that I originally applied for and I don't think that it is right for the BLM to keep taking it away from me.

By letter dated July 14, 1983, BLM informed appellant that her allotment application had been reinstated "pending further determination" and that BLM would continue normal processing of the allotment. Almost 3 years later, BLM issued the decision on appeal, finding that appellant's affidavit did not provide sufficient evidence that her relinquishment was involuntary and unknowing. BLM, accordingly, accepted appellant's relinquishment and denied her petition for reinstatement.

In her statement of reasons, appellant contends that application F-026210 was eligible for legislative approval after BLM reinstated this application in July 1983. Legislative approval is granted by section 905(a) of ANILCA, appellant explains, to those Native allotment applications pending before the Department on or before December 18, 1971, unless, inter alia, a protest is filed against the allotment.

Appellant's argument appears to overlook the fact that the State did, in fact, file a protest on June 1, 1981, against Native allotment application F-026210. If, as appellant contends, her relinquishment was neither voluntary nor knowing, then her entire application for 160 acres was outstanding at the time of the State protest. Section 905(a)(5) of ANILCA requires that BLM adjudicate a protested application pursuant to the requirements of the Act of May 17, 1906, 43 U.S.C. | 270-1 (1970), repealed by section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. | 1617 (1982), subject to pending applications. Legislative approval was, therefore, not available to appellant's application. When the State withdrew its protest in October 1981, BLM remained obligated to adjudicate the application. Withdrawal of a protest against an application does not cause that application to be legislatively approved. Stephen Northway, 96 IBLA 301 (1987).

Moreover, even in the absence of a protest, legislative approval could not be extended to application F-026210 in the absence of a BLM finding that appellant's relinquishment was unknowing or involuntary. Section 905(a)(6) of ANILCA denies legislative approval to any application pending on or before December 18, 1971, which was knowingly and voluntarily relinquished. There having been no finding to date that appellant's relinquishment was invalid, section 905(a)(6) runs contrary to appellant's argument.

[1] The record reveals that BLM has found Lincoln's relinquishment to be valid based solely upon the pleadings in the case file. In Titus O. Nashookpuk, Sr., 99 IBLA 213 (1987), and Feodora (Kallander) Pennington, 97 IBLA 350 (1987), this Board held that the question whether a relinquishment was voluntary and knowing raised an issue of fact. Such an issue should be resolved in an adjudicatory hearing pursuant to 43 CFR 4.415. 97 IBLA at 354.

Accordingly, BLM's decision of April 17, 1986, is set aside, and this case is referred to the Hearings Division, Office of Hearings and Appeals,

for assignment to an Administrative Law Judge who will conduct an evidentiary hearing on the question of the validity of appellant's relinquishment. See Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970). At the conclusion of the hearing, the Judge will issue a decision on this question, and the decision shall be appealable to the Board.

If appellant's relinquishment is ultimately found to be invalid, BLM must issue a contest against Lincoln's application for those 120 acres on which BLM could find no evidence of use. This course is in accordance with BLM's notice of June 11, 1980, supra, and Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). If appellant's relinquishment is ultimately found to be valid, her allotment shall be limited to 40 acres, and that allotment shall be processed forthwith.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Fairbanks District Office is set aside and the case is referred to the Hearings Division for action consistent herewith.

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Franklin D. Arness  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Will A. Irwin  
Administrative Judge