



INTERIOR BOARD OF INDIAN APPEALS

In re Federal Acknowledgment of the Nipmuc Nation

45 IBIA 231 (09/04/2007)

Petitioner's Request for Secretary to Direct Additional Reconsideration by Assistant Secretary -
Indian Affairs Denied, Letter from Solicitor David L. Bernhardt to Petitioner, Jan. 28, 2008

Related Board cases:

40 IBIA 149

41 IBIA 96

41 IBIA 100

45 IBIA 277

2. *Community*: This criterion requires that a predominant portion of a petitioning group comprises a distinct community and has existed as a community on a substantially continuous basis from historical times² until the present. 25 C.F.R. §§ 83.7(b) (“criterion (b)”); *see id.* § 83.6(e).
3. *Political authority*: This criterion requires that a petitioner has maintained political influence or authority over its members as an autonomous entity on a substantially continuous basis from historical times until the present. *Id.* §§ 83.7(c) (“criterion (c)”); *see id.* § 83.6(e).
4. *Membership from historical tribe(s)*: This criterion requires that a “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.” *Id.* § 83.7(e) (“criterion (e)”).

Petitioner contends that the final determination erred in finding that Petitioner did not satisfy these criteria and that reconsideration is warranted. The jurisdiction of the Board of Indian Appeals (Board) to review challenges to a final acknowledgment determination is limited to reviewing allegations that fall within one of four grounds for reconsideration: (1) there is new evidence that could affect the determination; (2) a substantial portion of the evidence relied upon in the determination was unreliable or of little probative value; (3) research for the determination appears to be inadequate in some material respect; or (4) there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination that would substantially affect the determination that the petitioner meets or fails to meet one or more of the seven mandatory criteria. *See* 25 C.F.R. § 83.11(d)(1)-(4).

The party requesting reconsideration bears the burden to establish before the Board, by a preponderance of the evidence, one or more of these four grounds for reconsideration. *Id.* § 83.11(e)(9), (10). Additional alleged grounds for reconsideration that are not within the Board’s jurisdiction must be referred to the Secretary of the Interior (Secretary), if the Board affirms the final determination, or to the Assistant Secretary, if the Board vacates and remands it for further work and reconsideration. *See id.* § 83.11(e)(10), (f)(1), (f)(2).

In the present case, some of Petitioner’s alleged grounds for reconsideration are within our jurisdiction; others are not. With respect to those over which we do have

² “Historical” is defined to mean “dating from first sustained contact with non-Indians.” 25 C.F.R. § 83.1.

jurisdiction, we affirm the final determination because Petitioner has failed to establish, by a preponderance of the evidence, that reconsideration is warranted. With respect to the alleged grounds for reconsideration that fall outside the Board's jurisdiction, we describe those alleged grounds and refer the request for reconsideration to the Secretary for consideration, as appropriate.

Early History and Geographical Orientation

At the time of first sustained contact with non-Indians, which began in the early 1600's, the Nipmuc Indians lived in small groups in what is now central Massachusetts and northern Connecticut and Rhode Island. Summary under the Criteria and Evidence for Proposed Finding [Against Federal Acknowledgment of] The Nipmuc Nation (PF), Sept. 25, 2001, at 25-26 & n.51. Beginning in the 1640's, English colonists undertook efforts to convert the Indians of Massachusetts to Christianity, establishing twelve Nipmuc "praying towns" for the "praying Indians." *Id.* at 22, 33-35. Among these Nipmuc praying towns were Hassanamisco at Grafton, Massachusetts, and Chaubunagungamaug at Dudley and now Webster, Massachusetts. *Id.* at 22, 35.³

King Philips War (1675-1676) significantly disrupted the Nipmuc population, and following the war, only a small number of Nipmuc remained in central Massachusetts and northeastern Connecticut, some resettling at Hassanamisco and at Chaubunagungamaug. *Id.* at 22, 38-39. In 1727, Massachusetts passed an act allowing white settlers to purchase 7,500 of the 8,000 acres of reserved Hassanamisco lands, while the remaining 500 acres were divided among the seven Indian families residing there. *Id.* at 48. These families were referred to as the Hassanamisco "proprietary" families. *Id.* at 48, 74. Eventually, only about four and one-half acres of the original Hassanamisco lands remained in the possession of a descendant of a proprietary family, Sarah Maria (Arnold) Cisco (1818-1891). *Id.* at 76; FD at 11, 181. In addition to Arnold and Cisco, family names associated with the

³ The praying towns of Hassanamisco and Chaubunagungamaug pre-dated the towns of Grafton (est. 1735) and Dudley (est. 1732). A portion of the Town of Dudley apparently became the Town of Webster (est. 1832). Other Nipmuc praying towns included Natick, Wacuntug (Uxbridge), Quinshepaug (Mendon), Packachoag (Auburn), Manchaug (Sutton), Quabaug (Brookfield), and Wabaquasset (Woodstock, Connecticut). *Id.* at 33-34.

Hassanamisco Nipmuc include Printer, Lawrence, Gimbee/Gimby, Hector, Bowman, Hemenway, and Giger (or Gigger). FD at 175, 181.⁴

Family surnames associated with the Dudley/Webster Nipmucs and their descendants include but are not limited to Pegan/Wilson, Belden, Jaha, Humphrey, and Sprague. *Id.* at 168, 171.

Petition for Federal Acknowledgment

In 1980, Zara CiscoBrough,⁵ on behalf of the “Nipmuc Tribal Council, Hassanamisco Reservation, Grafton, Massachusetts,” submitted a letter of intent to BIA to petition for Federal acknowledgment as an Indian tribe. PF at 6.⁶ BIA assigned this petition #69 in priority. FD at 2.

In 1984, “The Nipmuc Tribal Council Federal Recognition Committee” submitted a narrative and documented petition #69 to BIA. *Id.* at 2-3. At the time, the documentation indicated that the petitioner included descendants from a Hassanamisco Band historically associated with the Hassanamisco Reservation, and descendants from a Chaubunagungamaug Band historically associated with its original reservation at Dudley/Webster, Massachusetts. *Id.* A 1983 governing document of the “Nipmuc Tribe (or Nation)” was signed by Walter A. Vickers, who had been appointed by Zara CiscoBrough to succeed her as leader of the Hassanamisco Band of Nipmuc, and by Edwin W. Morse, Sr., as leader of the Chaubunagungamaug Band of Nipmuck. *Id.*

In 1995, BIA placed the petition in active consideration status. *Id.* at 3.

⁴ The Cisco surname, also spelled Sisco and Ciscoe, was introduced through marriage. *Id.* at 27. The final determination variously uses both the “Cisco” and “Sisco” spellings for the same individual. *Compare id.* at 12 (“Sarah Maria (Arnold) Sisco”) *with id.* at 181 (“Sarah Maria (Arnold) Cisco”). Petitioner apparently prefers the “Cisco” spelling, which the Board will use for purposes of this decision.

⁵ Zara (d. 1988) was the great-granddaughter of Sarah Maria (Arnold) Cisco. FD at 104 n.108.

⁶ The four and one-half acres retained in the ownership or possession of the Arnold/Cisco family are referred to as the “Hassanamisco Reservation.”

In 1996, Morse announced that the Chaubunagungamaug Band was withdrawing from petitioner #69 and notified BIA that the Band would pursue Federal recognition on its own. *Id.* BIA accepted the withdrawal of the Chaubunagungamaug Band, after which Petitioner was designated petitioner #69A and the Chaubunagungamaug Band was designated petitioner #69B. *Id.*⁷

Subsequently, Petitioner identified itself as composed of individuals descended from the Hassanamisco and Chaubunagungamaug bands, as well as other historic Nipmuc bands. PF at 4-5. Because OFA found that the self-definition of Petitioner had changed during the course of its petition for acknowledgment, OFA reviewed the evidence in light of arguments in favor of acknowledging petitioner #69 and its successor, Petitioner, as defined in three different ways: (1) those associated with the Hassanamisco Reservation at Grafton, (2) a joint organization encompassing the Hassanamisco and Chaubunagungamaug Bands (or the Grafton and Dudley/Webster reservations); and (3) an umbrella organization of the descendants of all historic Nipmuc bands. *See* 66 Fed. Reg. 49,967, 49,968 (Oct. 1, 2001).

On September 25, 2001, the Assistant Secretary - Indian Affairs signed a proposed finding against acknowledging Petitioner as an Indian tribe, based on a failure to satisfy criteria (a), (b), (c), and (e) of the acknowledgment regulations. Notice of the proposed finding was published on October 1, 2001. 66 Fed. Reg. 49,967.

Final Determination

Following publication of the proposed finding and further proceedings, including the receipt of comments and additional evidence in response to the proposed finding, the Principal Deputy Assistant Secretary signed the final determination on June 18, 2004, and notice of the determination was published in the *Federal Register* on June 25, 2004. 69 Fed. Reg. 35,667. The final determination concluded, based on the evidentiary record, that Petitioner did not satisfy criteria (a), (b), (c), and (e) for Federal acknowledgment as an Indian tribe.

⁷ On June 25, 2004, the Principal Deputy Assistant Secretary - Indian Affairs published a notice of her decision to decline to acknowledge petitioner #69B as an Indian tribe within the meaning of Federal law. *See* Final Determination Against Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, 69 Fed. Reg. 35,664. Petitioner #69B filed a request for reconsideration, which we are also deciding today. *In re Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians*, 45 IBIA 277 (2007).

As an initial matter, the final determination found that following the proposed finding, Petitioner redefined its membership and membership eligibility, and now described itself as “[t]he ‘historic Nipmuc tribe,’ . . . interpreted as meaning ‘those individuals and families of Nipmuc and other Indian ancestry who were part of the Hassanamisco tribal community by the 1920’s.’” FD at 37. Therefore, for purposes of making a final determination, OFA also took this revised self-definition of Petitioner into consideration.

The final determination is 196 pages long. We offer the following summary to provide a context for understanding the issues raised in the request for reconsideration, recognizing that a summary will not capture all of the evidence considered of importance to Petitioner nor or all of the analysis contained in the final determination.

I. External Identification of Petitioner Since 1900 (Criterion (a))

The final determination concluded that for the period 1900 to 1979, there were external identifications of the “Hassanamisco Reservation” and its Nipmuc residents, and thus the evidence provided substantially continuous identification of a continuing Hassanamisco entity in a limited sense. FD at 40-41.⁸ The final determination also concluded, however, that the evidence did not include continuous identification of a Hassanamisco Nipmuc entity that was broader than the descendants of the Hassanamisco proprietary families. *Id.* at 41; 69 Fed. Reg. at 35,668. The final determination concluded that the external identification of the Hassanamisco Reservation and its proprietary families was not the same as, and was narrower than, external identification of Petitioner because Petitioner as an entity is substantially different from the Hassanamisco entity: Hassanamisco descendants constitute only two percent of Petitioner’s membership. FD at 41, 171; 69 Fed. Reg. at 35,668, 35,671.

The final determination found that the ancestors of a large majority of the present membership of Petitioner were not part of the Hassanamisco entity that was externally identified, and therefore identifications of the Hassanamisco entity did not constitute identifications of Petitioner or any other antecedent components of Petitioner. 69 Fed. Reg. at 35,668. The final determination found that occasional associations of Dudley/Webster Nipmuc descendants with Hassanamisco were mentioned during the period of 1900 to 1979, but that these occurred primarily in the context of pan-Indian

⁸ Evidence constituting external identification of a group as an American Indian entity may, among things, come from Federal, state, or local officials, from scholars, from newspapers and books, and from relations with Indian tribes or Indian organizations. *See* 25 C.F.R. § 83.7(a)(1)-(6).

activities in New England, and were not identifications of an Indian entity that was antecedent to Petitioner. *Id.*; *see* FD at 39-40.

The final determination concluded that because “the large majority of the ancestors of the membership of [Petitioner] as it is currently before the Department were not included in the Hassanamisco entity being identified by external observers during the period from 1900 through the mid-1970’s, [Petitioner] does not meet the requirements of criterion [(a)].” FD at 41.

II. Existence of Community (Criterion (b))

For the period from colonial times to the American Revolution, the proposed determination found sufficient evidence that the historical Hassanamisco Band retained community because a majority of its population lived on the reservation in Grafton, Massachusetts.⁹ PF at 129; FD at 42. The final determination found that from 1785 through the early 1950’s there was limited community among some of the descendants of the Hassanamisco proprietary families. *See* FD at 50 (“a weak but discernable level of social interaction among [] some of the Hassanamisco proprietary descendants”), 85; *see also* 69 Fed. Reg. at 35,668. The focus of this community of Hassanamisco descendants occurred among the descendants residing in the city of Worcester, Massachusetts, rather than at Hassanamisco/Grafton, although the “Hassanamisco Reservation” under the proprietorship of the Cisco family continued to be an important symbol. FD at 85; 69 Fed. Reg. at 35,668.¹⁰ The final determination also found that the Worcester-based community of Hassanamisco proprietary descendants ceased to exist in the 1950’s with the death of several of its older members, and that the children and grandchildren of these older members did not play any significant role in the organizations that were formed under the leadership of Zara CiscoeBrough. FD at 86.

Neither the proposed finding nor the final determination found evidence of direct social interaction between Hassanamisco Nipmuc and Chaubunagungamaug

⁹ Examples of the types of evidence that may be relevant to determining whether a petitioner satisfies criterion (b) include significant rates of marriage within the group, significant social relationships connecting individual members, significant rates of informal social interaction which exist broadly among the members of a group, and geographic concentration within an area exclusively or almost exclusively composed of members of the group. *See* 25 C.F.R. § 83.7(b)(1)(i)-(iv), (b)(2).

¹⁰ Worcester is approximately seven miles from Grafton.

(Dudley/Webster) Nipmuc families between the 1730's and the 1920's, a period of nearly two centuries. *See* PF at 130. In the 18th century and the first half of the 19th century, there were a substantial number of marriages between Hassanamisco Nipmuc and non-reservation Nipmuc or non-Nipmuc Indians, and between Dudley/Webster Indians and non-reservation Nipmuc or non-Nipmuc Indians. FD at 46. But the final determination found that there were no marriages in that period between Hassanamisco and Dudley/Webster Indians. *Id.* The final determination interpreted the marriages as “probably reflect[ing] a somewhat distinct, localized population of people of color, and/or an existing social network of some individuals with Indian ancestry who maintained an Indian identity.” *Id.* at 44-45.

The final determination concluded that the evidence was not sufficient to support Petitioner's argument that a community of Dudley/Webster descendants had “coalesced” around some of the Hassanamisco families by the 1920's. *Id.* at 86. The final determination found that only one Dudley/Webster family — the Pegan/Wilson¹¹ family line, who had moved to Worcester, Massachusetts prior to World War I — had clearly become associated with and interacted socially with any of the Hassanamisco proprietary families by the 1920's. *Id.* The final determination found that from 1900 to 1930, there was little or no evidence of interaction between the Pegan/Wilson family and other Dudley/Webster descendants, or between the Pegan/Wilson family and Petitioner's other ancestors who are not descendants of either Hassanamisco or Dudley/Webster families. *Id.* at 86-87; 69 Fed. Reg. at 35,668.

The final determination also found that there was some evidence of social contacts between the Cisco family of Hassanamisco, through Sarah Maria (Cisco) Sullivan, and members of two other Dudley/Webster family lines — Belden and Jaha — during and after the 1920's. FD at 57. It did not, however, find evidence of interaction between these two Dudley/Webster family lines. In addition, the final determination concluded that the interaction between the Cisco family and the Belden and Jaha families appeared to have taken place only in the context of pan-Indian organizations rather than within a community context. *Id.* at 87; 69 Fed. Reg. at 35,669.

The final determination found that there was little or no evidence that other Dudley/Webster families included in Petitioner's membership (e.g., Sprague/Henries, Sprague/Nichols) developed any significant social ties with any Hassanamisco entity prior to the activities of Zara CiscoeBrough (daughter of Sarah Maria (Cisco) Sullivan) in the

¹¹ The Pegan/Wilson line is the family of James M. Pegan (1822-1892) and his son George M. Pegan who also used the surname Wilson. Wilson was an alias, not the name of a separate family that married into the Pegan family. FD at 195.

1960's and 1970's. FD at 67-68, 87, 104. The final determination noted that there was documentary evidence that Hassanamisco Indian Althea (Johns) Pease Hazzard (d. 1903) associated closely with Mary (Curliss) Vickers (d. 1898) and her children, but that there was limited evidence of interaction between 1903 and 1969 between Curliss/Vickers descendants and the Hassanamisco entity. *Id.* at 66. This evidence came from oral history and a 1982 manuscript written by CiscoBrough. *Id.* The oral history indicated that Joseph Walters Vickers (1914-1990) (father of Walter Vickers, the Chairman of Petitioner) attended the Indian fairs by 1948, which the final determination stated “may constitute” evidence that he did not participate in Hassanamisco events prior to World War II. *Id.* at 66-67.

According to the final determination, this specific branch of Vickers maintained a public Indian identity, but it was as Narragansett Indians, and there was “no evidence that [this family] had ‘coalesced’ around the Hassanamisco by the 1920’s.” *Id.* at 67. The final determination noted that the extensive correspondence of Sarah Maria (Cisco) Sullivan did not include any letters to or from this branch of the Vickers family prior to the late 1960’s. *Id.* The final determination concluded that activities ascribed to Joseph Walters Vickers “indicated interaction between this Vickers line and the annual Indian Fairs, and pan-Indian activities, but did not show social interaction between Vickers and members of any of the other family lines now included in the membership of [Petitioner].” *Id.* at 68.

In summary, for the period between 1900 and 1953, the final determination concluded that the evidence was insufficient to show interaction between the Hassanamisco descendants for whom limited community existed and the ancestors of most of the Dudley/Webster or Curliss/Vickers descendants who comprise most of Petitioner’s current membership. The final determination also found that the large majority of the persons who were shown to be interacting during that period do not have descendants in Petitioner’s membership.

The final determination concluded that “most of [Petitioner’s] ancestors were not associated with the community of some Hassanamisco descendants focused around Worcester, nor were they documented to be interacting among themselves elsewhere.” 69 Fed. Reg. at 35,668-669.¹²

¹² The final determination found that of the original Hassanamisco proprietary families, “the only one that has continued to function more or less continuously” within Petitioner is the Cisco family. FD at 86. Three other Hassanamisco families — Gigger, Scott, and Hemenway — did not appear on the membership lists of Petitioner until 1996 or 1997, and were dropped from Petitioner’s membership list in 2002. 69 Fed. Reg. at 35,669.

For the period of the 1960's to the 1970's, the final determination concluded that contemporary documentation concerning lists of Nipmucs created by Ciscoe Brough did not provide good evidence that she viewed the process as enrolling an existing community, and that "governing documents" for the group reflected an expanding definition of the Nipmuc group to include families with whom she had little or no previous contact. FD at 87. The final determination found that evidence from Petitioner showing family lines were "genealogical constructs, categories of individuals sharing a common ancestor, and were not demonstrated to be social units whose members interacted." 69 Fed. Reg. at 35,669.

For the period from 1975 to the present, the final determination found that Petitioner relied on evidence of social community from prior periods, which OFA had found insufficient to show that a community existed. FD at 87. For example, in response to an analysis of marriages submitted by Petitioner, OFA stated that "[b]ecause most of the marriages in the relevant lines occurred between the 1870's and 1920's, they cannot be assumed to be reflected in continuing kinship ties" and thus cannot be used to demonstrate community from 1975 to the present. *Id.* at 45.

III. Existence of Political Influence or Authority (Criterion (c))

The final determination concluded that from 1785 to the present, the evidence was insufficient to satisfy criterion (c). FD at 151-54.¹³ Among the evidence considered by the final determination were several petitions, including ones dating from 1785, 1837, and 1869, from members of the Hassanamisco proprietary families regarding the Hassanamisco lands. *Id.* at 91-92. The final determination found significant gaps in time between the various petitions, and found that the petitions did not necessarily reflect leadership actions on behalf of a group, but instead were submitted on behalf of individuals in relation to

¹³ Examples of relevant evidence for criterion (c) include the group's ability to mobilize significant numbers of members and resources from its members for group purposes, the importance to the membership of issues acted upon by group leaders, and widespread knowledge, communication, and involvement in political processes by most of the group's members. 25 C.F.R. § 83.7(c)(1)(i)–(iii). Demonstrating that the group meets the "community" criterion at more than a minimal level is also deemed relevant to showing the existence of political influence or authority. *Id.* § 83.7(c)(1)(iv). Criterion (c) requires a showing of "a political connection between the membership and leaders and thus that the members of a tribe maintain a bilateral political relationship with the tribe. This connection must exist broadly among the membership." *In re Federal Acknowledgment of the Historical Eastern Pequot Tribe*, 41 IBIA 1, 3 (2005). A formal structure is not required, but there must be both leaders and followers. *Id.*

disputes over property. *Id.* at 91-93. For example, the final determination found that an 1869 request for additional land by Sarah Maria (Arnold) Cisco was a one-time request that reflected a continuation of an 1847 inheritance dispute between John Hector and his half-brother Harry Arnold (Sarah's father), which followed the 1857 sale of Hector's portion of the land. *Id.*¹⁴

The final determination also considered a letter dated June 13, 1886, referring to an "election day" at Hassanamisco that year. *Id.* at 94. OFA concluded that the letter and reference to an "election day" was insufficient evidence to support Petitioner's argument that the Hassanamisco tribe not only held elections, but that it included individuals from more than one family line. *Id.*

For the period between 1900 and 1961, OFA found no evidence demonstrating the existence of a Hassanamisco "tribal entity," in any definable sense, that included the majority of the current Petitioner's ancestors. *Id.* at 152. Within the Hassanamisco community, OFA found some primacy of the Cisco family, but no indication that it maintained a bilateral political relationship with other proprietary families. *Id.* OFA found that most of the "political" events relied upon by Petitioner to demonstrate criterion (c) were held in the context of pan-Indian organizations and activities, including Indian fairs and pow-wows that were open to the public, and that references to conducting "business" did not necessarily refer to a Hassanamisco tribal entity conducting business (e.g., reference to business transacted at a "pow-wow of the Indian tribes of New England"). *Id.* at 101, 152. OFA found that Indian fair, pow-wow, and land claims activities by Sarah Maria (Cisco) Sullivan were insufficient evidence to establish that she had a political leadership role. *Id.* at 102-04.

Similarly, OFA found that the activities of Sarah's daughter, CiscoeBrough, who actively sought to preserve the Hassanamisco Reservation through a Hassanamisco Foundation, and to identify individuals of Nipmuc descent, did not reflect an existent community that maintained a bilateral political relationship with the Hassanamisco Foundation or Hassanamisco Council. *Id.* at 152.¹⁵ With the exception of the Wilson family, OFA found no indication that the ancestors of Petitioner's membership that are

¹⁴ Sarah Maria (Arnold) Cisco (1818-1891) was the grandmother of Sarah Maria (Cisco) Sullivan (1884-1964), who was the mother of Zara CiscoeBrough. FD at 104 n.108.

¹⁵ The "Hassanamisco Reservation Foundation" was founded in 1961, apparently by the Cisco family. *See* PF at 153-54; FD at 71-72. The by-laws of the foundation were revised in 1978, and a contemporaneous document refers to a "Nipmuc-Hassanamisco Tribal Council," separate from the board of trustees of the foundation. *See* PF at 164.

descended from Dudley/Webster Indians (Jaha, Belden, Sprague/Henries) and from the Vickers family were involved in any way other than by attending the Indian fairs. *Id.* Specifically, OFA found no evidence that there was any political connection to Hassanamisco prior to the 1960's for the Curliss/Vickers line or prior to 1970's for the Sprague/Henries/Morse line. *Id.*

For the period following 1978, the final determination found that there was only limited data to show a connection between the Hassanamisco Council and the remainder of the Hassanamisco or Nipmuc Nation membership, or that the issues dealt with by the Council were of importance to the membership, which could indicate a bilateral political relationship. *Id.* at 153. The final determination found that “there was no community that was led by Zara CiscoeBrough from the 1960's to 1982, nor, following her, by the Hassanamisco council, nor, subsequently, under the [Nipmuc Nation Tribal Council], the present governing body of [Petitioner].” *Id.* at 154.

IV. Membership's Descent from Historical Tribe (Criterion (e))

Criterion (e) requires that a “petitioner's membership consist[] of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.” 25 C.F.R. § 83.7(e).

The historical tribe, as defined by Petitioner for the final determination, consisted of those “individuals and families of Nipmuc and other Indian ancestry who were a part of the Hassanamisco tribal community by the 1920's.” FD at 167. OFA concluded, however, that Petitioner had not demonstrated that such a “Hassanamisco tribal community” embracing all of Petitioner's ancestors existed in the 1920's or at any point in time since then. *Id.*; 69 Fed. Reg. at 35,671 (The evidence does not support the assertion that Petitioner's ancestors constituted a community that had coalesced around Hassanamisco by the 1920's). Therefore, OFA looked back to the Hassanamisco and Dudley tribes identified in 1861 and 1889-1891 as the “historical tribes” for purposes of tracing membership descent from a historical tribe under criterion (e). FD at 167.

The proposed finding had concluded that historical Hassanamisco (Grafton) Nipmuc and the Chaubunagungamaug (Webster/Dudley) tribes continued to exist to the mid-19th century. *See* FD at 162, 167. The final determination, while using these two tribes as the “historical tribes” for purposes of evaluating criterion (e), stated that “these two tribes did not, at any time, amalgamate and thereafter function as a single entity.” FD at 167.

The final determination found that 2 percent of Petitioner’s members have Indian ancestry from the Arnold/Cisco (Hassanamisco) family, and that 53 percent of its members descend from six families (Jaha, Humphrey, Belden, Pegan/Wilson, Pegan, and Sprague) who were identified as Dudley/Webster Indians in 1861. *Id.* at 176.

The final determination also found that 34 percent of Petitioner’s members have Indian ancestry from Mary (Curliss) Vickers, who was identified as a “Miscellaneous Indian” in an 1861 report on Massachusetts tribes. *Id.* at 177. The final determination concluded that the Curliss/Vickers family had not been shown to be of Nipmuc ancestry, and that there was no evidence that the Curliss/Vickers ancestors were living in tribal relations with either the Hassanamisco or Dudley/Webster tribe in 1849 or 1861. *Id.* at 173.¹⁶

For the remaining members of Petitioner, the final determination found that eight percent have Indian descent from individuals identified as Connecticut Indians, and three percent have other Indian ancestry. *Id.* at 176.

Based on descent from either the historical Hassanamisco tribe or the historical Dudley/Webster tribe, the final determination found that even if the two historical tribes were treated as having amalgamated, only 55% of Petitioner’s members would descend from a historical tribe. The final determination concluded that this percentage was insufficient to satisfy criterion (e). *Id.* at 176-77.

¹⁶ The dates are derived from an 1849 *Briggs Report* and an 1861 *Earle Report*, both of which enumerated Indians in the Commonwealth of Massachusetts, including the Hassanamisco/Grafton and the Dudley Indians, and those deemed “Miscellaneous Indians.” *See* FD at 168; PF at 69-75. According to the final determination, “[t]he Curliss or Curless surname was not on the 1849 *Briggs Report* of Hassanamisco or Dudley Indians, or the 1861 *Earle Report* of Hassanamisco or Dudley Indians. The Vickers surname was not on the 1849 *Briggs Report* or the 1861 *Earle Report*, as Hassanamisco, Dudley, Natick, or any of the other Massachusetts tribes, but appeared in two households listed by Earle under the ‘Miscellaneous Indians’ category.” FD at 189 (internal footnote omitted).

Petitioner filed a timely request for reconsideration with the Board. The State of Connecticut and the Northeastern Connecticut Council of Governments filed answer briefs, and Petitioner filed a reply.¹⁷

Board Jurisdiction/Scope of Review

As noted earlier, the Board's jurisdiction to review final acknowledgment determinations is limited to reviewing four alleged grounds for reconsideration:

- (1) there is new evidence that could affect the determination, 25 C.F.R. § 83.11(d)(1);
- (2) a substantial portion of the evidence relied upon in the final determination was unreliable or was of little probative value, *id.* § 83.11(d)(2);
- (3) the petitioner's or OFA's research appears inadequate or incomplete in some material respect, *id.* § 83.11(d)(3); and
- (4) there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the seven mandatory criteria in 25 C.F.R. § 83.7(a) through (g), *id.* § 83.11(d)(4).

Discussion

I. Introduction

In its request for reconsideration, Petitioner begins by arguing that the “most fundamental mistake” in the final determination was OFA’s “decision” that the Nipmuc Nation “should be divided into two pieces” and “should be treated as two completely distinct entities” — the Hassanamisco group and the Dudley/Webster group. Request at 9. This, according to Petitioner, was wrong as a matter of law and contrary to the evidence, and many other conclusions in the final determination flow from this “erroneous decision.” *Id.* at 10. Petitioner contends that both groups interacted with one another and both

¹⁷ The deadline for filing answer briefs in opposition to Petitioner's request for reconsideration was October 7, 2005. On November 13, 2006, the Board received a letter dated November 7, 2006, from Larry Spotted Crow Mann, on letterhead styled as “Historical Nipmuc Tribe c/o Larry Spotted Crow Mann,” with a Webster, Massachusetts, address. The letter appears to be in opposition to Petitioner. The Board strikes it as untimely and has not considered it in reviewing this case.

descend from a single historical Nipmuc tribe or group of tribes that functioned as a single political entity, and should have been treated collectively.

In response to Petitioner’s argument that the final determination is “wrong as a matter of law and contrary to the evidence,” the State of Connecticut argues that this allegation is outside the Board’s jurisdiction. We agree that Petitioner’s general allegation of a fundamental procedural error — to “decide” that the Nation “should be divided into two pieces” — asserts a ground for reconsideration that is outside of our jurisdiction. Therefore, in Section VI of our discussion (alleged procedural errors and irregularities), we describe this allegation and refer it to the Secretary. However, within Petitioner’s general allegation are several specific arguments or examples of alleged error, for which Petitioner at least invokes the language of the Board’s jurisdiction. *See, e.g.*, Request at 10 (“new evidence . . . shows that there was substantial continuous interaction between the two groups”). In addition, although not relevant to a determination of our jurisdiction, we note that several, if not all, of the arguments included within the general allegation are repeated elsewhere in Petitioner’s brief within the context of criterion-specific arguments.

Because Petitioner’s general allegation of the “fundamental mistake” in the final determination appears intended both to state a separate ground for reconsideration and to capture what Petitioner contends is the collective weight of various criterion-specific arguments, some of which may be within our jurisdiction, we will examine each of Petitioner’s specific arguments in the context of the specific criterion in which they are raised by Petitioner. For those specific allegations over which we do have jurisdiction, we resolve them in this decision; for those over which we do not have jurisdiction, we describe them and refer them to the Secretary.

In addition to numerous allegations of substantive error in the final determination, Petitioner contends that the final determination suffers from other procedural irregularities, which make reconsideration appropriate. We conclude that the Board lacks jurisdiction to review any of these procedure-based allegations, which we describe and refer to the Secretary after completing our discussion of Petitioner’s criterion-specific substantive allegations. *See infra* at 271-72.

We begin by discussing each of Petitioner’s alleged grounds for reconsideration of the final determination’s findings with respect to each of the four criteria for which the evidence was found lacking.

II. External Identification of Petitioner Since 1900: Alleged Grounds for Reconsideration of the Finding that Criterion (a) Was Not Satisfied

Petitioner makes four arguments for why reconsideration under criterion (a) is warranted. Petitioner's first allegation falls outside of our jurisdiction and therefore we refer it to the Secretary. The last three are within our jurisdiction, but we reject them on the merits.

A. Improper Use of a New "Antecedent Component" Requirement

Petitioner contends that external identification of the Hassanamisco entity, which OFA found to exist, should have been accepted as sufficient to satisfy criterion (a) for Petitioner as a whole, and that OFA applied a new standard and required the external identification of all antecedent components of Petitioner. As explained below, we conclude that this allegation in substance falls outside of our jurisdiction.

Petitioner argues that OFA's "interpretation of the evidence . . . is unreliable and of little probative value . . . because [OFA] applies a new standard for evidence for meeting this criterion that is not set forth in the Acknowledgment Regulations or guidelines and which had not been applied in previous acknowledgment decisions prior to the [2003] Proposed Finding on the Golden Hill Paugussett Tribe." Request at 37; *see also id.* at 56 (final determination is not consistent with the regulations, guidelines, or precedents and "is therefore unreliable, of little probative value, arbitrary and capricious"). Petitioner also contends that "[r]easonable alternative interpretations of the evidence exist and should have been applied by [OFA] if the acknowledgment regulations and the precedents were followed uniformly." *Id.* at 37. Specifically, Petitioner contends that prior to the Golden Hill Paugussett proposed finding, OFA did not require that external identification of a tribal entity must include identification of the antecedent components of that entity.

We have previously recognized that an allegation that simply parrots the language of the Board's jurisdiction does not necessarily fall within our jurisdiction when the substance of the allegation falls outside of our jurisdictional purview. *See In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 IBIA 30, 37 (2005); *Historical Eastern Pequot Tribe*, 41 IBIA at 25, 28. To the extent that an allegation may fairly be construed as raising issues over which the regulations grant us jurisdiction, we will review the allegation on the merits. However, if the substance of an allegation, fairly construed, clearly falls outside of our jurisdiction, we will refer it to the Secretary or the Assistant Secretary, as appropriate.

A challenge to OFA's analysis or interpretation of the evidence as "unreliable" or "of little probative value" is not a challenge to the evidence itself, but rather a disagreement

with OFA's analysis. And a challenge to OFA's analysis of the evidence does not fall within the Board's jurisdiction. *See, e.g., Historical Eastern Pequot Tribe*, 41 IBIA at 25-26; *In re Federal Acknowledgment of the Cowlitz Indian Tribe*, 36 IBIA 140, 145, 150-51 (2001). Therefore, notwithstanding Petitioner's use of the language of subsection 83.11(d)(2), we conclude that the substance of this allegation falls outside of our jurisdiction.

Petitioner invokes some of the language of subsection 83.11(d)(4) by contending that a "reasonable alternative interpretation of the evidence" would be for OFA "to follow its regulations, precedent, and guidelines." In substance, Petitioner contends that reconsideration is warranted because the final determination is inconsistent with the regulations, precedent, and guidelines. The Board has previously held that allegations that a final determination violated the regulations, failed to adhere to its acknowledgment case precedent, or used an improper evidentiary standard do not state a ground for reconsideration over which the Board has jurisdiction. *See In re Federal Acknowledgment of the Golden Hill Paugussett Tribe*, 40 IBIA 126, 128 (2004) (*Golden Hill Paugussett Tribe II*). Moreover, Petitioner does not offer any actual alternative interpretation of specific evidence in this section of its Request for Reconsideration, nor does it even allege that a particular alternative interpretation was "not previously considered," as subsection 83.11(d)(4) requires. Instead, Petitioner is simply alleging in substance that OFA failed to follow its regulations, precedent, and guidelines. Thus, notwithstanding Petitioner's use of some of the language of subsection 83.11(d)(4), we conclude that this allegation may not reasonably be construed as falling within that subsection.

We conclude that in substance, this allegation falls outside the jurisdiction of the Board, and therefore we refer it to the Secretary as follows:

Should reconsideration be granted based on the allegation that the final determination, without proper notice to Petitioner, departed from existing precedent and applied a new standard of evidence for meeting criterion (a) that is not set forth in the regulations or guidelines, which had not been applied prior to the proposed finding for the Golden Hill Paugussett Tribe in 2003, and which improperly required that external identification of Petitioner for criterion (a) must consist of something more than identification of the Hassanamisco entity that OFA found to have been identified?

B. New Evidence: 1950's to 1990's

Petitioner contends that 23 documents submitted with its request for reconsideration constitute new evidence that could affect the determination regarding criterion (a), and

therefore constitute grounds for reconsideration under subsection 83.11(d)(1).¹⁸ The 23 documents refer variously to the “Hassanamisco Reservation” at Grafton, “Hassanamisco Tribe,” “Hassanamisco-Narragansett Tribe,” the “Hassanamisco Nipmucs,” the “Nipmuck Tribe” at Grafton, and the “Nipmuc Tribe, Hassanamisco Band.” We disagree with Petitioner that these documents provide grounds for reconsideration because even though most of this evidence apparently is new, Petitioner has not demonstrated that it could affect the determination regarding criterion (a).

Under subsection 83.11(d)(1), a party requesting reconsideration must first show that evidence that is proffered as “new” is in fact new. “New evidence” includes “only evidence that was *not* before the Assistant Secretary when she issued her Final Determination.” *In re Federal Acknowledgment of the Golden Hill Paugussett Tribe*, 32 IBIA 216, 223 (1998) (*Golden Hill Paugussett Tribe I*); see *In re Federal Acknowledgment of the Ramapough Mountain Indians, Inc.*, 31 IBIA 61, 66 (1997).

OFA’s inventory of documents submitted by Petitioner with its request for reconsideration indicates that 20 of the 23 documents submitted as new evidence with respect to criterion (a) were not in the record when the final determination was issued. Therefore, these 20 documents constitute new evidence under subsection 83.11(d)(1).

In addition to requiring the evidence to be new, subsection 83.11(d)(1) requires that the requester demonstrate that the evidence “could affect the determination.” If new evidence is simply another example of the same or similar evidence already considered, does not add any substantively new information to the record, or would simply confirm a fact already known to OFA and not considered determinative, the evidence does not satisfy the “could affect” standard. See, e.g., *Schaghticoke Tribal Nation*, 41 IBIA at 38; *Cowlitz Indian Tribe*, 36 IBIA at 147; *In re Federal Acknowledgment of the Snoqualmie Tribal Org.*, 34 IBIA 22, 32 (1999); *Ramapough Mountain Indians, Inc.*, 31 IBIA at 74-75.

Petitioner has not shown how the new evidence submitted with respect to criterion (a) could affect the determination. None of the new evidence pre-dates 1957, and Petitioner does not explain how this evidence could cure OFA’s finding that Petitioner, as presently defined and constituted, did not satisfy criterion (a) for the period between 1900 and 1957. In addition, for the post-1957 period, Petitioner has not shown that the new

¹⁸ Petitioner’s Request states that “twenty two documents provide new evidence” regarding criterion (a), Request at 38, but Appendix A, titled “New Evidence Documents,” lists 23 documents, and the Board presumes that Petitioner intended to rely on all 23 of these documents.

evidence adds substantive new information to the record. Our review of Petitioner’s new evidence indicates that it is consistent with OFA’s finding that a Hassanamisco entity was externally identified in some respects, and does not refute OFA’s conclusion that identification of that Hassanamisco entity was not the same as identification of Petitioner. Although some of the documents refer to the “Nipmuc Nation,” none do so in a way that clearly identifies an entity that is distinct from or broader than the Hassanamisco entity that OFA found had been identified. We understand that Petitioner contends that “Hassanamisco,” “Nipmuc Nation,” and Petitioner are all one and the same, but OFA concluded that the evidence did not support Petitioner’s position, and we conclude that the new evidence offered by Petitioner does not add anything that could affect OFA’s determination. Therefore, Petitioner has not satisfied its burden to show that this new evidence could affect the determination regarding criterion (a), and we reject it under subsection 83.11(d)(1) as a ground for ordering reconsideration.¹⁹

C. Reasonable Alternative Interpretation of the Evidence Regarding Title to the Hassanamisco Reservation Land

Petitioner argues next that OFA’s finding that the Hassanamisco Reservation property is privately owned is false and contrary to the available evidence. Petitioner contends that a reasonable alternative interpretation of the evidence is that title to the land is held by the Commonwealth of Massachusetts for the use and occupation of the Nipmuc Nation. Request at 64. According to Petitioner, “[t]he Nipmuc Nation Reservation, which has existed since the early 18th century, is firm evidence that the Petitioner has satisfied Criterion (a),” *id.* at 57, and therefore reconsideration is warranted under 83.11(d)(4).

In order to demonstrate grounds for reconsideration under subsection 83.11(d)(4), each of the following elements must be satisfied: (1) the requester must articulate an alternative interpretation of evidence used for the final determination; (2) that interpretation must be reasonable; (3) the interpretation must not have been previously considered; and (4) the interpretation, if accepted, would substantially affect the

¹⁹ In its reply brief, Petitioner contends that other new evidence, which it had not discussed in connection with criterion (a), provides additional evidence of external recognition for the period before 1957 — i.e., a 1932 notice of the National Algonquin Indian Council Pow-Wow and a 1947 letter from Schaghticoke tribal leader Swimming Eel to Sarah Cisco Sullivan. Neither of these documents, however, undercuts OFA’s finding that external identification of a Hassanamisco entity was not the same as identification of Petitioner, and therefore we conclude that they could not affect the determination.

determination that a petitioner meets or does not meet one of the seven mandatory criteria for acknowledgment. *See* 25 C.F.R. § 83.11(d)(4).

Although Petitioner has articulated an alternative interpretation of the evidence used for the final determination, we conclude that Petitioner has not met its burden of proof to show that its alternative interpretation of the evidence was not previously considered or that it would substantially affect the determination.

The final determination spends 23 pages analyzing the evidence and responding to Petitioner's argument that the Commonwealth of Massachusetts has continuously recognized it as a tribe and that state title to the "Hassanamisco Reservation" land is part of that evidence of state recognition. OFA considered the interpretation of the evidence offered by Petitioner, before disagreeing with that interpretation. Petitioner has not demonstrated that its interpretation of the evidence was not previously considered.

In addition, Petitioner has not shown that its interpretation of the evidence of title would substantially affect the determination. For example, Petitioner does not explain how its interpretation of the evidence would alter OFA's conclusion that the external identification of a "Hassanamisco" entity or "Nipmuc Nation" entity at Hassanamisco, even if based on recognition of a reservation for which title was held by the State, was not the same as identification of Petitioner.

We conclude that even assuming that Petitioner's interpretation of the evidence were accepted — that title to the Hassanamisco land has been held since the 18th century by the Commonwealth of Massachusetts for the Nipmuc Nation — Petitioner has not demonstrated that this interpretation was not previously considered or that it would substantially affect the determination. Therefore, we reject this as a ground for reconsideration.

D. Reasonable Alternative Interpretation of the Massachusetts Enfranchisement Act

Petitioner also argues that the 1869 Massachusetts Enfranchisement Act, which vested state citizenship rights in Indians, did not terminate the State's recognition of Indian tribes, including the Nipmuc Nation. Petitioner contends that a reasonable alternative interpretation of the evidence is that the State continued to recognize the Nipmuc Tribe, thus providing evidence of criterion (a).

The final determination did not find that the 1869 Massachusetts Enfranchisement Act "terminated" the State's recognition of Indian tribes. It did, however, find that the

status of Massachusetts Indians after 1869 as state citizens undercut Petitioner's argument that it has had continuous state recognition as an Indian tribe and that such recognition is evidence that criterion (a) has been satisfied. *See* FD at 8-10.

We follow the same analysis in rejecting this argument as we did with respect to the reservation land title status. First, OFA did consider Petitioner's interpretation of the evidence, *see id.*, and therefore Petitioner has not shown that it was not previously considered. Second, even assuming that the State continuously recognized the "Nipmuc Tribe," and that the 1869 Enfranchisement Act did nothing to alter that recognition, we would still be faced with OFA's analysis and conclusion that identification of a "Nipmuc" entity is not necessarily the same as identification of Petitioner, and nothing in Petitioner's argument regarding this evidence dictates a contrary result.

Therefore, we conclude that Petitioner has not shown that its interpretation of the evidence was not previously considered or that its interpretation would substantially affect the determination regarding criterion (a), and we reject this as a ground for reconsideration under subsection 83.11(d)(4).²⁰

III. Community: Alleged Grounds for Reconsideration of the Finding that Criterion (b) Was Not Satisfied

Petitioner alleges nine grounds for reconsideration of the final determination's finding that Petitioner does not satisfy criterion (b), which requires a showing that a predominant portion of a petitioning group comprises a distinct community and has existed as a community on a substantially continuous basis from historical times until the present. We conclude that three allegations are outside of our jurisdiction and refer them to the Secretary, and we conclude that six are within our jurisdiction, but fail to satisfy the standard for ordering reconsideration.

²⁰ Petitioner also asserts that the State of Rhode Island recognized it by referring to "Nipmucs" in legislation providing for an "Indian Day" holiday. Request at 38. To the extent Petitioner intended to raise this as a separate alleged ground for reconsideration based on a "reasonable alternative interpretation of the evidence," we reject it for the same reasons discussed with respect to recognition by the Commonwealth of Massachusetts.

A. Community from 1780 to 1930

1. Third-Party Connector Analysis: 1850 - 1930

Petitioner contends that OFA's finding that the evidence was insufficient to satisfy criterion (b) was in error and that OFA should have applied a "third-party connector" analysis to the evidence in this case. Petitioner argues that OFA also ignored crucial evidence submitted by Petitioner that was relevant to such an analysis. Petitioner contends that OFA should have followed precedent from the Eastern Pequot case, in which the Department found that members of a third family line served as a bridge or "connector" between two other family lines of Eastern Pequots, and that these social links indicated the existence of a single community.²¹ Petitioner also argues that "new evidence has been located . . . to further demonstrate the strength of the social ties within the Hassanamisco Nipmuc tribal entity." Request at 68.

We construe Petitioner's argument as alleging two distinct grounds for reconsideration: first, that OFA failed to follow its own precedent and ignored relevant evidence in the record; and second, that new evidence further demonstrates connections within an existing community of Petitioner's ancestors.²²

²¹ See Final Determination to Acknowledge the Historical Eastern Pequot Tribe, 67 Fed. Reg. 44,234, 44,237 (July 1, 2002), *vacated and remanded on other grounds*, *Historical Eastern Pequot Tribe*, 41 IBIA 1.

²² Petitioner does not contend that its third-party connector analysis is a "reasonable alternative interpretation[], not previously considered, of the evidence," 25 C.F.R. § 83.11(d)(4), only that OFA ignored crucial evidence and failed to follow its own precedent (and that there is new evidence that could affect the determination). Even if we were to construe Petitioner's arguments as intended to invoke the Board's jurisdiction under subsection 83.11(d)(4), we would reject it. As we understand the analysis that OFA undertakes for criterion (b), the evidence is necessarily reviewed in the context of evaluating connections between and among individuals, families, and groups — e.g., did connections exist, what was their nature, when and how often did they occur? Thus, Petitioner's "interpretation" of the evidence, in substance, simply states a different conclusion regarding the sufficiency and probative value of particular evidence to demonstrate that certain individuals or families served as "connectors" to link other individuals or families. It does not articulate a qualitatively different interpretation of the evidence that was "not previously considered" by OFA.

With respect to the first allegation, Petitioner specifically contends that if OFA had applied the connector analysis, it would have concluded that the existing evidence was sufficient to find that during the last half of the 19th century and into the first three decades of the 20th century, the historical Hassanamisco²³ had come to include members of the Webster-Dudley band of Nipmucs as well as other Nipmuc descendant families. Request at 67, 72. Petitioner argues that OFA ignored or failed to address relevant evidence that was already in the record, and that “[t]he historical Nipmuc tribal community undoubtedly had third-party connections.” *Id.* at 72. Petitioner offers its own proposed third-party connector analysis, none of which is expressly dependent upon any specific “new evidence” offered by Petitioner and all or most of which appears to reflect relationships among individuals that are already reflected in the FD. Request at 72-79.²⁴

Because this first allegation does not depend upon new evidence and simply expresses disagreement with OFA’s analysis, it is not within our jurisdiction, and we refer it to the Secretary as follows:

Should reconsideration be granted based on the allegations that the final determination ignored relevant evidence in the record, failed to follow acknowledgment case precedent, and failed to apply a “connector” analysis to the evidence in evaluating criterion (b)?

With respect to the second allegation — new evidence of social ties — we address each form of evidence in turn.

2. Civil War Pension Records

For the period covering the mid- to late-19th century, Petitioner submits copies of Civil War pension records as “new evidence,” and argues that these records make it “clear that the descendants of the many Nipmuc families are all represented across Dudley and

²³ As noted above, at 237, the final determination found that from 1785 through the early 1950’s, there was limited community among some of the descendants of the Hassanamisco proprietary families. Petitioner’s overall contention in this case is that “multiple bands of Indians within a tribe combined to form one group at the Hassanamisco Reservation under the Cicso family’s leadership by 1930.” Request at 35.

²⁴ In the context of its third-party connector argument, Petitioner also contends that for the period from 1780 to 1900, OFA improperly applied the “more stringent” test under 25 C.F.R. § 83.7(b)(2), rather than subsection 83.7(b)(1). Request at 80 (citing FD at 48-49).

Hassanamisco lines from the time of the Civil War until after the turn of the 19th century, into the 20th century.” Request at 87. According to Petitioner, these records “demonstrate[] that the mixed tribal community of Hassanamisco and Dudley-Webster that would take shape in the early 20th century under the direction of Sarah Cisco has deeper historical roots than what [OFA] had recognized.” *Id.* at 79-80.

Although Petitioner characterizes the Civil War pension records as “new evidence,” elsewhere Petitioner contends that OFA failed to comment on the information contained in the Civil War pension records, *see* Request at 68, thus acknowledging that they are not, in fact, new evidence. OFA’s inventory of documents submitted by Petitioner with its request for reconsideration confirms that the Civil War pension records are not new evidence. And Petitioner expressly discussed the Civil War pension records in its response to the proposed finding against acknowledgment. *See, e.g.*, Response of the Nipmuc Nation (Petitioner 69A) to Proposed Finding Against Federal Acknowledgment, Vol. II, Part A, at 35-39.

Because the Civil War pension records are not “new evidence,” they cannot serve as a basis for reconsideration under 25 C.F.R. § 83.11(d)(1).

3. Nipmuc Participation in the Abolitionist Movement

Petitioner contends that the Indians in Massachusetts, including both Hassanamisco and Dudley Indians, participated actively in the abolitionist movement, and that the mixture of individuals from both groups demonstrates “interaction between the two bands of Nipmuc Indians.” Request at 91. Apparently as “new evidence,” Petitioner submits several books and articles on abolitionist activities in the Worcester area.

The books and articles were not part of the record before the Principal Deputy Assistant Secretary, and therefore they are “new” within the meaning of subsection 83.11(d)(1). We conclude, however, that Petitioner’s evidence of participation by both Hassanamisco and Dudley Nipmuc individuals in the abolitionist movement could not affect the determination because its value in demonstrating that Petitioner satisfies the community criterion, even for this time period, is limited at best.

As explained by Petitioner, this new evidence shows that various Hassanamisco and Dudley Nipmuc Indian individuals, some also identified as black, participated in the abolitionist movement and in the “Free Church” in Worcester, under the leadership of its minister Thomas Wentworth Higginson. *See* Request at 90-91. According to Petitioner, Higginson went on to lead the 54th Massachusetts Colored Infantry, and contends that “it is not coincidental” that both Dudley and Hassanamisco Indians served under his command. *Id.* at 91.

Petitioner characterizes this as evidence of “interaction between the two bands of Nipmuc Indians, though put into the context of the abolition movement, [which] shows the close interactions of the two groups.” *Id.* We disagree. While the evidence may show individual connections between Nipmuc individuals, it does not clearly show that the connections or interaction took place within the context of an existing community of Nipmuc. Instead, the evidence suggests a broader group or community of individuals, not limited to Nipmuc Indians, actively working to end slavery. We do not disagree with Petitioner that evidence of connections between and among individual Hassanamisco and Dudley Nipmuc could contribute to an overall body of evidence which, if substantial enough, could demonstrate the existence of a distinct Nipmuc community that included both Hassanamisco and Dudley Nipmuc. We do disagree with Petitioner that the evidence of Hassanamisco and Dudley Indians participating together in the abolitionist movement or in the 54th Massachusetts Colored Infantry has much probative value in this case and that it could affect the determination.

Therefore, we conclude that the new evidence of Hassanamisco and Dudley Nipmuc Indians participating in the abolitionist movement is insufficient to provide a basis for reconsideration under subsection 83.11(d)(1).

4. World War I Draft Records

Petitioner contends that when registering for the draft in World War I, many of the Nipmucs registered as “Indian.” Request at 80. To support this proposition, Petitioner submits as new evidence copies of World War I draft registration cards. The surnames of registrants who identified themselves as “Indian” includes Vickers, Wilson, Brown, and Henries, and their addresses include Centerdale, Rhode Island; Worcester, Massachusetts; North Woodstock, Connecticut; and Woodstock, Connecticut. According to Petitioner, “this cross band registration illustrates an acceptance of the bands of Nipmuc in the area, and identified as Indians prior to 1920.” *Id.* at 81.

We fail to see how this evidence, whether considered separately or in conjunction with the other evidence, could affect the determination regarding criterion (b). The World War I registration materials do not document any interaction between or among the registrants, nor do we think that the registrants’ self-identification as “Indian,” although it conceivably could reflect identity as part of an existing community or group, necessarily reflects the existence of such a community or group, or the nature and character of that group in relation to Petitioner. In fact, Petitioner suggests that other Nipmuc “may have chosen to register as either white/Caucasian or Negro,” Request at 81, from which it might be inferred that the self-identity of Nipmucs varied and did not reflect a uniform identity shaped by membership in a single community. Therefore, we conclude that this evidence

could not affect the determination and we reject it as a ground for reconsideration under subsection 83.11(d)(1).

5. Contemporary Affidavits

Within the section of Petitioner's Request arguing that Petitioner satisfied criterion (b) for the period between 1780 to 1930, Petitioner contends that Appendix B to its Request contains new evidence which, together with information already provided to OFA, "reveals several clusters of Nipmuc families interacting for substantial lengths of time, between and across band lines." Request at 73. Appendix B to the Request, however, contains present-day affidavits, which relate to the post-1900 period and mostly post-1944, and include direct personal recollections from even later periods. Although Petitioner asserts that the "new evidence" in Appendix B is "detailed below" in its discussion, *id.*, nowhere in the section of Petitioner's request discussing this time period does Petitioner describe the evidence in the affidavits or explain how it is relevant to OFA's analysis of community for the period between 1780 - 1930.

A petitioner that offers "new evidence" to support reconsideration has the burden to demonstrate how the proffered evidence could affect the determination. *Golden Hill Paugussett Tribe I*, 32 IBIA at 223. While the affidavits themselves may be "new," in the sense that they were not before the Principal Deputy Assistant Secretary, Appellant has failed to explain how they are relevant to this time period. Appellant does not even identify the specific affidavits or information contained therein upon which it purportedly relies.

We conclude that Petitioner has failed to demonstrate that the affidavits contained in Appendix B constitute new evidence that could affect the determination that Petitioner failed to satisfy criterion (b) for the time period between 1780 and 1930, and therefore we reject this as a ground for reconsideration.

B. Community from 1930 to the Present

1. OFA's Analysis of Community from 1930 to the Present

Petitioner contends that OFA's analysis of the evidence of community for the period between 1930 to the present was "incomplete," "grossly inadequate," "misrepresented the evidence," and failed to follow OFA's own precedent. Request at 92, 95, 96. Petitioner argues that OFA failed to review all of the evidence submitted by Petitioner, improperly lumped spans of time together, and failed to adequately evaluate documents submitted by Petitioner in its response to the proposed finding. *Id.* at 92-94. For example, Petitioner contends that the final determination failed to analyze 47 documents relevant to community

for the period of 1961 to 1980, and that OFA's failure to adequately and fairly address all of the evidence submitted by Petitioner is true for all of the decades between 1930 and 2002. *Id.* at 101-02.

As noted above, at 247, an alleged ground for reconsideration that disagrees with OFA's analysis or interpretation or weighing of the evidence, but does not challenge the evidence itself, is not an allegation that falls within the Board's jurisdiction under subsection 83.11(d)(2), notwithstanding a requester's use of selective language from that subsection to frame the allegation. We conclude that the substance of this allegation falls outside of our jurisdiction and refer it to the Secretary as follows:

Should reconsideration be granted based on the allegation that OFA's analysis of the evidence of community for the period between 1930 to the present was "incomplete," "grossly inadequate," "misrepresented the evidence," and failed to follow OFA's own precedent?

2. Petitioner's Analysis of Core Residence Patterns Around Worcester

Petitioner submits as "new evidence" its "analysis of core residence patterns centered around Worcester . . . [which] follows [] established precedent" concerning geographic distribution and residency patterns. Request at 100-01.

Petitioner's "new" analysis of existing evidence is not "new evidence" within the meaning of subsection 83.11(d)(1). We need not decide whether Petitioner's analysis may properly be characterized as "evidence" — a doubtful proposition in this case — because Petitioner's analysis is not in substance "new." Petitioner acknowledges that its Response Report "also discussed and documented specific enclaves in Worcester for the decades between 1930 and the present." *Id.* at 100. A reformulation and refinement of an existing analysis does not, in our view, constitute "new" evidence under subsection 83.11(d)(1).

In addition, Petitioner has not demonstrated that its analysis could affect the determination. The final determination found that Petitioner had provided evidence of informal social contacts, but had failed to distinguish between incidental contacts and those of greater time depth and significance, and had failed to distinguish between contacts within a family line and contacts which demonstrate social contacts more broadly among the group. FD at 78. Petitioner's analysis of residence patterns and geographical proximity does not show actual contacts or interaction, but at most indicates that geographical proximity might have facilitated such contacts. Thus, this analysis, even if treated as "new evidence," does not show either new or additional actual contacts not previously reflected in

the record, nor does it provide new evidence of the social significance of either known or newly-revealed social contacts.

We conclude that Petitioner’s “new analysis” of residency patterns around Worcester does not constitute “new evidence” within the meaning of subsection 83.11(d)(1), and that even if it did, Petitioner has not satisfied its burden to demonstrate that it could affect the determination. Therefore, we reject this as a ground for reconsideration.

3. Scott Family

Petitioner also contends that new evidence contained in Appendix A to its Request documents continued ties between the Scott family and the Hassanamisco community. Request at 106. According to Petitioner, the Scott family was omitted from Petitioner’s 2002 tribal roll through an administrative error. Petitioner does not explain, however, how this evidence could affect the determination, nor does it even identify the evidence in Appendix A upon which it seeks to rely to support this argument.²⁵

As explained previously, a party seeking reconsideration bears the burden of demonstrating how new evidence could affect the determination. To satisfy this burden, a party must do more than simply refer to purported “new evidence,” without explaining its significance in relation to a final determination.²⁶ Petitioner has done no more than refer to this evidence, without explanation, and therefore has failed to satisfy its burden to show that this evidence provides a basis for reconsideration.

4. Oral History Evidence

Petitioner argues that OFA’s interpretation of the oral history evidence “is unreliable and of little probative value because [OFA] did not adhere to precedents established by previous acknowledgment cases and did not use uniform standards of analysis within the Nipmuc Nation case, resulting in incomplete analyses.” Request at 106. According to Petitioner, a reasonable alternative interpretation of the evidence that would substantially

²⁵ It appears that Petitioner may be relying on items 38 and 42 in Appendix A, but if that is the case, it also appears that neither document would satisfy the threshold requirement of being “new evidence” because OFA identifies both documents as being in the record. OFA’s Transmittal of Documents, Exhibit 3 at 4-5.

²⁶ Because Petitioner refers to this evidence in the context of its arguments concerning criterion (b), we do not interpret it as suggesting that we review the omission of the Scott family from the tribal rolls, which is an issue over which we would lack jurisdiction.

affect the determination regarding criterion (b) would be for OFA to follow acknowledgment precedent and guidelines by giving greater credibility and weight to the oral history evidence. *Id.* at 109-10.

These allegations fall outside of our jurisdiction for the same reasons discussed earlier with respect to allegations that selectively invoke the language of subsection 83.11(d) but in substance allege errors of a character not subject to Board review. Challenging OFA's interpretation of the evidence as "unreliable," rather than the evidence itself, does not bring the allegation within the scope of subsection 83.11(d)(2). Petitioner does not identify any specific "unreliable" evidence upon which OFA relied. To the contrary, Petitioner argues that OFA should have relied more on the oral history evidence. Switching to the language of subsection 83.11(d)(4), Petitioner contends that a "reasonable alternative interpretation of the evidence" would be to give greater weight to certain evidence, or treat it as sufficient, but that does not articulate a qualitatively "alternative interpretation" of the evidence, leaving aside the issue of whether OFA necessarily will always have "previously considered" whether to give greater (or lesser) weight to the evidence that it considers.

We conclude that the substance of this allegation falls outside of our jurisdiction and refer it to the Secretary as follows:

Should reconsideration be granted based on the allegation that in determining whether criterion (b) had been satisfied, the final determination failed to follow guidelines and precedent regarding the credibility and weight of oral history evidence?

IV. Political Influence or Authority: Alleged Grounds for Reconsideration of the Finding that Criterion (c) Was Not Satisfied²⁷

A. Political Influence or Authority: 1785 to 1900

1. 1839 Petition

Petitioner contends that OFA's research or analysis was incomplete because it failed to treat a 1785 petition and an 1839 petition consistently. Both petitions were to officials of the Commonwealth of Massachusetts and both apparently dealt with funds derived from the sale of Hassanamisco lands. *See* PF at 63; FD at 23 & n.34. Had OFA treated the two

²⁷ *See supra*, note 13, for examples of relevant evidence for showing the existence of political influence or authority.

petitions consistently, according to Petitioner, OFA would have concluded that the 1839 petition submitted by John Hector²⁸ and signed by eight Hassanamisco Indians from three families was sufficient evidence that Petitioner satisfies criterion (c). Request at 112.²⁹

Subsection 83.11(d)(3) allows the Board to consider an allegation that a petitioner's or OFA's "research appears inadequate or incomplete in some material respect." That subsection does not, however, encompass allegations that OFA's *analysis* was inadequate or incomplete. To the extent that Petitioner is alleging that OFA's research was inadequate, we conclude that Petitioner has failed to satisfy its burden of proof. To the extent Petitioner challenges OFA's analysis of the evidence, we conclude that we lack jurisdiction over this allegation.

In order for a requester to establish by a preponderance of the evidence that OFA's research was inadequate or incomplete in some material respect, the requester "must show, at a minimum, that additional research would produce material information not previously considered by [OFA]." *In re Federal Acknowledgment of the Mobile-Washington County Band of Choctaw Indians of South Alabama*, 34 IBIA 63, 69 (1999). In the present case, Petitioner does not identify or suggest any research that would lead to additional evidence regarding the 1839 petition. Therefore, Petitioner has failed to demonstrate, under subsection 83.11(d)(3), that reconsideration is warranted.

Petitioner's primary complaint with respect to OFA's treatment of the 1839 petition is that OFA failed to adequately study Petitioner's response to the proposed finding against Federal acknowledgment: "Had [Petitioner's Response Report for Criterion 83.7(a) at 5-6] been examined, [OFA] would have determined that the 1839 petition indicated 'sufficient internal authority or influence'" to satisfy criterion (c) for the relevant time period. Request at 112. This allegation that OFA's *analysis* was inadequate or incomplete does not fall within the scope of subsection 83.11(d)(3), and therefore is outside of our jurisdiction. We refer it to the Secretary as follows:

²⁸ As noted above, at 240-41, John Hector and his half-brother Harry Arnold were members of one of the original proprietary families at Hassanamisco.

²⁹ The proposed finding concluded that the 1785 petition, which was submitted to the State of Massachusetts by Joseph Aaron, demonstrated that the Hassanamisco group satisfied criterion (c) for the 1780's. PF at 141.

Should reconsideration be granted based on the allegation that OFA's analysis of the 1839 petition was inadequate and failed to address the similarities between the 1785 petition, which was found to be sufficient to meet criterion (c), and the 1839 petition, which was not?

2. Evidence of John Hector's Leadership, 1837 to 1850

Petitioner contends that OFA failed to consider an alternative interpretation of the documented activities of John Hector as evidence of his leadership for the period between 1837 and 1850. Request at 113. Petitioner argues that petitions related to Hassanamisco lands or funds that were submitted by Hector in 1837, 1839, 1844, and 1850 were all submitted "on behalf of the Tribe" and that OFA failed to distinguish between the petitions that Hector submitted on behalf of himself or his family, and those that he submitted on behalf of the Tribe. *Id.* at 114. Petitioner also contends that the status of the Hassanamisco reservation lands adds strength to applying a "Doctrine of Continuous State Recognition" to this case, apparently to fill gaps in the evidentiary record. *Id.* at 116.

While Petitioner's interpretation may constitute an "alternative interpretation" of the evidence within the meaning of subsection 83.11(d)(4), we are not convinced that it was not previously considered. The final determination indicates that OFA clearly considered whether the petitions submitted by Hector reflected political influence or authority or a political process within a group. OFA also considered whether Hector's activities represented actions taken primarily in support of private interests, or whether they indicated the presence of political authority or leadership. The final determination disagrees with Petitioner's interpretation of Hector's activities, but Petitioner has not shown that its interpretation was not previously considered, as required by subsection 83.11(d)(4). Nor are we convinced that Hector's activities, even if interpreted as evidence of political influence or authority, "would substantially affect the determination," 25 C.F.R. § 83.11(d)(4), given the limited time frame for this evidence compared to the overall time period for which the final determination found the Petitioner had failed to satisfy criterion (c).

In addition, the final determination considered, but rejected the argument that the relationship between the Commonwealth of Massachusetts and the Hassanamisco Indians fell within the category of "continuous State recognition with a reservation." FD at 10-33. Petitioner disagrees with OFA's interpretation of the evidence and its conclusion, but it has not demonstrated that its "alternative interpretation" was "not previously considered" by OFA. In addition, in light of the Board's decisions in *Schaghticoke Tribal Nation*, 41 IBIA 30, and *Historical Eastern Pequot Tribe*, 41 IBIA 1, which concluded that "implicit" state recognition of a tribe based on the status of land title was not probative of criterion (c),

Petitioner has not demonstrated that applying a doctrine of continuous state recognition in this case would substantially affect the determination.

Petitioner has not met its burden to demonstrate that this allegation constitutes a ground for reconsideration.

3. Mid-1880's "Election Day"

In the proceedings before OFA, Petitioner contended that correspondence from the mid-1880's regarding an "election day" at Hassanamisco demonstrated that a political entity existed at the time. The final determination found that three of the letters relied upon by Petitioner were never in the record and were only quoted in the 1984 petition for Federal acknowledgment. FD at 94. Thus, the final determination concluded that "much of [Petitioner's] argument is speculative." *Id.* With respect to one letter that was submitted as evidence — a letter from Sarah Maria (Arnold) Cisco to her daughter, Delia Brown (Cisco) Green Holley Hazzard, dated June 13, 1886 — the final determination rejected Petitioner's argument that the letter constituted "evidence that during this time the Hassanamisco tribe not only held elections, but that the elections included individuals from more than one family line, in this case a line which descends from a Dudley Nipmuc family of Molly Pegan." *Id.* (quoting Petitioner's Response Report for Criterion 83.7(c) at 18-19).

As grounds for reconsideration of the final determination, Petitioner has submitted an undated letter written by Zara CiscoeBrough which refers to a May 21, 1885, letter which, in turn, is described as stating that there would be "no election" that year.

It is unclear whether this document actually constitutes "new evidence." *See* OFA Transmittal of Documents, Exhibit 3 at 6 (location in record "Unknown"). Even assuming it does, however, Petitioner has not shown how it could affect the determination. At most, it reduces speculation regarding the existence of a May 21, 1885, letter (which is not in the record and which Petitioner has not produced) and its apparent reference to "no election" that year. It does not provide evidence of the nature of any such elections or the membership of the group holding such elections. Thus, it does not cure one of the deficiencies that OFA found in the evidence — failure to demonstrate that elections included individuals from more than one family line. Finally, the evidence is relevant to a limited time period, the 1880's, and the final determination found that Petitioner failed to satisfy criterion (c) for the time period between 1785 and the present. Therefore, we conclude that Petitioner has not demonstrated that this limited evidence could affect the determination, and we reject it as a ground for reconsideration.

B. Political Influence or Authority: 1900 to 1988

1. Alleged Failure to Follow Guidelines and Precedent Regarding the Credibility and Sufficiency of Oral History Evidence

For the time period between 1900 and 1988, Petitioner first contends that OFA's "interpretation of the oral history evidence presented by [Petitioner] for Criterion (c) is unreliable and of little probative value primarily because it fails to follow the precedents applied in previous acknowledgment decisions." Request at 117. Petitioner also argues that "[r]easonable alternative interpretations of the evidence exist and should have been applied if the acknowledgment guidelines and the precedents had been evenly and fairly applied." *Id.* Petitioner submits an affidavit from James William Cisco to "confirm" Cisco's oral recollections that were in the record but to which, Petitioner contends, OFA gave insufficient credibility. *Id.* at 117-18. Cisco's affidavit states that in the 1930's he witnessed Nipmuc tribal meetings that took place as a distinct part of the annual gatherings.³⁰

Once again, Petitioner presents a melange of allegations worded in such a way as to utilize language from both subsections 83.11(d)(2) and (d)(4), but which in substance does no more than express disagreement with the weight and sufficiency that OFA gave to certain oral history evidence presented in this case and to argue that OFA's treatment of such evidence is inconsistent with acknowledgment case precedent. *See also* Request at 121 ("The denial of the credibility of the oral interview evidence of the Nipmuc Nation is arbitrary, capricious, unreasonable, and unfair because neither rule nor precedent established the expectation that such evidence would not be found to be credible."). And once again, for reasons we have explained above, we conclude that the substance of this allegation lies outside of our jurisdictional purview. Therefore, we refer it to the Secretary as follows:

Should reconsideration be granted based on the allegation that the final determination gave insufficient weight or credibility to oral history evidence for evaluating whether Petitioner satisfied criterion (c) for the time period between 1900 and 1988, or based on the allegation that OFA improperly, and contrary to

³⁰ Although Cisco's affidavit is "new evidence" because it was not in the record when the final determination was issued, Petitioner acknowledges that it restates and "confirms" Cisco's statements that were in the record. Petitioner does not attempt to rely on subsection 83.11(d)(1) (new evidence that could affect the determination) in this section of its request.

acknowledgment case precedent, required corroborating documentary evidence in addition to the oral interview evidence that was presented by Petitioner?

2. New Evidence Regarding Sarah Cisco Sullivan's and Zara CiscoBrough's Land Claims Activities

Petitioner argues next that the final determination erred in concluding that Sullivan's land claims activities between 1907 and 1940 did not demonstrate the existence of political influence or authority. Petitioner contends that new evidence, inadequate OFA research, and reasonable alternative interpretations not previously considered "provide evidence" that OFA erred. Request at 122. In support of its claim, Petitioner first quotes from an article from 1938, which was in the record and which refers to a land claim filed by Sullivan "for descendants of the Hassanamisco tribe," and then, "[i]n further support of the foregoing, . . . refers to the Affidavits of James Cisco, Walter Vickers, and Charles O. Hamilton." *Id.* at 123. Elsewhere in its request, Petitioner contends that in the 1940's, Schaghticoke leader Swimming Eel advised Sullivan about the Indian claims process and political matters, and that she acted on that advice. In support of this claim, Petitioner submits, apparently as new evidence, a letter from Swimming Eel to Sullivan from 1947. Request, Appendix A, No. 81. Finally, as evidence of political leadership, Petitioner submits as new evidence a circa 1980 letter from Zara CiscoBrough, which refers to "Nipmuck territory." Request, Appendix A, No. 98.

With respect to the three affidavits, Petitioner does not discuss the details of any of those affidavits regarding Sullivan's land claims activities, but based on our review, we conclude that even treating the affidavits as "new evidence," Petitioner has not demonstrated that this evidence could affect the determination. James Cisco states that he considered the land claims filed by his aunt, Sara Cisco Sullivan, and by her daughter CiscoBrough, to be on behalf of the Hassanamisco Tribe, and not simply on behalf of the Cisco family. Affidavit of Cisco, ¶ 14. Walter Vickers and Charles O. Hamilton (whose mother was a Vickers), state that the various land claims "were made on behalf of the Hassanamisco Tribe as a whole and not just for the Cisco family." Affidavit of Vickers, ¶ 15; Affidavit of Hamilton, ¶ 16.

Each of these affidavits is conclusory in nature and fails to identify the factual basis for the affiant's opinion. For example, none provides any detail of contemporaneous interaction between either Sullivan or CiscoBrough and the membership of a broader entity at the time the land claims were filed. Although OFA has found in some previous cases that efforts of leaders to pursue land claims, at least when combined with other evidence, constituted evidence of political influence or authority, it has not treated land

claims activities as necessarily reflecting the existence of political influence or authority. *Compare* Final Determination to Acknowledge the Cowlitz Indian Tribe, 65 Fed. Reg. 8436, 8437 (Feb. 18, 2000) (“Cowlitz leaders undertook activities in addition to claims which demonstrated a bilateral relationship between them and tribal members”), *with* Final Determination Against Federal Acknowledgment of the Duwamish Tribal Organization, 66 Fed. Reg. 49,966, 49,967 (Oct. 1, 2001) (evidence of claims activities was not considered sufficient evidence of criterion (c) because it concerned individuals rather than group actions).

We are not convinced that these affidavits could affect the determination regarding OFA’s interpretation of the land claims activities of Sullivan and CiscoeBrough, and therefore we reject them as a basis for reconsideration under subsection 83.11(d)(1).

The 1947 letter from Swimming Eel apparently was not in OFA’s record, but it appears that similar ones may be, *see* OFA Transmittal of Documents, Exhibit 3 at 9, and in any event this letter of advice from someone outside the group does not indicate internal political processes. Therefore, even if this letter constitutes new evidence, it does not add any new information to the record, could not affect the determination, and therefore does not constitute a basis for reconsideration under subsection 83.11(d)(1).

Finally, the references to “Nipmuck territory” in CiscoeBrough’s 1980 letter, and references in the same letter to “*true legal heirs* in each Band of Nipmuck and their *legal claims*” do not, standing alone, indicate the existence of any bilateral political relationship between CiscoeBrough and the membership of Petitioner. We reject this letter as a basis for reconsideration under subsection 83.11(d)(1).³¹

3. Evidence Regarding Sarah Cisco Sullivan and Zara CiscoeBrough Serving as Trustees of the Old and Indian Cemetery of Grafton

Petitioner also relies on the Cisco, Vickers, and Hamilton affidavits as “new evidence” to support its contention that activities by Sullivan and CiscoeBrough to protect the Indian cemetery in the Town of Grafton were evidence of political influence or authority. The final determination concluded that the fact that these two women were

³¹ Although Petitioner invokes the language of subsections 83.11(d)(3) (inadequate research) and (d)(4) (alternative interpretation) with respect to land claims activities, the substance of the allegations pertain to the “new evidence” as considered with existing evidence. Petitioner does not separately articulate claims under subsections 83.11(d)(3) or (d)(4).

elected by the townspeople of Grafton to the position of trustee of the Old and Indian Cemetery did not demonstrate political authority or influence under criterion (c). FD at 104-05. The final determination found that the trustee position “did not provide leadership for any Nipmuc group, nor were the electors members of any Nipmuc group.” *Id.* at 105.

All three affidavits state that “[a]s a tribal member,” each affiant considered the two women’s tenure as trustees of the cemetery “to be of service and importance to the Hassanamisco Tribe.” *See, e.g.*, Affidavit of Cisco, ¶ 15. These conclusory statements, standing alone and without any additional detail regarding the relationship between the trustee role and a broader tribal membership, are insufficient to satisfy Petitioner’s burden of proof to show that this new evidence could affect the determination. Therefore, we conclude that Petitioner has failed to demonstrate that these affidavits provide a basis for reconsideration of the final determination regarding the cemetery trustee roles of Sullivan and CiscoeBrough.

Petitioner also reintroduces and reargues the significance of certain documents, which were in OFA’s record, concerning the Indian cemetery trustees. Petitioner contends that OFA’s analysis was incomplete because it failed to consider the importance of the Indian cemetery and that a “reasonable alternative interpretation” is to view the service of the cemetery trustees “in the overall historical context of the importance of the Nipmuc burial ground as a significant tribal resource, both culturally and historically.” Request at 126.³² OFA did, however, consider the potential significance of the cemetery and the evidence offered by Petitioner, *compare* FD at 100, 104-05, *with* Request at 125, but disagreed with Petitioner that the trustee positions demonstrated political authority or influence. FD at 105. The final determination concluded that the trustee “position did not provide leadership for any Nipmuc group, nor were the electors members of any Nipmuc group.” *Id.*³³ We conclude that to the extent Petitioner’s interpretation could be construed as an “alternative” interpretation of the evidence, Petitioner has failed to demonstrate that it

³² Petitioner also argues in passing that OFA’s research was incomplete, but does not suggest any additional research that would produce material information, and its argument is directed primarily at OFA’s analysis rather than its research. Request at 126. Therefore, to the extent that Petitioner seeks to invoke our review under subsection 83.11(d)(3), we conclude that it has failed to satisfy its burden of proof. *See Cowlitz Indian Tribe*, 36 IBIA at 145 (“incomplete research” argument was directed primarily to BIA’s analysis rather than its research); *Mobile-Washington County Band of Choctaw Indians of South Alabama*, 34 IBIA at 69 (requester must show that additional research would produce material information).

³³ The final determination also noted that as far as the records indicated, the cemetery was used only by descendants of the Hassanamisco proprietary families, and not by a wider “Nipmuc” entity. *Id.* at 101 n.107.

was “not previously considered,” nor do we think Petitioner has shown that this interpretation, even if accepted, would substantially affect the determination that Petitioner failed to satisfy criterion (c). Therefore, we reject this argument as a ground for reconsideration.

4. New Evidence Regarding Gatherings at Hassanamisco Reservation

Petitioner contends that “the most significant piece of new evidence” for criterion (c) is a “recently discovered sign-in register kept at the Hassanamisco Reservation [which] recorded both tribal members and visitors from other tribes who maintained contact with the political core of the Nipmuc Tribe between the years of 1944 and 1956.” Request at 128; *see* Request, Appendix A, No. 53.³⁴ Petitioner gives examples of Nipmuc people from different families who signed the register, and asserts that “[i]f all of these Nipmuc people are documented to have attended the same pow wow, it can then be reasonably inferred that they would have interacted at that . . . pow wow.” Request at 128-29.

These sign-in sheets were not in the record for the final determination, and therefore they constitute “new evidence” under subsection 83.11(d)(1). We are not convinced, however, that Petitioner has demonstrated that these sign-in sheets could affect the determination that Petitioner does not satisfy criterion (c). The final determination considered a variety of evidence regarding annual Indian fairs and other gatherings at Hassanamisco, and the attendees at those events, but concluded that the events took place in the context of pan-Indian organizations and activities that were open to the public and were not limited to a Hassanamisco tribal entity. The sign-in sheets do not contradict that interpretation of the evidence. For example, they do not provide evidence of actual interaction among individuals from different family lines, nor do they describe the character of any such interaction.

Similarly, Petitioner submits new evidence, consisting of a “profile sheet” prepared in 1974 for the Hassanamisco Reservation, which refers to a “homecoming and dedications” and “weekend Indian Fair and Pow-Wow” for the July 4 weekend. *See* Request at 131; Request, Appendix A, No. 89. Nothing in this new evidence provides any description of who attended or of the nature of interaction among the attendees, and simply confirming the existence of these events is insufficient to demonstrate that this evidence could affect the determination concerning the existence of political influence or authority.

³⁴ Petitioner also contends that this evidence also provides documentation for criterion (b) — social interaction — but does not separately discuss its relevance with respect to that criterion, and therefore we do not separately consider it with respect to criterion (b).

We conclude that Petitioner has not demonstrated that this new evidence could affect the determination that it failed to satisfy criterion (c).

5. New Evidence Regarding Organizational Issues and Disputes

Petitioner submits as new evidence a circa 1970 letter to CiscoeBrough from her cousin Martha Bell, stating that Bell “knew Peter Silva Sr. wasn’t a real Chief of the Hassanamisco Reservation.” Request at 130; *see* Request, Appendix A, No. 84. Petitioner characterizes this letter as documenting “political strife that began to affect the tribe in the 1970’s,” Request at 130, but the letter itself provides no evidence that this apparent dispute between individuals reflected broader political processes within a larger group.³⁵

We conclude that Petitioner has not demonstrated that this new evidence could affect the determination that it failed to satisfy criterion (c).

6. New Evidence Regarding Assistance Programs

Petitioner also submits as new evidence a document which indicates that a community services and parks and recreation program managed by CiscoeBrough in the 1970’s was called “Nipmuc Centre.” Request at 130; *see* Request, Appendix A, No. 85. Petitioner asserts that the fact that the program was called the Nipmuc Centre “provides further proof for Petitioner’s claim that this program was geared toward assisting *Nipmuc* people and was tribally focused.” Request at 130. We fail to see how this document is probative of a bilateral political relationship within a group, or how a focus on assisting individuals of Nipmuc ancestry or Nipmuc identity necessarily reflects the existence of *political* entity. Therefore, we conclude that Petitioner has not demonstrated that this new evidence could affect the determination that it failed to satisfy criterion (c).

7. New Evidence Regarding Use of “Hassanamisco” and “Nipmuc”

Petitioner contends that “[o]ther new evidence dated to the 1970’s also clearly identif[ies] Hassanamisco as ‘Nipmuc’ and provide[s] demonstrable proof that Hassanamisco and Nipmuc were consistently used interchangeably in representation of the

³⁵ Petitioner also cites, as new evidence regarding the Silvas, correspondence dated November 5, 1992, from Thomas Doughton to Chief Natachaman (Walter Vickers). Request at 132; *see* Request, Appendix A, No. 106. The referenced letter does not add any qualitatively new or different information.

Tribe by its leadership.” Request at 130. Again, we fail to see how this evidence demonstrates the existence of a bilateral political relationship between leaders and followers. Petitioner repeatedly refers to “evidence of leadership,” *see, e.g., id.* at 131, without providing either evidence or explanations of the relationship between individuals it identifies as leaders and the membership as a whole.

We conclude that Petitioner has not demonstrated that this new evidence could affect the determination that it failed to satisfy criterion (c).

8. New Evidence, Considered Collectively

In addition to our evaluation of Petitioner’s new evidence regarding criterion (c) in the context of the categories in which the various evidence falls, we have also considered Petitioner’s new evidence collectively to determine whether Petitioner has demonstrated that the new evidence, if considered as a whole, could affect the determination made by OFA under criterion (c). We conclude that Petitioner has not satisfied its burden to prove, by a preponderance of the evidence, that its new evidence could affect the determination. In addition to our conclusions, stated above, regarding the limited value of this evidence, we find that much of it is of a type already considered by OFA and is not qualitatively new, and therefore Petitioner has not demonstrated that it could affect the determination. Therefore, we reject Petitioner’s new evidence regarding criterion (c) for the time period between 1900 and 1988 as grounds for reconsideration.

C. Political Influence or Authority: 1988 to the Present

1. OFA’s Interpretation of the Evidence is Unreliable Because its Research was Inadequate

Petitioner contends that for this time period, OFA’s “interpretation of the evidence presented by [Petitioner] for Criterion (c) is unreliable because its research on the activities of the Petitioner was incomplete.” Request at 132. As we have already held, a challenge to OFA’s analysis as “unreliable” does not state an alleged ground for reconsideration under subsection 83.11(d)(2), over which we would have jurisdiction. Nor does Petitioner actually appear to be challenging OFA’s research, notwithstanding its use of language from subsection 83.11(d)(3). Instead, Petitioner contends that OFA ignored or dismissed without discussion certain evidence offered by Petitioner for this time period.

We conclude that we lack jurisdiction to review this allegation, and therefore refer it to the Secretary as follows:

Should reconsideration be granted based on the allegation that the final determination failed to adequately consider evidence presented by Petitioner concerning the existence of political influence or authority for the time period from 1988 to the present?

2. Membership Involvement in Dissolution of Hassanamisco Council in 1996

In reviewing the evidence for the time period between 1978 to 1996, the final determination found that there was little data to show a connection between the Hassanamisco Council and the remainder of the Hassanamisco or Nipmuc Nation membership. FD at 153.³⁶ The final determination found that there was “only limited evidence that the issues dealt with by the Hassanamisco Council were of importance to the members.” *Id.* at 153. As additional evidence that the Hassanamisco Council did not exercise political influence in an existing community,” the final determination noted that there was “no evidence of membership comment or question concerning the 1996 dissolution of the Hassanamisco [C]ouncil in favor the larger NNTC [Nipmuc Nation Tribal Council]. *Id.*

Petitioner challenges this statement in the final determination and argues that OFA ignored an “obvious” alternative interpretation — that members saw their concerns being addressed by the NNTC and thus saw no reason to complain about the dissolution of the Hassanamisco Council. Request at 135.

We need not decide whether Petitioner has established that its interpretation was “not previously considered” by OFA because even if that were the case, we would find that Petitioner’s interpretation would not affect the determination. The negative inference drawn in the final determination from the lack of membership “comment or question” — not from a “lack of complaint,” as Petitioner says — was used as additional evidence that the Hassanamisco Council did not exercise political influence over an existing community. Thus, to the extent that the final determination relied on the absence of comment or question as evidence of a lack of political influence, it did so only in part. Thus, even accepting Petitioner’s interpretation, we conclude that Petitioner has failed to demonstrate that its interpretation would substantially affect the determination, as required by subsection 83.11(d)(4), that Petitioner failed to satisfy criterion (c) for this time period.

³⁶ The Hassanamisco Council apparently was an outgrowth of the Hassanamisco Foundation, which was begun in 1961 by Sarah Cisco Sullivan. *See id.* at 109.

V. Membership's Descent from a Historical Tribe or Tribes that Combined:
Alleged Grounds for Reconsideration of the Finding that Criterion (e)
Was Not Satisfied

Petitioner alleges four grounds for reconsideration challenging the final determination's conclusion that Petitioner failed to demonstrate that its 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. *See* 25 C.F.R. § 83.7(e). Each of these alleged grounds is raised in the context of Petitioner's introductory arguments that OFA's "decision to split the Nipmuc Nation into two separate entities" was wrong as a matter of law and fact, *see* Request at 13-29, and none is based on any of the four grounds for reconsideration over which the Board has jurisdiction. Therefore, we refer these alleged grounds for reconsideration to the Secretary as follows:

Should reconsideration be granted based on the allegation that OFA required that 85% of Petitioner's membership be descended from a single tribe, which was arbitrary and capricious, and that if Hassanamisco and Dudley/Webster were treated as a single tribe, the resulting 55% membership from a single tribe would satisfy criterion (e)?

Should reconsideration be granted based on the allegation that OFA improperly introduced a new requirement that the Hassanamisco and Dudley/Webster bands must have amalgamated in order to be considered a single tribal entity?

Should reconsideration be granted based on the allegation that OFA improperly required the Curliss/Vickers family line to show that their ancestors were living in tribal relations with the Hassanamisco or Dudley/Webster tribes, and that OFA improperly and without notice to Petitioner, changed its position in the final determination and found that the Curliss/Vickers family line had not demonstrated Nipmuc ancestry?

Should reconsideration be granted based on the allegation that OFA improperly rejected descendants of Connecticut Indian families?

VI. Alleged Procedural Errors and Irregularities

As noted earlier, Petitioner contends that "[t]he most fundamental mistake" in the final determination was OFA's treatment of the Hassanamisco families and the Dudley/Webster families as descended from distinct entities. Although much of this allegation may be subsumed in more specific allegations that we have already addressed, it

appears that Petitioner intends to raise this as a distinct ground for reconsideration, but one that is outside of our jurisdiction. Therefore, we refer it to the Secretary as follows:

Should reconsideration be granted based on the allegation that it was a fundamental mistake for OFA to decide that the Nipmuc Nation should be divided into two pieces and that the families and other groups genealogically descended from the Hassanamisco proprietary families and those descended from the Dudley/Webster reservation should be treated as two completely distinct entities?

Petitioner contends that issuance of the final determination was fraught with procedural irregularities, specifically, (i) the withdrawal and reversal of a January 2001 positive proposed finding;³⁷ (ii) failure to consider evidence submitted after the negative proposed finding and in response to a January 2002 Technical Assistance Meeting; (iii) abandonment of (positive) conclusions reached in the negative proposed finding with no new evidence and without affording Petitioner an opportunity to comment; and (iv) issuance of the final determination after several lengthy delays by a “subordinate BIA official, not appointed by the President with the advice and consent of the Senate, without legal authority to make the decision.” Request at 12. Petitioner also argues that the procedural irregularities “call into serious question whether [Petitioner] can get a fair consideration from OFA . . . on remand,” and therefore the Board should require or recommend that on remand a formal adjudication be conducted by an administrative law judge. Reply Brief at 35-36.

Petitioner does not identify any jurisdictional basis for the Board to review these alleged grounds for reconsideration, and we conclude that they do not fall within our jurisdiction under subsections 83.11(d)(1) through (d)(4). Under the regulations, if the Board affirms a final determination with respect to issues subject to its review, and additional alleged grounds for reconsideration fall outside of the Board’s jurisdiction, we must describe them and refer them to the Secretary. *See* 25 C.F.R. § 83.11(f)(1), (2).

³⁷ On January 19, 2001, the Acting Assistant Secretary approved a draft proposed finding in favor of acknowledging Petitioner as an Indian tribe, apparently contrary to the recommendation and advice of OFA and without review by the Department’s Office of the Solicitor. *See* Petitioner’s Appendix D; 66 Fed. Reg. at 49,968. Notice of the proposed finding was not sent to the *Federal Register* before the Acting Assistant Secretary left office, and the October 1, 2001, published notice of the proposed finding against Federal acknowledgment of Petitioner referred to the earlier document as a “preliminary factual finding.” 66 Fed. Reg. at 49,966.

Therefore, because we are affirming the final determination, we refer these alleged grounds for reconsideration, as described above, to the Secretary.³⁸

With respect to Petitioner's request that the Board appoint or recommend the appointment of an administrative law judge, we conclude that the request to the Board is moot because it presumes a decision by the Board vacating and remanding the matter to the Assistant Secretary, whereas we are affirming the final determination and referring the additional alleged grounds for reconsideration to the Secretary.

Conclusion

For the reasons stated above, and 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, we conclude that Petitioner has failed to demonstrate, by a preponderance of the evidence, that reconsideration of the final determination is warranted under 25 C.F.R. §§ 83.11(d)(1) through (d)(4), and therefore we affirm the final determination with respect to Petitioner's allegations over which we have jurisdiction. We have described and restated in an Appendix attached to this decision Petitioner's additional allegations that fall outside of our jurisdiction, and refer them to the Secretary, as provided by 25 C.F.R. § 83.11(f)(2), for consideration, as appropriate.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³⁸ We express no view on the sufficiency of these particular allegations in stating a ground for reconsideration that may reasonably be understood to warrant any consideration by the Secretary. As we have noted before, however, we understand the role of the Board under the regulations to describe additional alleged grounds, and not to screen or filter out such grounds, except in very limited circumstances. *See, e.g., Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians*, 45 IBIA at 295 (Board unable to describe an alleged ground for reconsideration that speculates without describing its relevance); *Historical Eastern Pequot Tribe*, 41 IBIA at 28 n.13 (Board declined to refer a complaint based on the Freedom of Information Act).

APPENDIX

Issues Referred to the Secretary of the Interior

Criterion (a)

1. Should reconsideration be granted based on the allegation that the final determination, without proper notice to Petitioner, departed from existing precedent and applied a new standard of evidence for meeting criterion (a) that is not set forth in the regulations or guidelines, which had not been applied prior to the proposed finding for the Golden Hill Paugussett Tribe in 2003, and which improperly required that external identification of Petitioner for criterion (a) must consist of something more than identification of the Hassanamisco entity that OFA found to have been identified? (45 IBIA at 247)

Criterion (b)

2. Should reconsideration be granted based on the allegations that the final determination ignored relevant evidence in the record, failed to follow acknowledgment case precedent, and failed to apply a “connector” analysis to the evidence in evaluating criterion (b)? (45 IBIA at 253)
3. Should reconsideration be granted based on the allegation that OFA’s analysis of the evidence of community for the period between 1930 to the present was “incomplete,” “grossly inadequate,” “misrepresented the evidence,” and failed to follow OFA’s own precedent? (45 IBIA at 257)
4. Should reconsideration be granted based on the allegation that in determining whether criterion (b) had been satisfied, the final determination failed to follow guidelines and precedent regarding the credibility and weight of oral history evidence? (45 IBIA at 259)

Criterion (c)

5. Should reconsideration be granted based on the allegation that OFA’s analysis of the 1839 petition was inadequate and failed to address the similarities between the 1785 petition, which was found to be sufficient to meet criterion (c), and the 1839 petition, which was not? (45 IBIA at 261)

6. Should reconsideration be granted based on the allegation that the final determination gave insufficient weight or credibility to oral history evidence for evaluating whether Petitioner satisfied criterion (c) for the time period between 1900 and 1988, or based on the allegation that OFA improperly, and contrary to acknowledgment case precedent, required corroborating documentary evidence in addition to the oral interview evidence that was presented by Petitioner? (45 IBIA at 263-64)
7. Should reconsideration be granted based on the allegation that the final determination failed to adequately consider evidence presented by Petitioner concerning the existence of political influence or authority for the time period from 1988 to the present? (45 IBIA at 270)

Criterion (e)

8. Should reconsideration be granted based on the allegation that OFA required that 85% of Petitioner's membership be descended from a single tribe, which was arbitrary and capricious, and that if Hassanamisco and Dudley/Webster were treated as a single tribe, the resulting 55% membership from a single tribe would satisfy criterion (e)? (45 IBIA at 271)
9. Should reconsideration be granted based on the allegation that OFA improperly introduced a new requirement that the Hassanamisco and Dudley/Webster bands must have amalgamated in order to be considered a single tribal entity? (45 IBIA at 271)
10. Should reconsideration be granted based on the allegation that OFA improperly required the Curliss/Vickers family line to show that their ancestors were living in tribal relations with the Hassanamisco or Dudley/Webster tribes, and that OFA improperly and without notice to Petitioner, changed its position in the final determination and found that the Curliss/Vickers family line had not demonstrated Nipmuc ancestry? (45 IBIA at 271)
11. Should reconsideration be granted based on the allegation that OFA improperly rejected descendants of Connecticut Indian families? (45 IBIA at 271)

Procedural

12. Should reconsideration be granted based on the allegation that it was a fundamental mistake for OFA to decide that the Nipmuc Nation should be divided into two pieces and that the families and other groups genealogically descended from the Hassanamisco proprietary families and those descended from the Dudley/Webster reservation should be treated as two completely distinct entities? (45 IBIA at 272)

- 13-16. Should reconsideration be granted based on the allegations that issuance of the issuance of the final determination was fraught with procedural irregularities, specifically (1) the withdrawal and reversal of a January 2001 positive proposed finding; (2) failure to consider evidence submitted after the negative proposed finding and in response to a January 2002 Technical Assistance Meeting; (3) abandonment of (positive) conclusions reached in the negative proposed finding with no new evidence and without affording Petitioner an opportunity to comment; and (4) issuance of the final determination after several lengthy delays by a “subordinate BIA official, not appointed by the President with the advice and consent of the Senate, without legal authority to make the decision? (45 IBIA at 272)