



INTERIOR BOARD OF INDIAN APPEALS

In re Federal Acknowledgment of the Nipmuc Nation
and
In re Federal Acknowledgment of the Webster/Dudley Band of
Chaubunagungamaug Nipmuck Indians

40 IBIA 149 (11/12/2004)

Related Board cases:

41 IBIA 96
41 IBIA 100
45 IBIA 231
45 IBIA 277



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

IN RE FEDERAL ACKNOWLEDGMENT : Order Dismissing Request for
OF THE NIPMUC NATION, and : Reconsideration
:
IN RE FEDERAL ACKNOWLEDGMENT :
OF THE WEBSTER/DUDLEY BAND : Docket No. IBIA 05-13-A
OF CHAUBUNAGUNGAMAUG :
NIPMUCK INDIANS :
:
(Hassanamisco Nipmuc Foundation Request) : November 12, 2004

On November 5, 2004, the Board of Indian Appeals (Board) received a request for reconsideration of the Final Determination Against Federal Acknowledgment of the Nipmuc Nation (Petitioner 69A), and of the Final Determination Against Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians (Petitioner 69B), as Indian tribes within the meaning of Federal law. The request was filed pursuant to 25 C.F.R. § 83.11, and is signed by Peter Silver Arrow Silva, as Chief of the Hassanamisco Nipmuc Foundation Tribal Council. The two final determinations that are the subject of the request were signed by the Principal Deputy Assistant Secretary - Indian Affairs on June 18, 2004, and notices of the two determinations were published in the Federal Register on June 25, 2004. 69 Fed. Reg. 35664; 69 Fed. Reg. 35667. 1/

1/ The request asserts that the Hassanamisco Nipmuc Foundation Tribal Council is the original Petitioner 69, and that prior to the Principal Deputy Assistant Secretary's June 18, 2004, final determinations, it had requested that a separate determination be made for Petition 69. The requester construes the two final determinations for Petitioners 69A and 69B as implicitly denying Petition 69, and therefore requests reconsideration of the two final determinations as they affect "original Petitioner #69." (Letter from Silva to Fleming of Sept. 17, 2004.) According to the Principal Deputy Assistant Secretary, the Nipmuc Tribal Council, Hassanamisco Reservation, in Grafton, Massachusetts, submitted a letter of intent to petition for federal acknowledgment in 1980, and was designated Petitioner 69. 69 Fed. Reg. 35665. Subsequently, the Chaubunagungamaug Band withdrew from Petitioner 69, submitted a separate letter of intent to petition for federal acknowledgment, and was designated Petitioner 69B. The rest of original Petitioner 69, known as the Nipmuc Nation, was designated Petitioner 69A. Id.

The request for reconsideration was mailed to the Director of the Office of Federal Acknowledgment, Office of the Assistant Secretary - Indian Affairs, where it was received on September 23, 2004. ^{2/} Subsequently, the request was transmitted by the Office of the Solicitor to the Board, where it was received on November 5, 2004. The Board docketed the request, but dismisses it as untimely.

A request for reconsideration of a final determination on a petition for federal acknowledgment must be filed “with the Interior Board of Indian Appeals.” 25 C.F.R. § 83.11(a)(1). A request for reconsideration “must be received by the Board no later than 90 days after the date of publication” of the final determination in the Federal Register. *Id.* § 83.11(a)(2). The Board “shall dismiss” a request for reconsideration that is not filed within the 90-day deadline. *Id.* § 83.11(c)(1).

The Hassanamisco Nipmuc Foundation (Foundation) did not file its request for reconsideration with the Board within 90 days after publication of notice of the final determinations in the Federal Register. Although the request was received by the Office of Federal Acknowledgment within the 90-day time period — on the 90th day — the regulations clearly require that requests be filed with the Board, and that they be received by the Board within the 90-day period in order to be timely. The Federal Register notices for the two final determinations specifically referred to 25 C.F.R. § 83.11(a)(1) and (a)(2), and specifically directed interested parties to file any requests for reconsideration with the Board. 69 Fed. Reg. 35667; 69 Fed. Reg. 35671.

In the context of appeals to the Board, an appellant who ignores appeal instructions and files an appeal in the wrong office, must bear the risk that the appeal will not be received by the Board within the requisite time period. *Reeves v. Anadarko Area Director*, 25 IBIA 40, 41 n.1 (1993); *Baumann v. Acting Aberdeen Area Director*, 21 IBIA 279, 280 n.1 (1992). The Board sees no reason why the same principle should not apply to requests for reconsideration of final acknowledgment determinations. The acknowledgment regulations are clear, and the Principal Deputy Assistant Secretary’s notices correctly advised interested parties where and by when to file requests for reconsideration. The Board finds that the Foundation’s request is untimely and concludes that it must be dismissed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1 and 25 C.F.R. § 83.11, the Board dismisses the Hassanamisco Nipmuc Foundation’s request for reconsideration of the Final Determination Against Federal Acknowledgment of the Nipmuc Nation (Petitioner 69A), and of the Final

^{2/} The request does not appear to have been served on all interested parties, as required by the regulations, 25 C.F.R. § 83.11(b)(2), but the Board’s dismissal makes that procedural requirement moot.

Determination Against Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians (Petitioner 69B), as untimely. 3/

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Colette J. Winston
Administrative Judge

3/ The Board's dismissal of the Foundation's request does not affect consideration of the timely requests for reconsideration that have been filed and are pending in In Re Federal Acknowledgment of the Nipmuc Nation, IBIA Docket Nos. 04-151-A, 04-152-A, and 04-153-A; and in In Re Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, IBIA Docket Nos. 04-154-A, 04-155-A.