



INTERIOR BOARD OF INDIAN APPEALS

In re Federal Acknowledgment of Paucatuck Eastern Pequot Indians
of Connecticut

34 IBIA 210 (01/06/2000)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

IN RE FEDERAL ACKNOWLEDGMENT OF	:	Order Docketing and Dismissing
THE PAUCATUCK EASTERN PEQUOT	:	Appeal
INDIANS OF CONNECTICUT	:	
	:	
	:	Docket No. IBIA 00-35-A
	:	
	:	
	:	January 6, 2000

Appellant Paucatuck Eastern Pequot Indians of Connecticut seeks review under 25 C.F.R. § 2.8, "Appeal from inaction of official," of the failure of the Assistant Secretary - Indian Affairs to issue proposed findings on Appellant's petition for Federal acknowledgment as an Indian tribe. Appellant states that its petition was placed on active consideration on April 2, 1998, but that, despite the provisions of 25 C.F.R. § 83.10(h), no proposed findings have been published in the Federal Register, and no notice of extension has been received by Appellant. ^{1/} Appellant further states that it has followed the procedures required by 25 C.F.R. § 2.8(a), but that the Assistant Secretary has failed to respond. Therefore, Appellant states, it "seeks either a proposed finding on [Appellant's] petition for acknowledgment, or a date set for the issuance of a proposed finding not later than sixty (60) days from the date of [Appellant's] December 14, 1999, request [to the Assistant Secretary under sec. 2.8]". Notice of Appeal at 3.

25 C.F.R. § 2.8 is a part of the Bureau of Indian Affairs' general appeal regulations in 25 C.F.R. Part 2. 25 C.F.R. § 2.3(b) provides: "This part does not apply if any other regulation or Federal statute provides a different administrative appeal procedure applicable to a specific type of decision." Appeal procedures concerning decisions on acknowledgment petitions are set out in 25 C.F.R. § 83.11.

^{1/} 25 C.F.R. § 83.10(h) provides:

"Within one year after notifying the petitioner that active consideration of the documented petition has begun, the Assistant Secretary shall publish proposed findings in the Federal Register. The Assistant Secretary has the discretion to extend that period up to an additional 180 days. The petitioner and interested parties shall be notified of the time extension."

In In re Federal Acknowledgment of the Golden Hill Paugussett Tribe, 34 IBIA 18, recon. denied, 34 IBIA 55 (1999), the Board rejected a contention that appeals from acknowledgment-related decisions may be brought under 25 C.F.R. Part 2 in cases where the decisions are not the precise type of decision for which appeal procedures are provided in 25 C.F.R. § 83.11. The Board stated:

25 C.F.R. Part 83 deals comprehensively with Departmental proceedings concerning the acknowledgment of Indian tribes. 25 C.F.R. § 83.11 deals comprehensively with administrative appeals from decisions concerning the acknowledgment of Indian tribes. It is abundantly clear that all Departmental decisions concerning the acknowledgment of Indian tribes fall under 25 C.F.R. Part 83. Thus, insofar as acknowledgment matters are concerned, a "specific type of decision" under 25 C.F.R. § 2.3(b) means any decision concerning the acknowledgment of an Indian tribe.

34 IBIA at 55.

The same reasoning applies in this case, where Appellant seeks to invoke a provision in 25 C.F.R. Part 2 to compel the issuance of a decision under 25 C.F.R. Part 83. The Board finds that, under 25 C.F.R. § 2.3(b), none of the provisions of Part 2, including sec. 2.8, are applicable to procedures concerning the acknowledgment of Indian tribes.

The Board's authority in acknowledgment matters is limited. See, e.g., 25 C.F.R. § 83.11(d), (e); Golden Hill Paugussett Tribe, 34 IBIA at 18-19. The Board has no authority under 25 C.F.R. Part 83 or otherwise to compel the issuance of proposed findings under 25 C.F.R. § 83.10(h).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but is dismissed for lack of jurisdiction.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge