

ANDREY MANDREGAN, JR.

IBLA 2004-177

Decided August 30, 2006

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting an Alaska Native veteran allotment application. AA-83629.

Affirmed.

1. Alaska: Alaska Native Veteran Allotment: Generally–Alaska: Native Allotments

BLM properly rejects an Alaska Native veteran allotment application, pursuant to the Alaska Native Veterans Allotment Act, as amended, 43 U.S.C. § 1629g (2000), after notifying the applicant that it found “correctable errors,” when the applicant fails to make the corrections within the specified time. 43 CFR 2568.81.

2. Alaska: Alaska Native Veteran Allotment: Generally–Alaska: Native Allotments

The purpose of the requirement that a Native applicant file an Alaska Native veteran allotment application, pursuant to the Alaska Native Veterans Allotment Act, as amended, 43 U.S.C. § 1629g (2000), “with a sufficient description to identify the lands” is to allow BLM to determine both whether the applicant is qualified and whether the land is available for conveyance. 43 CFR 2568.78; 43 CFR 2091.0-5; 43 CFR 2568.80; 43 CFR 2568.90.

APPEARANCES: Andrey Mandregan, Jr., St. Paul Island, Alaska, and Port Orchard, Washington, pro se.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Andrey Mandregan, Jr., appeals from a decision dated February 26, 2004, issued by the Alaska State Office, Bureau of Land Management (BLM), rejecting his application, AA-83629, for an Alaska Native allotment submitted under the Alaska Native Veterans Allotment Act (ANVAA), as amended, 43 U.S.C. § 1629g (2000). On January 21, 2002, Mandregan, an Alaska Native, executed the allotment application BLM received on January 28, 2002.

Mandregan's Alaska Native veteran allotment application includes a Certificate of Indian Blood and a Certificate of Release or Discharge from Active Duty verifying military service of at least 6 months between January 1, 1969, and December 31, 1971. Mandregan left blank the space provided in section 6 of the application form requiring a legal description of the occupied lands and did not attach a topographic map showing where his claimed allotment is located, as required in section 6a. In section 10, which requests the applicant to state the dates each period of residence began and ended, Mandregan states that his residence began November 20, 1947,^{1/} and ended in May of an unspecified year. Mandregan lists both the Navy and the "Chemawa Indian School HS" as reasons for his absences from the land and indicates that his residence resumed on August 1, 1983, and ended on January 1, 1984, because of unspecified events associated with the "Aleutian Pribilof Island Association." (Application at 1-2.)

Mandregan did not fill in those portions of the form requesting information on the exclusivity of the occupancy (section 11); improvements on the land (section 12); fishing, trapping, and other uses of the land and the dates those uses began and ended (section 13); or any other relevant remarks "showing * * * use and occupancy of the land for a period of 5 or more years" (section 14). (Application at 2.)

By letter dated July 9, 2003, and addressed to Mandregan at the St. Paul Island, Alaska, post office address of record, BLM notified Mandregan that his application was deficient. The notice states:

Your application, as filed, provides no evidence that you made a land selection prior to the end of the application filing period. If you made a land selection during that time frame, please provide us with a map and legal description of the land for which you applied, as well as information setting forth to whom and when you gave the land

^{1/} The record shows this as the date of his birth.

description, and information regarding the circumstances under which you made your selection.

* * * * *

It is necessary that this information be provided before your application can be processed further. You are allowed 60 days from the date you receive this notice in which to submit the information required.

(Notice at 1.) The certified mail return receipt shows that Corrine Mandregan accepted delivery of the notice on July 18, 2003.

On February 26, 2004, BLM issued a decision rejecting application AA-83629, pursuant to 43 CFR 2568.81. The decision refers to the July 9, 2003, Notice informing Mandregan that his application provided no evidence that he had made a land selection prior to the end of the application filing period and that he had failed to submit a map or legal description of the land for which he applied, as required by 43 CFR 2568.74(c) and (d). The decision states that “[n]o additional information was received from you to show that you applied for specific land before the filing deadline” and that, “[i]n view of the above, your application is rejected pursuant to 43 CFR 2568.81.” (Decision at 1.) “In addition to the legal defect stated above which resulted in rejection of allotment application AA-83629,” the decision noted “application deficiencies,” including failure to provide evidence of qualifying use and occupancy, as required by 43 CFR 2568.82(b) and 43 CFR 2568.90(a)(4) and (5). (Decision at 2.)

On March 22, 2004, Mandregan filed a letter that serves as a timely notice of appeal. He explains that in February 2003 he and his wife, Corrine, moved to Washington State for family and health reasons, but that he has been “diligently in contact with a fellow named Jason Bourdukofsky Sr., who volunteered to coordinate the Vietnam Veterans who reside on St. Paul Island.” Mandregan reports numerous attempts to contact Bourdukofsky in order to obtain “a copy of the map he and our corporation (Tandagusix Corp.) TDX had put together for all qualifying Veterans for their application package for submittal to the Bureau of Indian Affairs.” (Notice of Appeal at 1.) He states that “all Vietnam Veterans applications from St. Paul Island are exactly the same in content” and asks if “a copy of one of them [can] be made and attached to my application form.” Id.

Mandregan misapprehends the statutory and regulatory requirements for filing an Alaska Native veteran allotment application. ANVAA provided an opportunity to

any person who “would have been eligible” for an allotment under the Alaska Native Allotment Act of May 17, 1906, as that Act was “in effect before December 18, 1971,”^{2/} but who may have missed the application deadline as a result of military service between certain dates in 1969-71, to apply for an allotment. 43 U.S.C. § 1629g(a) and (b) (2000); David O. Osterback, 169 IBLA 230, 232-33 (2006); Burkher M. Ivanoff, 169 IBLA 83, 84-86 (2006).^{3/}

[1] The regulations implementing ANVAA provide that an Alaska Native veteran wishing to apply for an allotment “must complete form no. AK-2561-10, ‘Alaska Native Veteran Allotment Application.’” 43 CFR 2568.73. The applicant is also required to file a Certificate of Indian Blood, a Certificate of Release or Discharge from Active Duty, a “map at a scale of 1:63,360 or larger, sufficient to locate on-the-ground the land for which you are applying,” and “a legal description of the land,” along with an “estimate of the number of acres in each parcel.” 43 CFR 2568.74(c) and (d). The regulation at 43 CFR 2568.81 clearly states that if an Alaska Native veteran files an application during the 18-month filing period between July 31, 2000, and January 31, 2002, and BLM notifies the applicant, as it did in this case, that it found “correctable” errors, the applicant “must make corrections within the specified time or BLM will reject your application.” Therefore, BLM properly rejects an Alaska Native veteran allotment application pursuant to ANVAA, after notifying the applicant that it found “correctable errors,” when the applicant fails to make the corrections within the specified time. 43 CFR 2568.81.

^{2/} The Alaska Native Allotment Act of 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970), granted the Secretary of the Interior authority to allot to any Native Alaskan Indian, Aleut, or Eskimo applicant, 21 years old or the head of a family, up to two parcels totaling 160 acres or less of nonmineral lands in Alaska that were vacant, unappropriated, and unreserved on the date when the applicant first used and occupied those lands, upon satisfactory proof of substantially continuous use and occupancy for a 5-year period. Larry M. Evanoff, 162 IBLA 62, 66 (2004); Forest Service, U.S. Department of Agriculture, 143 IBLA 175, 177-78 (1998). The Act was repealed, subject to a savings provision for pending Native allotment applications, by section 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (2000).

^{3/} “The same restrictions applicable to Native allotment applications submitted under the Alaska Native Allotment Act apply to Veteran allotment applications submitted during the 18-month period.” Irving P. Sheldon, 169 IBLA 276, 280 (2006), citing David O. Osterback, 169 IBLA at 233, and Burkher M. Ivanoff, 169 IBLA at 87.

[2] The regulations require an applicant to “post the land by marking all corners on the ground with your name and address,” before filing an allotment application (43 CFR 2568.77(a)) and to file an application with “a sufficient description,” of the land, an estimate of “the number of acres in each parcel,” and a map of a certain minimum scale “sufficient to locate on-the-ground the land for which you are applying.” 43 CFR 2568.74(c) and (d); 43 CFR 2568.78.

These rules governing Alaska Native veteran allotment applications allow BLM to determine both whether the applicant is qualified and whether the land is available for conveyance. Identification of the land is essential for an applicant to demonstrate that his use and occupancy of the land pre-dated the repeal of the Alaska Native Allotment Act of 1906, and therefore that he is qualified under the Act as it was in effect prior to December 18, 1971. Further, the Native applicant must file “an application with a sufficient description to identify the lands” which segregates, “subject to valid existing rights, a specified area of the public lands from the operation of some or all of the public land laws,” for ultimate adjudication and disposition.^{4/} 43 CFR 2568.78; 43 CFR 2091.0-5; 43 CFR 2568.80; 43 CFR 2568.90. BLM cannot process applications for unidentified land, nor can it use information specific to another Alaska Native’s allotment application in lieu of the information missing in appellant’s application.

The record shows that Mandregan’s application was deficient in several respects. BLM provided sufficient notice advising Mandregan that he must provide evidence of having made a land selection prior to the end of the application period. However, as is clear from the record, Mandregan did not provide the required evidence of having made a timely land selection and thereby correct the deficiency, pursuant to 43 CFR 2568.81, because he had not made a land selection by January 31, 2002. See 43 U.S.C. § 1629g(a) (2000); 43 CFR 2568.70. As a result, Mandregan’s application AA-83629 is deficient as a matter of law. Further, his notice of appeal suggests that Mandregan was in search of a parcel to apply for, not that he was identifying land he had used or occupied prior to the repeal of the Alaska Native Allotment Act of 1906.

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.

^{4/} ANVAA 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; Larry M. Evanoff, 162 IBLA at 66.

Christina S. Kalavritinos
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge