

LARRY M. EVANOFF

IBLA 2002-187

Decided June 29, 2004

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting an Alaska Native Veteran Allotment application. AA-83320.

Affirmed.

1. Alaska: Alaska Native Veteran Allotment: Generally

The Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), allows certain Alaska Natives who were on active military duty during a specific period of time to apply for an allotment of not more than two parcels of Federal land totaling 160 acres or less under the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970), as that Act was in effect before December 18, 1971. Allotments may be selected only from lands that were vacant, unappropriated, and unreserved on the date the person eligible for the allotment first used and occupied the lands.

2. Alaska: Alaska Native Veteran Allotment: Generally--  
Withdrawals and Reservations: Generally

The Presidential Proclamation of July 28, 1907, reserved from settlement, entry, or sale certain described public lands in Alaska for the Chugach National Forest, excepting therefrom lands which were on that date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States Land Office, or upon which any valid settlement had been made pursuant to law. One seeking an Alaska Native Veteran Allotment for lands within that forest may not rely on the possession and occupancy of relatives predating the Proclamation, as excepting the lands from

that reservation, when such possession and occupancy amounted only to an inchoate preference right.

3. Alaska: Alaska Native Veteran Allotment: Generally--  
Withdrawals and Reservations: Generally

BLM properly rejects an Alaska Native Veteran Allotment application, pursuant to the Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), when at the time the Native initiated use and occupancy of claimed lands those lands were reserved as part of a National Forest, and thus not “vacant, unappropriated, and unreserved,” as required by the Act.

APPEARANCES: Samuel J. Fortier, Esq., Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On September 21, 2001, Larry M. Evanoff, an Alaska Native who was born on November 27, 1948, filed Alaska Native Veteran Allotment application AA-83320, with the Alaska State Office, Bureau of Land Management (BLM), pursuant to the Alaska Native Veterans Allotment Act (ANVAA), 43 U.S.C. § 1629g (2000), seeking three parcels of land identified therein as Parcels 1, 2, and 3 within the Chugach National Forest.<sup>1/</sup> The parcels (designated as Parcels A, B, and C, respectively, by BLM) were described in maps accompanying the application as follows: “Parcel #1 Port Nellie Juan Former Summer Fishing Camp,” E $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$  sec. 30, T. 6 N., R. 8 E., Seward Meridian, Alaska (Parcel A); “Parcel #2 Chenga Island Fall Fishing Camp,” W $\frac{1}{2}$ SE $\frac{1}{4}$  and E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$  sec. 23, T. 3 N., R. 8 E., Seward Meridian, Alaska (Parcel B); and “Parcel #3 Elrington Island,” NW $\frac{1}{4}$  sec. 31, T. 6 N., R. 8 E., Seward Meridian, Alaska (Parcel C).

<sup>1/</sup> ANVAA originated as section 432 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1999, Pub. L. No. 105-276, 112 Stat. 2461, 2516-18 (Oct. 21, 1998). That section amended the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 *et seq.* (2000), by adding a new section 41. Section 41 became known as ANVAA and is codified at 43 U.S.C. § 1629g (2000).

In his application, Evanoff claimed that he had initiated use and occupancy of the three parcels of land in 1963 (Parcel A), 1958 (Parcel B), and the early 1950's (Parcel C). He noted that his use and occupancy of Parcel A continued during most years until 1968, when he was drafted into the U.S. Army, and that his use and occupancy of the other two parcels has continued to the present. He stated that he used and occupied Parcel A during June to July or August from 1963 through 1968 for berry picking, hunting, and fishing; Parcel B yearly in August and September for fishing, berry picking, and hunting ("black bear and seal"); and Parcel C yearly from August to December for hunting and trapping ("Fox Farm"). Evanoff noted that Parcel A was also used as a base of operations for "commercial fishing." He states that he was a crewman on board a ship "owned by Nellie Juan Fish Packing Company." In the application he listed various improvements on each parcel that had been erected in the late 1940's and early 1950's.

On January 4, 2002, the Alaska State Office, BLM, issued a decision rejecting Evanoff's application "for the following legal defect:"

The lands you applied for are located within the Chugach National Forest and became reserved by Presidential Proclamation on July 23, 1907. According to information on your application, you did not begin to use and occupy the land until 1950, therefore the land was not vacant, unappropriated, and unreserved when you began to use and occupy it, as required by 43 CFR 2568.90(a)(2). 43 CFR 2568.90(a)(3) requires that the land has not been continuously withdrawn since before your sixth birthday. Your stated date of birth is November 27, 1948, therefore the 1907 withdrawal of the land occurred before your sixth birthday.

(Decision at 1.)

In addition to the legal defect, BLM also noted that certain items required by regulations were not included in or provided with the application. BLM listed those as a Certificate of Indian Blood (43 CFR 2568.74(a)), a Certificate of Release or Discharge from Active Duty (DD Form 214) or other Department of Defense documentation verifying military service (43 CFR 2568.74(b)), and an estimated number of acres for each parcel (43 CFR 2568.74(d)). BLM also noted that Evanoff had applied for three parcels, and that 43 CFR 2568.79 limits an applicant to 160 acres in no more than two parcels.<sup>2/</sup>

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<sup>2/</sup> BLM calculated the acreage in the parcels as 70 acres (Parcel A), 60 acres (Parcel  
(continued . . . )

Under the regulations, the deficiencies noted by BLM are considered correctable. See 43 CFR 2568.75 and 43 CFR 2568.81. Apparently in response to receipt of the decision, Evanoff filed an amended application on January 28, 2002, seeking two parcels designated as “Shipyard Parcel #1” and “Parcel 2 - Fox Farm.” The amended application descriptions of those parcels are identical to Parcels A and C in the original application. Our rationale for disposition of this appeal is the same regardless of whether Evanoff is seeking two or three parcels.<sup>3/</sup>

On February 8, 2002, Evanoff filed a timely notice of appeal. Evanoff does not dispute the fact that the land claimed by him is within an area of lands reserved as part of the Chugach National Forest on July 28, 1907, that the area of lands has remained reserved since that time, and that his use and occupancy began in the early 1950’s or 1960’s, at a time when the area was reserved. Rather, he contends that the specific lands in question were excepted from that reservation because they were possessed and occupied by his Alaska Native family members at the time of the original 1907 reservation. That fact, he asserts, gave rise to possessory rights under law, which rendered the lands “segregated from the public domain,” and, therefore, not public lands subject to the 1907 reservation.<sup>4/</sup> (SOR at 17.) He further contends that, upon the December 18, 1971, extinguishment of such rights pursuant to section 4(c) of ANCSA, as amended, 43 U.S.C. § 1603(c) (2000),<sup>5/</sup> the lands were

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<sup>2/</sup> (. . . continued)

B), and 40 acres (Parcel C).

<sup>3/</sup> We note that 43 CFR 2568.75 states that BLM will not process an application absent a Certificate of Indian Blood or verification of military service. However, BLM states that it “saw no point in asking the applicant to correct deficiencies in this application when the law required rejection in any event.” (Answer at 2, n.1.)

<sup>4/</sup> In support of his assertion, Evanoff relies on his June 5, 2002, affidavit (Ex. B attached to his Statement of Reasons (SOR)) as proof that his family members, “possessed and occupied” the lands at issue here at the time of the 1907 reservation. The affidavit identifies two parcels, designated as Parcels A and B therein, which are, in fact, Parcels A and C from the original and amended applications. He asserts that he could, if necessary, present, at a hearing, adequate testamentary and documentary proof that his family members possessed and occupied the lands at the time of the 1907 reservation. Since we conclude that, even accepting that appellant’s family members possessed and occupied the lands at the time of the 1907 reservation, he is not eligible for a Native allotment pursuant to ANVAA, no hearing is necessary.

<sup>5/</sup> Section 4(c) of ANCSA “extinguished,” as of Dec. 18, 1971, “[a]ll claims against (Continued . . . )

“restored to the public domain,” and continued to be excluded from the National Forest. (SOR at 4.) Appellant asserts that, therefore, the lands were not, at the time of the 1907 reservation or thereafter, included in the Chugach National Forest. Appellant believes the effect of ANCSA was to make the lands available for him under ANVAA, since they were, in fact, “vacant, unappropriated, and unreserved” at the time of the initiation of his personal use and occupancy.

[1] We affirm BLM’s denial of Evanoff’s Alaska Native Veteran Allotment application for the following reasons. ANVAA allows certain Alaska Natives who were on active military duty during a specific period of time to apply for an allotment of not more than two parcels of Federal land totaling 160 acres or less under the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970), as that Act was in effect before December 18, 1971. 43 U.S.C. § 1629g(a)(1) and (b)(1) (2000).<sup>5/</sup> ANVAA also provides that “[a]llotments may be selected only from lands that were vacant, unappropriated, and unreserved on the date when the person eligible for the allotment first used and occupied those lands.” 43 U.S.C. § 1629g(a)(2) (2000); see 43 CFR 2568.90. Further, ANVAA specifically provides that the Secretary of the Interior “may not convey allotments containing \* \* \* National Forest Lands.” 43 U.S.C. § 1629g(a)(3)(H) (2000); see 43 CFR 2568.91. However, if an Alaska Native veteran applicant qualifies for an allotment on National Forest Lands, 43 CFR 2568.110 provides that he or she may choose an alternative allotment from certain types of land within the same ANCSA Region as the land for which he or she originally qualified.

[2] The July 28, 1907, Proclamation of President Theodore Roosevelt, 35 Stat. 2149 (1907), which was issued pursuant to section 24 of the Act of March 3, 1891, ch. 561, 26 Stat. 1095, 1103, “reserved from settlement, entry, or sale, and set apart as a public reservation, for the use and benefit of the people, all the tracts of land, in the Territory of Alaska, shown as the Chugach National Forest on the diagram forming a part hereof, and further described as follows: All the public land lying within” certain defined boundaries.<sup>7/</sup> President Roosevelt excepted from this

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<sup>5/</sup> (. . . continued)

the United States \* \* \* that are based on any statute \* \* \* of the United States relating to Native use and occupancy.” 43 U.S.C. § 1603(c) (2000).

<sup>6/</sup> Applications were required to be filed within the 18-month period following promulgation by the Department of implementing regulations, which occurred on July 31, 2000. 43 U.S.C. § 1629g(a)(1) (2000). Evanoff filed a timely application.

<sup>7/</sup> Section 24, which authorized the President to “set apart and reserve” public lands (continued . . . )

reservation certain lands, including “all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law \* \* \*.” 35 Stat. at 2150. He further provided that the “proclamation shall not be so construed as to deprive any person of any valid right \* \* \* acquired under any act of Congress relating to the Territory of Alaska \* \* \*.” Id.

Appellant argues that the subject lands were, by virtue of the possessory rights initiated by his Alaska Native family members prior to the date of the Proclamation, not “public land,” and were thus excluded from the effect of the Proclamation. He contends that the term public land does not include any land “to which any claims or rights of others have attached.” (SOR at 6 (citing Payne v. Central Pacific Railway Co., 255 U.S. 228, 237-38 (1921)).)

Appellant asserts that his “allotment was possessed and occupied by Alaska Native family members in 1907” at the time the Proclamation issued. (Evanoff Affidavit at 1.) Prior to the 1906 Act, such rights would have arisen pursuant to section 8 of the Act of May 17, 1884, ch. 53, 23 Stat. 24, 26, which protected the notorious, exclusive, and continuous use or occupancy of lands by Alaska Natives from disturbance by third parties other than the United States. Forest Service (Heirs of Frank M. Williams), 141 IBLA 336, 339 (1997); United States v. Flynn, 53 IBLA 208, 224-25, 88 I.D. 373, 382 (1981). Following enactment of the 1906 Act, such possession and occupancy would have afforded appellant’s family members inchoate preference rights to an allotment of the lands, which, upon the completion of five years of qualifying use and occupancy and the filing of an allotment application, would have matured into vested rights, which would have related back to the initiation of their qualifying use and occupancy.<sup>8/</sup> See Forest Service (Heirs of

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<sup>7/</sup> (. . . continued)

wholly or partly covered by timber or undergrowth (whether or not of commercial value) as “public reservations,” provided that the President “shall, by public proclamation, declare the establishment of such reservations and the limits thereof.” 26 Stat. at 1103.

<sup>8/</sup> We note that the requirement to complete five years of qualifying use and occupancy was first adopted by the Department in 1935, and later incorporated into the 1906 Act, by amendment in 1956. Heirs of George Brown, 143 IBLA 221, 229, 229 n.9 (1998); see Allotments of Public Lands in Alaska to Indians and Eskimos (Circular No. 1359), 55 I.D. 282, 285 (1935). Prior thereto, a vested preference right would have arisen from the filing of an allotment application, together with the

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Frank M. Williams), 141 IBLA at 339-40; United States v. Flynn, 53 IBLA at 234, 88 I.D. at 387; State of Alaska Department of Transportation and Public Utilities, 124 IBLA 386, 391 (1992), and cases cited therein. However, there is no evidence in the record that any of appellant's Alaska family members filed a Native allotment application for these lands either prior to issuance of the Proclamation in 1907 or after.

The Supreme Court and lower Federal courts, as well as this Board, have all recognized that the possessory interests of Alaska Natives are not property interests that prevent the United States from reserving or otherwise disposing of public land. See Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278-80, 285 (1955); Akootchook v. United States, 747 F.2d 1316, 1320 (9<sup>th</sup> Cir. 1984), cert. denied, 471 U.S. 1116 (1985); <sup>2/</sup> United States v. Flynn, 53 IBLA at 225, 88 I.D. at 382; Myrtle M. Jensen Shanigan, 29 IBLA 255, 257 (1977); Louis P. Simpson, 20 IBLA 387, 392-94 (1975); Terza Hopson, 3 IBLA 134, 143 (1971).

Tee-Hit-Ton involved a claim for compensation under the Fifth Amendment for a taking by the United States of timber from Alaska lands allegedly belonging to petitioners, "a clan of the Tlingit Tribe" of Alaskan Indians. 348 U.S. at 273. The claim, which the Supreme Court rejected, was based on asserted rights arising under the 1884 Act, which did not grant to Alaska Natives any "right of permanent occupancy." 348 U.S. at 278. However, that case stands for the broader proposition that rights of "permissive" occupancy, which encompass rights under the 1906 Act prior to the filing of an allotment application, do not prevent the taking or extinction of such rights by the United States:

This is not a property right but amounts to a right of occupancy which the sovereign grants and protects against intrusions by third parties but

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<sup>8/</sup> (. . . continued)

requisite use and occupancy. United States v. Flynn, 53 IBLA at 234, 88 I.D. at 387; Frank St. Clair (On Petition), 53 I.D. 194 (1930).

<sup>2/</sup> In Akootchook, the court rejected the Native applicants' contention that in enacting the 1906 Act and its predecessor, "Congress acted to segregate lands used and occupied by Alaska Natives from the public domain until such time as they could secure title," and thus the lands at issue remained unreserved despite public land withdrawals. 747 F.2d at 1320. That is precisely the contention advanced by appellant here. The court stated: "[R]ights granted by [the 1906 Act and its predecessor] \* \* \* have never been held to rise to the level of enforceable ownership rights." Id.

which right of occupancy may be terminated and such lands fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indian.

Id. at 279; see United States v. Atlantic Richfield Co., 435 F. Supp. 1009, 1029-31 (D. Alaska 1977), aff'd, 612 F.2d 1132 (9<sup>th</sup> Cir.), cert. denied, 449 U.S. 888 (1980).

In order to convert the inchoate preference right protections of Native use and occupancy into a vested property right for a particular tract of land, the Alaska Native had to couple qualifying use and occupancy with the actual filing of a Native allotment application. United States v. Flynn, 53 IBLA at 234, 88 I.D. at 387, and cases cited therein. Appellant repeatedly asserts that the rights of his family members arose only from possession of the subject lands. He provides no evidence of the filing of a Native allotment application by any relative for the lands in question. Therefore, we must conclude that the subject lands were public land at the time, and within the meaning, of the 1907 Proclamation, and not excepted from the reservation. See Akootchook v. United States, 747 F.2d at 1319-20; United States v. Blendaur, 128 F. 910, 913 (9<sup>th</sup> Cir. 1904).

The cases cited by appellant in support of his position, such as Payne (SOR at 20-21), involving homesteads and other types of claims of record are distinguishable. Those cases stand for the proposition that the term public lands in withdrawals and reservations is “uniformly regarded as not including lands to which rights have attached and become vested through full compliance with an applicable land law.” Payne v. Central Pacific Railway Co., 255 U.S. at 237-38. As explained above, any possessory rights of appellant’s relatives would not have become vested rights of record, absent qualifying use and occupancy and the filing of an allotment application.

[3] However, even assuming that the lands were excepted from the effect of the 1907 Proclamation by virtue of the possessory right of appellant’s family members, what appellant overlooks is the fact that the Proclamation also specifically provided that the exceptions concerning any legal entry, lawful filing or selection, or valid settlement “shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made \* \* \*.” 35 Stat. at 2150. This means that, once an entryman, settler, or claimant ceases to comply with applicable law, the lands become subject, at that time, to the effect of the Proclamation and become National Forest lands. See John E. Henry, 30 L.D. 158, 159 (1900). In this case, any possessory rights that might have been acquired by appellant’s relatives based on their use and occupancy of the land prior to July 28, 1907, were extinguished at the

time of their deaths. <sup>10/</sup> See Louis P. Simpson, 20 IBLA at 393. Such rights are personal and uninheritable. Akootchook v. United States, 747 F.2d at 1319. As we stated in United States v. Flynn, 53 IBLA at 234, 88 I.D. at 387, “[d]eath of a Native, invested with an inchoate right to apply for an allotment, but who had not applied in his or her lifetime, terminated the inchoate right and no allotment could be predicated based on such Native’s use or occupancy.”

Moreover, we have held that use and occupancy of public land by a forebear, while the land was open to entry or settlement, does not create any right that excepts the land from a withdrawal in favor of an applicant who may have initiated independent use and occupancy subsequent to the withdrawal. Sam Hanlon, Sr., 42 IBLA 161, 162-63 (1979), and cases cited. This longstanding Departmental doctrine received later approval by the courts in Akootchook v. United States, 747 F.2d at 1318-20, which held that use and occupancy by a Native’s ancestors do not except the affected lands from a succeeding withdrawal or reservation, or otherwise benefit a later applicant whose own rights do not predate the withdrawal or reservation. See Shields v. United States, 698 F.2d 987, 990-91 (9<sup>th</sup> Cir.), cert. denied, 464 U.S. 816 (1983). <sup>11/</sup>

Therefore, BLM correctly determined that the subject lands were not “vacant, unappropriated, and unreserved,” within the meaning of 43 U.S.C. § 1629g(a)(2) (2000), at the time appellant initiated his personal use and occupancy thereof. As such, they are not available pursuant to ANVAA.

<sup>10/</sup> The only specific relative mentioned in Evanoff’s affidavit whose use and occupancy predated the Proclamation is his grandfather, who, Evanoff states, “occupied” Parcel A “at the turn of the century” and died “in the mid-thirties.” (Ex. B at 2.) To the extent appellant’s grandfather held any possessory rights to the subject land that predated the Proclamation, those rights terminated upon his death and the reservation immediately became effective as to those lands. See Nick E. Demientieff, 81 IBLA 303, 308 (1984), and cases cited. The result of the extinguishment of a possessory right under sec. 4(c) of ANCSA, 43 U.S.C. § 1603(c) (2000), would be the same--immediate attachment of the reservation to the land in question.

<sup>11/</sup> We note that the Shields case involved Native allotment applications filed by Alaska Natives, members of a certified class, whose ancestral, but not personal, use and occupancy predated reservations for the Tongass and Chugach National Forests, including the 1907 reservation at issue here. See Shields v. United States, 504 F. Supp. 1216, 1217-18 (D. Alaska 1981), aff’d, 698 F.2d 987 (9<sup>th</sup> Cir.), cert. denied, 464 U.S. 816 (1983).

We further note that ANVAA provides that a qualified veteran may be eligible for an allotment if he or she “would have been eligible for an allotment under the Act of May 17, 1906 \* \* \*, as that Act was in effect before December 18, 1971.” 43 U.S.C. § 1629g(b)(1) (2000); see 43 U.S.C. § 1629g(a)(1) (2000); 43 CFR 2568.50. Thus, the purpose of ANVAA was to allow a veteran, who might have been hampered or prevented because of his or her military service from filing an allotment application in the two-year period preceding the December 18, 1971, repeal of the 1906 Act, as amended, an additional period of time to file an application, which would allow him or her to receive the benefit of his or her compliance with the 1906 Act, as amended. George F. Jackson, 158 IBLA 305, 306 (2003). The Native was still required to show that his or her qualifying use and occupancy began before any withdrawal or reservation of the lands claimed, and otherwise demonstrate eligibility under the 1906 Act, as amended. Indeed, both the courts and this Board have long held that in order to demonstrate entitlement under the 1906 Act, as amended, a Native applicant must show that his or her personal use and occupancy predated any withdrawal or reservation of the lands claimed.<sup>12/</sup> Akootchook v. United States, 747 F.2d at 1318-20; Shields v. United States, 698 F.2d at 991; Forest Service (Heirs of Nellie Aragon Lindoff), 143 IBLA 175, 178 (1998), and cases cited therein. A Native applicant cannot rely on use and occupancy by ancestors or predecessors-in-interest to satisfy the requirements of the 1906 Act.

Since appellant cannot demonstrate that he initiated qualifying use and occupancy before the July 28, 1907, reservation of the subject lands for the Chugach National Forest, he cannot show that he is eligible under the 1906 Act, as amended, as required by 43 U.S.C. § 1629g(a)(1) and (b)(1) (2000).

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<sup>12/</sup> The requirement that a Native applicant demonstrate that his or her entitlement to an allotment of lands within a National Forest is based on occupancy “prior to the establishment of the forest” has long been a part of Departmental regulation. Instructions Relating to the Acquisition of Title to Public Lands in the Territory of Alaska (Circular No. 491), 50 L.D. 27, 48 (1923); see 43 CFR 67.7 (1939); 55 I.D. at 283. Further, this requirement later received Congressional approval with the enactment of section 1(e) of the Act of Aug. 2, 1956, Pub. L. No. 84-931, 70 Stat. 954, codified at 43 U.S.C. § 270-2 (1970), which amended the 1906 Act, providing that “[a]llotments in national forests may be made under th[e] [1906] Act if founded on occupancy of the land prior to the establishment of the particular forest.” (Emphasis added.) Thus, the 1906 Act, as it was in effect before Dec. 18, 1971, required that occupancy by a Native applicant precede inclusion of the lands sought in a National Forest.

Finally, appellant contends that BLM's rejection of his allotment application violates his "rights to substantive due process" under the Fifth Amendment to the U.S. Constitution. (SOR at 3.) Because the Board has no authority to determine whether appellant's constitutional rights have been violated, or to afford any relief therefrom, we do not address that issue. See George F. Jackson, 158 IBLA at 307; Laguna Gatuna, Inc., 131 IBLA 169, 173 (1994).

Therefore, we conclude that BLM properly rejected Evanoff's application because he initiated use and occupancy of the subject lands at a time when they were reserved as part of the Chugach National Forest, and, therefore, not "vacant, unappropriated, and unreserved," as required by 43 U.S.C. § 1629g(a)(2) (2000) and 43 CFR 2568.90. <sup>13/</sup>

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. <sup>14/</sup>

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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H. Barry Holt  
Chief Administrative Judge

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<sup>13/</sup> BLM also noted in its decision that 43 CFR 2568.90(a)(3) requires that claimed land not be continuously withdrawn since before the applicant's sixth birthday and that "the 1907 withdrawal of the land occurred before your sixth birthday." (Decision at 1.) In this case, the subject lands were continuously withdrawn since before 1954, the year of Evanoff's sixth birthday. This provided an additional basis for rejection of the application.

<sup>14/</sup> On June 17, 2004, BLM filed a motion to consolidate this appeal with a number of other Alaska Native Veteran Allotment appeals presently docketed with the Board. That motion is denied as to this appeal. It remains pending for the others.