



INTERIOR BOARD OF INDIAN APPEALS

Estate of Kenneth Mark Booth

53 IBIA 228 (06/27/2011)



or in any other Federally recognized tribe and, the IPJ found, neither qualifies as an “Indian” within the meaning of the Indian Land Consolidation Act, 25 U.S.C. § 2201(2).<sup>3</sup>

Following the IPJ’s denial of reopening, the Superintendent filed an appeal with the Board, arguing that the IPJ had misapplied the Heirship Act. The Superintendent contends that because Decedent was an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, and because Decedent’s daughters are his lineal descendants who have been assigned “N” account numbers by BIA — “N” for “non-enrolled Indian” — they qualify as persons who are “otherwise recognized as Indians by the Secretary,” within the meaning of the Heirship Act. The Superintendent relies on a policy memo for assigning Individual Indian Money account “class codes” (including the “N” designation), and also refers to various probate decisions in which an administrative law judge (ALJ) or an IPJ allowed a person who had been issued an “N” number to inherit Standing Rock property.<sup>4</sup> The Superintendent argues that reversal by the Board of the IPJ’s order denying reopening

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<sup>3</sup> Section 2201(2) defines “Indian” to mean —

(A) any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(B) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and

(C) with respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to section 2206 of [25 U.S.C.], any person described in subparagraph (A) or (B) or any person who owns a trust or restricted interest in a parcel of such land in that State.

<sup>4</sup> The Superintendent contends that under Departmental policy, individuals who have been assigned “N” numbers “are lineal descendants of an individual for whom the United States holds or has held land in trust.” Notice of Appeal at 3 (citing Memorandum from Director, Bureau of Indian Affairs and Special Trustee for American Indians to All [Assistant Secretary-Indian Affairs]/BIA Employees and [Office of the Special Trustee] Employees, Jan. 19, 2006 (Subject: Policy for Assigning Individual Indian Money Account/Owner ID Numbers)). It is unclear whether that is in fact the case. We note that the Standing Rock property at issue in this case derived from the estate of Decedent’s father, Everett E. Booth, a Fort Peck allottee, who held a 2/27 interest and who devised the property to his wife, Decedent’s mother, Dorothy Lacaine O’Kute Booth Bearcub. Bearcub was a Canadian Indian and naturalized U.S. citizen, who was assigned a Fort Peck “N” number. *See Estate of Everett E. Booth*, Probate No. IP BI 250 D 77 (OHA-7 Data for Heirship Finding and Family History; Certificate of Record of Naturalization for Dorothy Katherine Booth (nee O/Kute)) (copies added to record). It is unclear what criteria were applied in assigning Bearcub an “N” number.

is “necessary for a consistent interpretation of the rights of heirs of decedents who died holding an interest in trust land on the Standing Rock Reservation.” Notice of Appeal at 2. The Superintendent’s appeal does not address the procedural basis for the IPJ’s denial of reopening: the absence of any responses to the OSC.

We decline to address or decide the merits of the Superintendent’s interpretation of the Heirship Act and the legal significance under that Act of the assignment of an “N” number, or lineal descent, because we conclude that the IPJ did not err in declining to reopen Decedent’s estate when neither the Superintendent nor Decedent’s daughters had responded to the IPJ’s OSC. The Superintendent’s appeal fails to address the procedural ground upon which the IPJ denied reopening. The Superintendent argues on appeal that reopening is necessary for a consistent interpretation of the Heirship Act, but does not contend that the IPJ committed any manifest error or that manifest injustice would result if the estate is not reopened to redistribute Decedent’s 1/27 interest in the Standing Rock lands.<sup>5</sup> Decedent’s daughters did not object to the IPJ’s decision, and ensuring consistency among ALJ and IPJ nonprecedential probate decisions is not a compelling reason to excuse the Superintendent’s procedural default and review the underlying merits.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the IPJ’s January 5, 2009, Order Denying Reopening.

I concur:

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Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge

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<sup>5</sup> We note that the Superintendent does not point to any definitive or controlling Board precedent on the significance of an “N” number or lineal descent for purposes of applying the Heirship Act. And on the procedural issue, even if we were to conclude that the Superintendent may have intended his petition for reopening as sufficient, in lieu of responding to the IPJ’s OSC, it would not aid the Superintendent. The Superintendent’s petition for reopening simply asserted that Decedent’s daughters “are descendants of an Indian and therefore eligible to inherit.” Letter from Superintendent to IPJ, Oct. 17, 2008. The Superintendent agrees that “mere descendancy” is insufficient to be an eligible heir under the Heirship Act. See Notice of Appeal at 7 (citing *Estate of Edward Benedict Defender*, 47 IBIA 271 (2008), *aff’d*, *Defender v. U.S. Department of the Interior*, 2011 WL 1299767, No. CIV 08-1022 (D.S.D. Mar. 30, 2010)).