

Final Determination


Against Acknowledgment of

The Central Band of Cherokee
(Petitioner #227)

Prepared in Response to the Petition Submitted to the Assistant Secretary – Indian Affairs for
Federal Acknowledgment as an Indian Tribe

MAR 23 2012

(Date)



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CENTRAL BAND OF CHEROKEE, PETITIONER #227

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ABBREVIATIONS OR ACRONYMS USED IN THIS REPORT

AS-IA	Assistant Secretary – Indian Affairs
BIA	Bureau of Indian Affairs
CBC	Central Band of Cherokee, the Petitioner (formerly the Cherokees of Lawrence County, TN)
CFR	<i>Code of Federal Regulations</i>
FD	Final Determination
FR	<u>Federal Register</u>
IBIA	Interior Board of Indian Appeals
OFA	Office of Federal Acknowledgment
PF	Proposed Finding
TA	Technical Assistance
TCIA	Tennessee Commission of Indian Affairs
TN	Tennessee
U.S.	United States

INTRODUCTION

The Office of the Assistant Secretary – Indian Affairs (Assistant Secretary or AS-IA) within the Department of the Interior (Department) issues this final determination (FD) against Federal acknowledgment as an Indian tribe in response to the petition the Department received from the group known as the Central Band of Cherokee (CBC), Petitioner #227. The petitioner’s office is located in Lawrenceburg, Lawrence County, Tennessee. The petitioner seeks Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR Part 83), “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.” The Office of Federal Acknowledgment (OFA), within the Office of the AS-IA, has responsibility for review and analysis of the petition.

The acknowledgment regulations, 25 CFR Part 83, establish the procedures by which a non-federally recognized group may seek Federal acknowledgment as an Indian tribe entitled to a government-to-government relationship with the United States. To be entitled to such a political relationship with the United States, the petitioner must submit evidence documenting that the group meets all seven mandatory criteria set forth in section 83.7 of the regulations. The Department shall acknowledge the petitioner as an Indian tribe when it determines that the group satisfies all of the criteria in 83.7(a-g). Failure to meet any of the seven criteria requires a determination that the petitioning group is not an Indian tribe within the meaning of Federal law.

This FD concludes that the CBC petitioner does not meet criterion 83.7(e). None of the group’s 407 members have demonstrated descent from a historical Indian tribe or tribes that combined. In accordance with the regulations set forth in 25 CFR 83.10(m), the failure to meet any one of the seven criteria in 83.7 requires a determination that the petitioning group is not an Indian tribe within the meaning of Federal law. Therefore, the Department declines to acknowledge the CBC petitioner.

On August 6, 2010, the AS-IA issued a proposed finding (PF) that the CBC petitioner was not an Indian tribe within the meaning of Federal law, because the petitioner did not meet one of the seven mandatory criteria for Federal acknowledgment as an Indian tribe, criterion 83.7(e). The review of the evidence for the PF clearly established that the petitioner did not meet criterion 83.7(e), which permitted the AS-IA to make a finding under this single criterion (83.10(e)(1)).

In response to the PF, the petitioner or third parties needed to provide evidence for the FD that the petitioner meets the criterion 83.7(e) under the “reasonable likelihood” standard (83.6(d)), which applies to the evaluation of all petitions. Although the standard in this case shifts from “clearly does not meet” in the PF to “reasonable likelihood that it meets” in the FD, the burden of establishing that the petitioner is entitled to be acknowledged as an Indian tribe always remains on the petitioner. This FD on the CBC petition is issued based on the conclusion that neither the CBC nor the third parties have shown that the CBC meets criterion 83.7(e) under the “reasonable likelihood” standard.

The Department bases this FD on an evaluation of materials the petitioner and third parties submitted in response to the PF, and materials already in the record for the PF. This FD also incorporates evidence the Department researchers developed during the evaluation and verification process. Therefore, this FD should be read and considered in conjunction with the PF.

After the publication of notice of the FD in the Federal Register, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the publication of notice of the FD in the Federal Register. The FD will become final and effective 90 days from the Federal Register publication, unless a request for reconsideration is received within that time.

Summary of the Proposed Finding

The PF found that none of the evidence in the record demonstrated the validity of the petitioner's claims. The evidence in the record for the PF clearly showed that Petitioner #227 is a recently formed group of individuals, and clearly established that its members did not demonstrate descent from a historical Indian tribe or Indian tribes that combined. The evidence did not validate any of the petitioner's claims that its ancestors were members of an Indian tribe or Indian descendants. Neither the petitioner nor OFA could document a genealogical link between the petitioner's members and a tribe of Cherokee Indians, the historical Indian tribe from which it claimed to descend. The PF concluded that the petitioner "clearly does not meet the requirements of criterion 83.7(e), because there was no evidence in the record that established that any of the petitioner's 407 members descended from a historical Indian tribe," be it Cherokee or any other Indian tribe (75 FR 51107).

The petitioner alleges its members descend from either Cherokee Indians who remained in Tennessee after 1806 when the historical Indian tribe ceded its lands by treaty, or from Indians who returned to "their traditional lands" in the area of Lawrence County, Tennessee, after evading or escaping from the Cherokee removal in the late 1830s. There was no primary or reliable secondary evidence to validate these claims. The PF found that the petitioner illustrated, with genealogical descent reports and family histories, about 53 percent (219 of 407) of the current members' generation-to-generation connections to their claimed ancestors, but that the petitioner had not documented those claimed connections (CBC PF 2010, 9). The PF also found that the ancestors identified in the group's petition materials were not part of a historical Cherokee Indian tribe, or any other Indian tribe. Rather, the evidence in the record for the PF showed the petitioner's members descended from non-Indians who migrated to Tennessee from disparate places at different times, and began to settle after 1818 in what is now Lawrence County, Tennessee, or neighboring counties, including some in Alabama. In their own lifetimes, the petitioner's named ancestors were identified as non-Indians living among the general population (CBC PF 2010, 26).

The PF also briefly reviewed some of the petitioner's submissions regarding criterion 83.7(a), (b), and (c), for evidence to support the petitioner's claims that a band of Cherokee Indians existed in Lawrence County or to see if there was another Indian entity from which the petitioner might demonstrate descent (CBC PF 2010, App. D). The PF summarized the petitioner's evidence for those claims as it related to criterion 83.7(e). However, the PF found, "[b]ecause the evidence clearly establishes that the group does not meet the mandatory criterion 83.7(e), the regulations (83.10(e)(2)) provide there is no need to make conclusions regarding the other mandatory criteria described in §83.7" (CBC PF 2010, 25).

Administrative History since the Proposed Finding

Publication of the notice of the PF in the Federal Register (75 FR 51105) on August 18, 2010, initiated a 180-day comment period during which the petitioner and third parties could submit arguments and evidence to support or rebut the PF. The comment period ended on February 14, 2011. However, on April 11, 2011, the AS-IA found good cause to reopen the comment period and extend it for an additional 180 days (Tsosie 4/8/2011, OFA 4/11/2011). The extended comment period ended August 15, 2011. The Petitioner faxed its comments on the PF on August 15, 2011, and the OFA received the hard copy bearing the original signatures of the governing body, on September 6, 2011 (CBC 8/15/2011).

During this time, the petitioner experienced leadership disputes that involved Joe H. White—the "Principal Chief" and primary contact prior to the PF—and the "Vice-Chief" Johnny L. Corbin and others listed as council members. On August 5, 2011, the Department determined for acknowledgment purposes there was sufficient evidence to identify the Johnny L. Corbin-led council as the governing body of the CBC petitioner, and designated Joe H. White an informed party. This determination was based on CBC council actions that removed White from office.¹ The governing body's correspondence on this issue was signed by the members of the CBC council that had been in place since before the PF was issued (CBC 10/10/2010; 12/18/2010). In contrast, White's submissions were under his signature alone, with one or two exceptions. On the few occasions when another individual or individuals signed, however, those individuals were not on the list of council members. As the close of the comment period approached and the group had not settled its internal leadership dispute and the Chancery Court had not taken action, the Department made its determination to designate the Corbin-led council as the group with which it would deal for the comment and response periods.

The Lawrence County, Tennessee, Chancery Court resolved the leadership dispute on November 18, 2011, when it directed that all of the CBC's property, including "all documents

¹ White refused to step down after the group's council voted to remove him from office in October 2010 and again in December 2010 (CBC 10/10/2010; 12/18/2010). Both Corbin and White referred to a Lawrence County, Tennessee, Chancery Court Case No. 15105-10 filed in November 2010 (Chancery Court 2010). However, neither party provided a copy of the original complaint or all of the Court's instructions to the parties and the Court-appointed special master. The petitioner claimed that White's law suit to retain his position in the CBC and the Chancery Court's actions (issuing a temporary injunction, appointing a special master, calling for another election) had affected the petitioner's ability to respond to the PF. Nevertheless, Joe White continued to submit evidence and arguments to the OFA.

and items related to the corporation” be turned over to Johnny L. Corbin and 15 others who were elected to office on October 26, 2011 (Chancery Court Final Order 11/18/2011).² The Court’s action confirmed Petitioner #227’s new governing body with which the OFA would continue to conduct business relating to Federal acknowledgment process. Throughout this period, the OFA kept the petitioner and Joe H. White fully informed of the Department’s actions and provided both with the technical assistance necessary to prepare comments on the PF.

On October 6, 2011, the OFA notified the petitioner that the starting date for its 60-day period to respond to third party comments on the PF would begin on the date the group received the letter from the OFA (OFA 10/6/2011). In the same mailing the OFA provided the group with information about the comments from third parties, and included compact disks with images of the comments from Joe White (OFA 10/6/2011). Since it was not clear that Joe H. White had provided the petitioner with a copy of his submissions or had retained a copy in the CBC’s files, the OFA provided the petitioner with a copy as a form of technical assistance to the petitioner.

On Saturday, January 7, 2012, the petitioner faxed the OFA a two-page letter dated January 4, 2012, in response to third party comments (CBC 1/4/2012). This letter was timely, but the petitioner did not follow-up by sending a properly executed original letter.³ The January 4, 2012, letter does not bear the original signatures of the CBC governing body, and cannot be considered a properly executed response to third party comments. Nonetheless, this fax did not provide documentation or a specific response to the third party comments. Instead this letter is a request to withdraw from the acknowledgment process. As provided in the regulations, however, once active consideration of the documented petition has begun, the AS-IA “shall continue the review and publish proposed findings and a final determination . . . notwithstanding any requests by the petitioner or interested parties to cease consideration” (83.10(g)).

The OFA notified Petitioner #227 and interested parties that the Department would begin work on a FD on January 23, 2012 (OFA 1/10/2012). After consideration of all of the evidence in the record for the PF and FD, the AS-IA issues this FD regarding the petitioner’s status. The Department will publish a notice of the FD against acknowledgment of the petitioner in the Federal Register (FR).

² The petitioner also sent the OFA a letter signed by all members of the governing body that certified the results of the October 26, 2011, election and named all of the elected officers (CBC ca. 10/26/2011).

³ On January 9, 2012, Johnny Corbin stated the governing body received the third party comments on November 7, 2011, and it understood that January 7, 2012, was the deadline for responding. He confirmed that the faxed letter was its only response to those comments (OFA 1/9/2012). However, the petitioner did not follow through by sending the original letter with original signatures of the document it faxed on January 7, 2012. Instead, the petitioner sent an undated letter that listed the changes in the group’s leadership as a result of the October 26, 2011, election (CBC ca. 10/26/2011 [received in OFA on 2/8/2012]). This letter has original signatures identical to the image of signatures appearing on the January 4, 2012, letter that was faxed to the OFA. A photocopy of the block of signatures on the “ca. 10/26/2011” letter appears to have been reduced and reproduced on the January 4, 2012, letter that was faxed to the OFA.

COMMENTS ON THE PROPOSED FINDING NOT RELATED TO CRITERION 83.7(e)

Neither the petitioner nor the third party commenters provided evidence to overcome the PF conclusions that the petitioner failed to meet criterion 83.7(e). Although the petitioner and commenters disagreed with the finding, they did not provide evidence that the members and families discussed in the PF were descendants of or members of a historical Cherokee Indian tribe as the petitioner claimed. The petitioner and commenters did not submit evidence that documented the generation-to-generation links between the current members of the group and their claimed ancestors as required by criterion 83.7(e).

Petitioner Comments Not Related to Criterion 83.7(e)

The petitioner's comments on the PF did not include new evidence that addressed the requirements of criterion 83.7(e). Instead, the petitioner submitted a 2-page letter and two exhibits by fax on August 15, 2011 (the OFA received the originals on September 6, 2011). Johnny Corbin and six members of the governing body signed this letter, which the petitioner called its "Response to the Office of Federal Acknowledgment"⁴ (CBC 8/15/2011). The petitioner outlined what it considered was needed to meet the deficiencies described in the PF.

We understand that at this time the Bureau of Indian Affairs' major objection is that insufficient evidence has been provided to address criterion 83.7. We believe this objection can be addressed in three ways. The first would be recognition of our Tribe as of Native American descent by a Federal judge. The second would be recognition by the State of Tennessee as an American Indian Tribe. The third would be an examination of the genealogical records of many of our members by the BIA. (CBC 8/15/2011)

The OFA evaluated each of these exhibits for evidence that applied to criterion 83.7(e). The petitioner's "Exhibit A" was a photocopy of a December 11, 2009, U.S. Middle Tennessee District Court order assigning the "service mark at issue, Application No. 77/830,794, at the United States Patent and Trademark Office" in *Joe White v. Central Bank of Cherokee*,⁵ to the plaintiff Joe White (U.S. District Court Order 12/11/2009). The petitioner's letter claimed that this document was a "Federal Court order, which recognizes our tribe under criterion 83.7." The Federal Government was not a party to this lawsuit. The petitioner's "Exhibit B" was a photocopy of the June 19, 2010, "Certificate of Recognition" from the Tennessee Commission of Indian Affairs (TCIA). The petitioner claimed this was recognition by the State of Tennessee, but admitted that the State's recognition of six Tennessee "tribes" was "currently under appeal" (CBC 8/15/2011). These exhibits did not provide evidence for criterion 83.7(e). Therefore, they do not overcome the deficiencies in the PF.

⁴ The OFA is within the Office of the Assistant Secretary—Indian Affairs and is not part of the Bureau of Indian Affairs (BIA), as the petitioner sometimes states. The petitioner's references to the BIA are understood to mean the OFA or the AS-IA.

⁵ Both the title of the complaint and the text say "Bank" not "Band"; however, this appears to be a typographical error as nothing in the record indicates otherwise.

The first exhibit, the 2009 District Court order, assigned a trademark application at the U.S. Patent and Trademark Office to Joe White (Plaintiff) as the “legal representative and trustee” of the corporation. The Court Order repeated the corporation’s self-identification as “the descendants of the Cherokee, lawfully and continuously residing as a distinct group on the land comprising the 1806 Congressional Reservation,” but it did not make a ruling on the validity of that identification. Instead, the Court Order granted the corporation “license to use the mark at issue for such purposes at its museum, only in the state of Tennessee, and only for such purposes in a form agreed between the parties” (U.S. District Court 12/11/2009). [*Emphasis added.*] The Court Order very clearly limited the use of the trademark to the corporation’s activities in Tennessee, which cannot be construed as Federal acknowledgment of an Indian tribe or as meeting criterion 83.7(e).

The petitioner’s second exhibit was a “certificate of recognition” from the TCIA, which stated the CBC had “presented adequate and sufficient documentation” to fulfill the commission’s “established procedure to be known as a Tennessee State Recognized American Indian Tribe” (TCIA 6/19/2010). The TCIA recognition was addressed in the PF, which stated the TCIA’s recent decision did not constitute evidence of Indian descent (CBC PF 2010, 25). The petitioner did not provide copies of any evidence that the TCIA may have used to determine how the CBC fulfilled the commission’s requirements. Lacking such new evidence, there is nothing in the record that would change the PF’s evaluation of TCIA’s decision.

The petitioner did not include new records for the OFA’s consideration of its third issue, “an examination of the genealogical records of many of our members” (CBC 8/15/2011). The petitioner did not provide an updated membership list, ancestry charts, or genealogies and supporting documentation for members of the governing body or any other members of Petitioner #227 in order to correct previous omissions. Had the petitioner submitted such evidence, the OFA would have analyzed it as a submission addressing criterion 83.7(e).

Third Party Comments Not Related to Criterion 83.7(e)

The majority of the comments on the PF were submitted by Joe H. White during the time the group was experiencing the leadership dispute. The other third party commenter was Robert Pokras of California. Both parties submitted comments that did not address the mandatory criteria, nor address criterion 83.7(e) in particular. The following summary is not an exhaustive description of each document or submission, many of which were either the same as or similar to those analyzed for the PF. White’s and Pokras’s comments of a genealogical nature are evaluated under the summary of the evidence for the criterion 83.7(e) section of this finding.

White submitted copies of chapters from local histories about the Cherokee and Chickasaw Indians in Alabama—those in the Muscle Shoals area and Lawrence County, Alabama, in particular (McDonald 1989; Walker 2008). He attached essays or articles on Indians in the southeast or other more general Indian histories, but they did not describe or identify an Indian population in Lawrence County, Tennessee, or identify the petitioner’s ancestors. White also submitted copies of articles on the “Trail of Tears,” other Indian groups that claimed to have

been “hiding in plain sight,” tribal-origin theories involving “Ancient Americans” or “Lost Tribes of Israel,” DNA Haplogroups, and other topics that were not responsive to the mandatory criteria (Family Tree DNA 2011, Thomas n.d., Wikipedia.org 2010-2011).

Joe H. White initiated a letter-writing campaign for CBC members or the public to express their support for the petition.⁶ White also submitted 1,785 pages of the guest register for visitors at the Cherokee/David Crockett Museum and Cultural Center in Lawrenceburg, Tennessee (White 2010-2011). White added headings that characterized the pages of the sign-in book of the museum’s visitors as a “signature petition for recognition.” Adults and children signed the register, although there is no evidence that, at the time they signed, the visitors viewed the guest register as a petition for Federal acknowledgment of an Indian tribe, or a petition to support such an effort.

On October 6, 2010, the OFA received comments from Robert Pokras, which he called an “*amicus curiae* brief” in “support of acknowledgment of petitioner #227” and a “rebuttal of the decision set forth by the BIA” (Pokras 2010, 1).⁷ Pokras included a narrative that provided a rebuttal of some of the Department’s findings in the PF, summarized his views on Indian policy in general, interpreted racial identifications within the context of “Jim Crow” laws, and asserted that “Old tribal groups” can re-emerge in the modern era. Pokras claimed the CBC is an “indigenous population of Cherokees that were continuously present in the county [Lawrence] since perhaps 1790” (Pokras 2010, 2, 3). He attached 21 exhibits that addressed general Cherokee history and the “Trail of Tears,” as well as articles on topics such as the “misidentification” of Indians on Federal censuses, “Bell’s route” that passed through Lawrence County, Tennessee, during Cherokee removal from North Carolina in the 1830s, DNA as evidence, Indians as one of the “Lost Tribes of Israel,” and other topics that did not address the deficiencies described in the PF (Pokras 2010).

The Petitioner’s Request to Withdraw from the Acknowledgment Process

Petitioner #227’s response to third party comments expressed regret for the nature of those comments, but it did not specifically address the genealogical claims submitted by the third parties (CBC 1/4/2012). Instead, the petitioner requested to withdraw from the acknowledgment process (CBC 1/4/2012). The petitioner referred to the lack of records in its own membership files, which had been released by the Chancery court, and concluded

⁶ The OFA received several hundred postcards on which the signer could choose to check three options: (1) offer support for the group’s “pre 1900 Cherokee Heritage in the 1806 Congressional Reservation and their treaties,” (2) support the group’s claimed evidence for the same, and (3) call for “criminal prosecution” of everyone that “violated” Cherokee treaties, civil, and religious rights (CBC n.d.). These postcards did not provide evidence to evaluate for criterion 83.7(e).

⁷ When the OFA contacted Pokras by email on September 13, 2011, he confirmed that he had not only sent a copy of his comments to Joe White, but he also sent a copy to Johnny Corbin after the leadership dispute arose (OFA 9/13/2011). Thus, Pokras fulfilled the requirements of 83.10(i) by providing the petitioner with a copy of his comments.

If we continue down the path of Federal recognition, we will by BIA rules necessarily have to remove a number of the current members of our Tribe who cannot sufficiently establish their ancestry to Cherokee descending from Tribal Roll[s] in this region. (CBC 1/4/2012)

The petitioner referred to but did not provide copies of “Cherokee rolls” it claims were associated with its “geographic area” [Lawrence County, Tennessee] (CBC 1/4/2012), nor did the OFA locate any such rolls. The petitioner did not provide copies of genealogical charts or evidence that may have been in its membership files showing how at least some of its members descend from the claimed ancestors. The petitioner’s January 4, 2012, letter also claimed that many of the members “carry the blood of other Native American tribes,” but acknowledged the challenges the group would face documenting the diverse origins of its membership and satisfying the criteria for Federal acknowledgment (CBC 1/4/2012). The petitioner was also concerned that it might have to limit future enrollments (CBC 1/4/2012).⁸ Noting the “likely impact when applied to our Tribal members and their descendants” of trying to satisfy the “BIA rules,” the governing body stated it “voted to voluntarily withdraw from the BIA Federal Recognition process” (CBC 1/4/2012).

The OFA considered the petitioner’s request to withdraw from the Federal acknowledgment process. Under the provision in section 83.10(b)(2), a petitioner may withdraw under certain circumstances, but only before a group goes on active consideration.

Once active consideration of the documented petition has begun, the Assistant Secretary shall continue the review and publish proposed findings and a final determination in the FEDERAL REGISTER pursuant to these regulations, notwithstanding any requests by the petitioner or interested parties to cease consideration. (83.10(g))

The CBC petitioner went on active consideration on August 6, 2010, when the AS-IA issued the PF. Therefore, the petitioner’s January 4, 2012, request to withdraw its petition was not timely and its request could not be granted.

⁸ This letter also repeated several misconceptions about the acknowledgment process or what the petitioner called “BIA rules.” Contrary to Petitioner #227’s beliefs, petitioners are not required to demonstrate a minimum Indian blood quantum, are not told to close their rolls or limit membership, and are not forced to remove members who do not establish descent from particular historical rolls or lists. It is up to the group to determine its membership and define its membership requirements. Criterion 83.7(e) does not require 100 percent of a group’s members to demonstrate descent from a historical tribe. However, no previous petitioner has met criterion 83.7(e) without at least 80 percent of its members documenting descent from a historical Indian tribe. The CBC has not demonstrated that any of its members descend from a historical Indian tribe, or from Indian tribes that amalgamated historically.

SUMMARY UNDER THE CRITERION

25 CFR 83.7(e)

- 83.7(e) The petitioner’s membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.**
- 83.7(e)(2) The petitioner must provide an official membership list, separately certified by the group’s governing body, of all known current members of the group.**

Introduction

In order to meet criterion 83.7(e), a petitioner must demonstrate that its current members descend from a historical Indian tribe, or Indian tribes that combined and functioned as an autonomous political entity. Thus, the petitioner must (1) identify its current members, (2) document the historical Indian tribe and the individuals in that historical Indian tribe from whom the petitioner’s current members descend, and (3) document generation-to-generation the members’ descent from the historical Indian tribe.

The membership list used for the FD is the November 20, 2007, list that was separately certified by the group’s governing body. It identified 407 members of the group with their full names (including maiden name), date of birth, and current residential address. This was the membership list used for the PF. The petitioner did not submit an updated membership list for the FD. Several members of the current governing body were not listed on the membership list reviewed for the PF.⁹ Having no other certified membership list, the Department continued to use the 2007 list that identified 407 members for the FD.¹⁰

The petitioner claims its members are descendants of Cherokee Indians who allegedly remained in Tennessee after 1806 when the historical Indian tribe ceded its lands by treaty, or from Indians who returned to “their traditional lands” in the area of Lawrence County, Tennessee, after evading or escaping from the Cherokee removal in the late 1830s. There is no primary or reliable secondary evidence to validate these claims.

⁹ The PF described the membership list as a typed version of the handwritten list previously submitted in 2002 (CBC PF 2010, 11). The 2007 list noted some individuals who died or resigned between 2002 and 2007, but did not identify individuals who may have enrolled after the 2002 list was compiled. This may also account for members of the governing body not appearing on the group’s membership list in 2007.

¹⁰ After the PF was issued, one person asked that her name be removed from the membership list, which would reduce the number of members to 406 (Dodson 9/17/2010). Whether this individual is a member of the petitioner or not does not impact the conclusions of this FD.

The comments and evidence submitted for the FD, together with the evidence analyzed in the PF, are not sufficient to find by the reasonable likelihood standard in 83.6(d) that the petitioner descends from a historical tribe of Indians. Petitioner #227 has not provided evidence to demonstrate that its ancestors who were named in the PF, or others identified in records submitted for the FD, were members of a band of Cherokee Indians in Lawrence County. The records do not demonstrate that the petitioner's ancestors were members or descendants of an Indian tribe in any of the localities where those individuals originated prior to settling in Tennessee. In addition, the evidence for the FD, whether submitted by the petitioner or third parties, or gathered by the OFA in its verification process, does not document the current members' generation-to-generation descent from their claimed ancestors. None of the 407 members of the CBC petitioner has demonstrated descent from a historical Indian tribe or historical Indian tribes that combined and functioned as an autonomous political entity.

Historical Indian Tribe

The petitioner claims its membership descends from the historical Cherokee Indian tribe. There are several historical rolls listing members of the Cherokee Indian tribe in the early- to mid-1800s to the early 1900s. Some of the rolls of historical Cherokee Indians the petitioner could use to find its ancestors if they were Cherokee Indians would be the Emigration Rolls (1817-1835), the Cherokee East of the Mississippi Census of 1835, the Mulla Roll of Cherokees in North Carolina (1848), the "Old Settlers Roll" of Cherokees West of the Mississippi (1851),¹¹ the Drennen Roll of "Emigrant Cherokees" (1852) in Indian Territory (now northeastern Oklahoma), and the Siler Roll (1851) and Chapman Roll (1852) of Cherokee Indians in North Carolina.¹²

The petitioner might have used the Dawes Roll to identify ancestors whom it claims went west, but returned to "traditional lands," i.e., Lawrence County, Tennessee. In 1893, the Dawes Commission was organized to accept applications for tribal enrollment in the Cherokee, Choctaw, Chickasaw, Creek, or Seminole Tribes (the Five Civilized Tribes) in Indian Territory. The application packets identified the applicant, his or her family members, birth dates, whether on previous rolls, other testimony, and often included supporting documents, such as birth or marriage records. The information in the applications was summarized on a "Census Card."¹³ Successful applicants were assigned a Dawes Roll number, which was also noted on the census card. The resulting Dawes Roll identified individuals enrolled with the Five Civilized Tribes. With regard to the Cherokee Nation, individuals are listed by name, roll number, and category (Cherokee by Blood, Cherokee Minor, or Cherokee Freedman). The final roll number leads back

¹¹ The Old Settlers Roll included a list of 102 families who went west prior to the Treaty of New Echota in 1835, but who returned to the east prior to the removal in the late 1830s.

¹² The historical Cherokee rolls have been microfilmed by the National Archives and are widely available. Brief descriptions of the historical rolls and links to on-line copies or indexes may be found at <http://www.rootsweb.ancestry.com/~itcherok/genealogy/rolls-census.htm>.

¹³ For additional details, see the descriptive summary of the "Enrollment Cards of the Five Civilized Tribes, 1898-1914," in RG 75, M1186 [93 microfilm rolls] in *American Indians: A Select Catalog of National Archives Microfilm Publications*, 73.

to the corresponding census card and original testimony. In preparing the final rolls, the Dawes Commission also created lists of individuals whose claims were found to be “doubtful” or “rejected,” or whose names were “stricken” from the rolls.

In 1906, the U.S. Court of Claims appointed Guion Miller (then a special agent in the Department) as the Court’s special commissioner to determine who was eligible for funds under the 1835-1836 and 1845 treaties with the Eastern Cherokee Indians. The fund was to be distributed to all Eastern Cherokee Indians, whether residing east or west of the Mississippi, who could establish that they were members of the Eastern Cherokee Tribe at the time of the treaties. The descendants of such members of the historical Indian tribe were also eligible to share in the fund. Miller used the historical rolls listed above, among others, and interviews with more than 4,500 witnesses in 19 states, including Tennessee and Alabama, to identify over 30,000 individuals who were eligible to share in the judgment fund.¹⁴ The Miller Roll was not a membership list of the Eastern Band of Cherokee, but a list of the members of the “Eastern Cherokee Tribe” at treaty times who were still living in 1906, or their descendants who claimed rights to the fund because their ancestors had been members of the Indian tribe at the time of the treaties.

The CBC petitioner and third parties did not provide and the Department did not find evidence that any of the petitioner’s members or ancestors were on any of these historical rolls that identified members of the historical Cherokee Indian tribes. The record for the FD, including the evidence evaluated for the PF, does not demonstrate a generation-to-generation link between the petitioner’s members and any of the Cherokee Indians on the historical rolls described above. The petitioner did not identify or provide copies of any other “rolls” naming Indians in what the petitioner termed as its “geographical area” (CBC 8/15/2011, 1/4/2012). The Department is not aware of any such rolls.

Petitioner Comments Relating to Criterion 83.7(e)

The petitioner’s comments on the PF did not include new evidence for the FD that addressed criterion 83.7(e). Instead, Petitioner #227 asked for an “examination of the genealogical records of many of our members” (CBC 8/15/2011). The petitioner did not provide copies of each member’s birth, baptismal, or other reliable, contemporary records that name the individual and his or her parents. The petitioner’s comment referred only to the evidence in the record for the PF. About 50 percent of the CBC’s membership (219 of 407) at the time of the PF had ancestry charts or descent reports that outlined their connections to the claimed ancestors; however, those ancestors were not demonstrated to be Indians (CBC PF 2010, 11-25; App. A). In their own lifetimes, the petitioner’s named ancestors were identified as “Whites” living among the general

¹⁴ Miller stated that there were over 45,000 applications, identifying about 90,000 individual claimants. The applications have been filmed by the National Archives on 348 rolls of microfilm in RG 75: M-1104. Guion Miller’s report summarizing his findings was reproduced on 12 rolls of microfilm in RG 75: M-685. See *Records Relating to Enrollment of Eastern Cherokees* by Guion Miller. Abstracts of Miller’s report were compiled by Jerry Wright Jordan and published as *Cherokee By Blood: Records of Eastern Cherokee Ancestry in the U.S. Court of Claims 1906-1910, Vol. 1-8*, which the OFA used as a guide to try to identify the petitioner’s ancestors who may have applied for the Eastern Cherokee settlement fund.

population. Therefore, even if these same individuals had documented their generation-to-generation descent from these claimed ancestors, it would not have remedied the problem that the claimed ancestors were not demonstrated to be members of an Indian tribe.

The petitioner's comments referred to "Cherokee Indian rolls" in its "geographic area" as evidence that their ancestors were descendants of that historical Indian tribe. However, the petitioner did not identify such rolls or identify which of its ancestors were supposed to be listed. The petitioner did not identify its ancestors who may have been on one of the historical rolls naming Cherokee Indians.

Third Party Comments Relating to Criterion 83.7(e)

Joe White submitted comments concerning the two families OFA used as case studies in the PF: White's own family and the Pennington family. The PF found there was no evidence in the record that any of White's "great-grandparents were Indian descendants, or part of a historical Indian tribe" (CBC PF 2010, 19-21). Instead, the PF found "the evidence shows them as part of the general population of settlers coming to Tennessee or Alabama in the mid-19th century" (CBC PF 2010, 19-21). Based on the information given in the petitioner's 2007 membership list, about 35 members appear to be related to Joe White (CBC 11/20/2007).

Joe White's submissions during the comment period included family Bibles or record books for his father's families with surnames Wilcoxson, Springer, and White (White 6/13/2012). The Bible entries confirmed information in the PF about White's paternal family (CBC PF 2010, 19-21, App. C; Jas. W. White 1810-1904). The Bibles verified some child-parent links and added the maiden name "Robinson" and parents for one woman (Wilcoxson 1826-1890).

Unlike the petitioner's comments, White's third party comments did claim descent from individuals listed on the Miller and Dawes Rolls. Apparently by matching surnames in his family lines with the same or similar surnames on the Miller Roll, White attempted to connect his demonstrated Robinson ancestors with Martha C. (b. 1866) and Walter E. Robinson (b. 1886), a sister and brother who applied for a share of the money appropriated for the Eastern Cherokee Indians by the Act of Congress in 1906 (Miller Roll Applications # 33877, #33878). The OFA's review of the Miller Roll applications found that Martha and Walter Robinson resided in Juniper, North Carolina, and their claims were based on descent from Martin Maney (d. abt. 1833) and Kesiah Vann (d. abt. 1846). However, these two applications and 160 others based on the same genealogical claims connecting them to the Maney-Vann family were rejected by Miller. Miller's investigation included a special report from Chas. E. Mix, Acting Commissioner of Indian Affairs, in 1858. Commissioner Mix reported that Martin Maney was from Ireland and a Revolutionary War soldier who had been on an expedition against the Cherokee. He and his wife, Kesiah (also spelled Keziah and Kaziah), who was the daughter of Agnes Weatherford, did not live among the Cherokee at the time of the treaty in 1817 and their heirs' claims for reservation lands under the 1835-1845 treaties. Keziah (Vann) Maney was reportedly the daughter of John Vann, whom Miller Roll applicants claimed was part Cherokee. This claim was never established despite repeated attempts from as early as the 1830s to do so (Miller Roll Application #276 includes a copy of 1858 report).

To see whether this new information connected Joe White's ancestors with the historical Cherokee Indian tribe as claimed, the OFA researchers looked at readily available sources for James Robinson (b. 1805) and his wife, Mourning Vautters (b. 1810), who were identified in the Bible record as the parents of White's great-great-grandmother, Dulcena Harriett Robinson (b. 1841 - d. 1890). This search found Federal censuses and Tennessee or Alabama marriage records that supported the identities, dates, and relationships found in the Bible records, but those individuals were not demonstrated to be related to the Miller Roll applicants claimed.

Even if White's Robinson ancestress and the many Robinsons who applied for Eastern Cherokee claims were related through shared ancestors or other kinship ties, it would not solve the problem that repeated investigations failed to demonstrate that their common ancestors, Martin Maney and Kesiah (Vann) Maney, were descendants of the historical Cherokee Indian tribe as claimed.¹⁵ The OFA's verification process did not link White's ancestors with any of the Miller Roll applicants referred to by White, nor were White's demonstrated ancestors found to be applicants themselves.

Joe White also submitted one page from an unidentified source depicting what appears to be a selection of names from the Dawes Roll. White's selection included two persons whose last name was "Harlin," which White wrote was a variation of his "Harlan" family name. As with the Robinson claim described above, White did not document a genealogical connection between his known Harlan ancestors and those individuals whom Dawes found to have "doubtful" claims, such as "Bertha H. Harlin 'D' 2800" and "Georgia Harlin 'D' 2911." Even should such a connection exist, these particular Harlins were not enrolled with the Cherokee Nation because the Dawes Commission deemed their claims "doubtful" (Dawes Final Roll 1899-1906; Harris 1999, 41).

Joe H. White also submitted undocumented genealogical reports and local histories pertaining to the Pennington family that had been the subject of one of the case studies in the PF (CBC PF 2010, 21-25). Fifty-eight individuals on the petitioner's 2007 membership list appear to be Pennington descendants (CBC 11/20/2007). White's submissions were either the same as or similar to the reports reviewed for the PF. They do not change the conclusions in the PF. The PF found public records made in the lifetimes of the claimed ancestors which "identify the Penningtons as settlers who had land, money, and education, but none of these records identified them as Indian. There is no evidence in the record to support a claim that the Penningtons were Cherokee Indians" (CBC PF 2010, 23).

Joe White also submitted several new descent reports that claimed to depict descendants of the Cherokee Indian Chief Double Head, and other historical figures. Neither White nor the petitioner documented the descent represented in these reports. White did not identify which individuals in these lengthy, undocumented reports are members of the petitioning group. In this

¹⁵ White also included pages from the rejected Miller Roll applications of James Roberson and William Robinson, but as with the case described above, White did not demonstrate that these individuals were related to his family or that his Robinson ancestors were members of the Cherokee Indian tribe (Miller Roll Applications 40761, 40750).

category of documents, one correspondent sent Joe White over 80 emails containing descent reports with brief explanations that the principal historical individuals were in some way related to her.¹⁶ For example, someone wrote: “Just found out with more research tonight that Doublehead ‘Taltsuska’ is my 31st cousin 5x removed—that’s a little closer than the original info I sent you” and claimed “Nancy ‘GhiGau’ Ward” as her “30th cousin 6x removed” (Buchholz 9/29/2010). White did not provide documentation to support these claims or to demonstrate that any of the petitioner’s members descend from these historical figures.

Third party commenter Robert Pokras’s narrative stated that “Chief Double Head was one of the ‘Forefathers’ of the ‘Central Band of Cherokee’” and that Double Head, James Vann,¹⁷ and other signers of the 1806 treaty represented the “original Cherokee Nation.” He asserted that “migrations from Double Head’s villages just south in Northern Alabama” make up some of the “mixed-blood Cherokee” lineages in Lawrence and Giles Counties, Tennessee (Pokras 2010, Exh. 7). Pokras also included an article on the descendants of James Vann, and implied that Double Head and Vann were the “forefathers” of the CBC petitioning group (Pokras 2010, Exh. 7). However, Pokras did not identify any current members of the CBC or provide documentation to verify the generation-to-generation links between members of the CBC and Double Head, James Vann, or any other members of the Cherokee Indian tribe. Pokras’s comments, alone or in combination with the evidence in the PF, do not satisfy the requirements of criterion 83.7(e).

Summary of the Evidence for Descent from a Historical Indian tribe

The petitioner’s own statements confirm the PF’s analysis of the evidence that Petitioner #227 is a recently formed group of individuals from diverse origins who claim to have Indian ancestry, but who have not documented those claims.

Petitioner #227 did not provide any new evidence for the FD that addresses criterion 83.7(e). Some of the third party submissions confirm a few parental links identified in the PF and add some information on White’s ancestors and the Pennington family. This information affects about 23 percent (93 of 407) of the CBC membership who appear to be related to White or the Penningtons. The evidence does not demonstrate the generation-to-generation links between the petitioner’s members and their ancestors, nor does the evidence demonstrate that the ancestors were Cherokee Indians. In addition, other than the documents verifying a few parentages, the evidence evaluated for the FD, which includes all of the records available for the PF, does not demonstrate that any of the petitioner’s ancestors were descendants of a Cherokee Indian tribe as claimed, or descendants of any other Indian tribe, or Indian tribes that combined, as required by the regulations.

¹⁶ The correspondent’s name is not on the 2007 membership list, but White’s response to one of her emails thanked her for “the help you have been to your Tribe,” which may imply membership (White 9/26/2010).

¹⁷ “James Vanu” [or Vann] was a signer of the 1806 treaty (Kappler 1904, II, 90-91). He should not be confused with the John Vann identified in the Maney-Vann claims in the Miller Roll applications discussed above.

Genealogical charts or descent reports for about 53 percent (219 of 407) of the CBC members illustrate their claimed descent from historical individuals but their descent is not documented. This submission does not satisfy the requirements of criterion 83.7(e) for two reasons: (1) the petitioner has not demonstrated the generation-to-generation links between these members and their claimed ancestors, and (2) the claimed ancestors have not been demonstrated to be members or descendants of a historical Indian tribe. Even if these 219 individuals had documented their claimed descent from an Indian tribe, such a low percent of descent (53 percent) would not satisfy the requirements of criterion 83.7(e). No petitioner for Federal acknowledgment has satisfied the requirements of the criterion with less than 80 percent of its members demonstrating descent from the historical Indian tribe.

There is no primary or reliable secondary evidence submitted by the petitioner or third parties, or located by the Department that demonstrates the validity of the petitioner's claims of the existence of a Cherokee Indian band in Lawrence County, Tennessee. There is no evidence that the petitioner's ancestors were Indians who evaded removal or escaped when the Cherokee Indians were removed from North Carolina. The evidence shows the petitioner's members and claimed ancestors were consistently identified as non-Indians living in non-Indian communities. Neither the third parties nor the petitioner demonstrated that historical Cherokee figures, such as Chief Double Head or James Vann, were the ancestors of the current members of the group. The evidence in the record does not demonstrate descent from any historical Indian tribe for the CBC membership.

The new materials submitted for the FD, in combination with the evidence in the record for the PF, do not demonstrate that the petitioner meets criterion 83.7(e) under the standards set forth in section 83.6(d).

Conclusion

The Central Band of Cherokee is a recently formed group of individuals who claim to have Indian ancestry, but who have not documented those claims. The record for the FD does not demonstrate that the petitioner's ancestors, either the ones named in the PF or others claimed for the FD, were members of a historical Cherokee Indian tribe or any other Indian tribe. The petitioner did not demonstrate generation-to-generation links between the current members of the group and their claimed ancestors. Petitioner #227 does not meet the requirements of criterion 83.7(e) because none of the group's members have demonstrated descent from a historical Indian tribe or tribes that combined.

The Department declines to acknowledge the group known as the "Central Band of Cherokee," Petitioner #227, as an Indian tribe because the evidence in the record does not demonstrate that the petitioner's members descend from a historical Indian tribe, or historical Indian tribes that combined, as required by mandatory criterion 83.7(e).

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