United States Department of the Interior

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

IN RE FEDERAL ACKNOWLEDGMENT OF THE CENTRAL BAND OF CHEROKEE	)	Order Dismissing Request for Reconsideration
	)	Docket No. IBIA 12-115
	)	July 24, 2012

Pamela Mother of Many Sexton (Sexton), identifying herself with the title "Chief," filed a request with the Board of Indian Appeals (Board), in the name of the Central Band of Cherokee (Petitioner), for reconsideration of the Final Determination Against Federal Acknowledgment of the Central Band of Cherokee, Petitioner #227 (Final Determination), by the Assistant Secretary – Indian Affairs (Assistant Secretary).[1] The Assistant Secretary concluded that Petitioner did not demonstrate that it satisfies 25 C.F.R. § 83.7(e) (membership descends from historical Indian tribe), which is one of seven mandatory criteria that must be satisfied for a petitioning group to be acknowledged as an Indian tribe within the meaning of Federal law.[2]

Sexton filed the request for reconsideration with the Board pursuant to 25 C.F.R. § 83.11, which provides the Board with limited jurisdiction to review final acknowledgment determinations made by the Assistant Secretary. We dismiss the request for reconsideration because it does not allege any grounds for reconsideration over which the Board has jurisdiction. And although that deficiency is dispositive, it also appears that Sexton has no standing or authority to request reconsideration on behalf of Petitioner, because Petitioner's Council/Board of Directors, including the individual whom the Assistant Secretary recognized as Petitioner's representative or contact person, contends that she has no such standing or authority and disassociates itself entirely from Sexton's request.

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[1] The Assistant Secretary signed the Final Determination on March 23, 2012, and notice of the determination was published in the Federal Register on March 30, 2012. 77 Fed. Reg. 19,315.

[2] Failure to meet any one of the seven mandatory criteria in § 83.7 is dispositive, and because the Assistant Secretary's proposed finding against acknowledgment concluded that Petitioner did not meet § 83.7(e), the Assistant Secretary found it unnecessary to make conclusions for the other six criteria. *See* Final Determination (FD) at 3.

Background

Relevant to the Final Determination, a petitioning group that seeks to be acknowledged by the Department of the Interior as an Indian tribe must demonstrate that "[t]he 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." 25 C.F.R. § 83.7(e). As summarized in the Final Determination, Petitioner contends that its members "descend from either Cherokee Indians who remained in Tennessee after 1806 when the historical Indian tribe ceded its lands by treaty, or from Indians who returned to 'their traditional lands' in the area of Lawrence County, Tennessee, after evading or escaping from the Cherokee removal in the late 1830s." FD at 2.

The Assistant Secretary found that there was no primary or reliable secondary evidence to validate Petitioner's contentions, and concluded that Petitioner was a recently formed group of individuals who claim to have Indian ancestry, but who have not documented those claims. *Id.* at 9, 15. The Assistant Secretary concluded that Petitioner did not meet criterion 83.7(e) because "[n]one of the group's 407 members have demonstrated descent from a historical Indian tribe or tribes that combined." *Id.* at 1.

Sexton's request for reconsideration alleges that "[t]he fiction of the [Assistant Secretary's Final Determination] has no grounds of fact, that has been tested by six independent souls, members of the Tennessee Commission of Indian Affairs finalized on June 19th, 2010, and is in violation of The Jim Crow Laws." Request at 1 (unnumbered).[3] Sexton contends that Petitioner proved with evidence and fact that it satisfies the regulatory requirements, and argues that the Final Determination violates the U.S. Constitution, Federal laws and Federal court rulings, and international laws.

Twelve individuals identifying themselves as the legal Council/Board of Directors of Petitioner (Council), including the individual whom the Assistant Secretary recognized as the representative or contact person for Petitioner during the proceedings before him,

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[3] Petitioner apparently submitted to the Office of Federal Acknowledgment (OFA) a "Certificate of Recognition," dated June 19, 2010, from the Tennessee Commission of Indian Affairs (TCIA). The Assistant Secretary found that Petitioner had not presented any copies of evidence that TCIA may have used to determine how Petitioner satisfied TCIA's requirements, and that the certificate did not provide evidence of criterion 83.7(e). FD at 5-6. It is unclear whether Petitioner's reference to "six independent souls" refers to TCIA or to something else.

responded to Sexton's request, asserting that Petitioner has not requested reconsideration nor authorized Sexton or any other individual to request reconsideration of the Final Determination. *See* Letter from Johnny L. Corbin, et al. to Board, June 24, 2012.[4] The Council contends that Sexton was a member of a previous council, but, to the current Council's knowledge, she is no longer an active member of Petitioner. *See id.* at 1-2.

Discussion

It appears that Sexton's request is suitable for dismissal for lack of standing. But because the request is also facially deficient, we need not solicit briefing on the issue of standing or rely on that ground for dismissal.[5]

Under the acknowledgment regulations, upon receiving a timely request for reconsideration of a final acknowledgment determination, the Board must determine whether it has jurisdiction to review any of the allegations contained in the request. *See* 25 C.F.R. § 83.11(c)(2). All allegations of error must be included and clearly articulated in the request, because the request also serves as the requester's opening brief. *See* 25 C.F.R. § 83.11(e)(5). The Board's jurisdiction is set out in the regulations as follows:

> The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:
> (1) That there is new evidence that could affect the determination; or
> (2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or
> (3) That petitioner's or the [Bureau of Indian Affairs'] research appears inadequate or incomplete in some material respect; or
> (4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would

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[4] The Final Determination and notice of the determination identify Mr. Johnny L. Corbin as Petitioner's representative or contact person for its acknowledgment petition. *See* 77 Fed. Reg. at 19,316.

[5] We construe Sexton's request as intended to be filed on behalf of Petitioner, but even if Sexton intended to file it on her own behalf, she would lack standing (even assuming, nothwithstanding the Council's assertion to the contrary, that she is even a member of Petitioner). *See In re Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians*, 41 IBIA 100, 100-01 (2005) (individual members of a petitioning group lack standing to request reconsideration).

substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7(a) through (g).

25 C.F.R. § 83.11(d).[6]

Sexton's request for reconsideration is, on its face, fatally flawed. None of Sexton's allegations fall within any of the above four grounds for reconsideration over which the Board has jurisdiction. Sexton does not offer any new evidence, does not allege that any evidence relied upon by the Assistant Secretary lacked probative value,[7] does not contend that the research on the petition was inadequate or incomplete, and makes no allegation that there are reasonable alternative interpretations, not previously considered, that would substantially affect the determination that Petitioner did not meet criterion 83.7(e). Therefore, we conclude that the request states no grounds for finding that the Board has jurisdiction.

The Board's lack of jurisdiction over allegations contained within a request for reconsideration may not end the matter. As a general rule, the Board must describe any allegations of error that fall outside the Board's jurisdiction, and refer them to the Secretary of the Interior (Secretary). *See* 25 C.F.R. § 83.11(f)(1)&(2). But when an allegation is not articulated with sufficient clarity or focus to permit the Board to describe it in any meaningful way in a referral to the Secretary, the Board will decline to refer the allegation. *See In re Schaghticoke Tribal Nation*, 41 IBIA at 41 n.10 (alleged ground for reconsideration was too vague and generalized to be described by the Board); *In re Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians*, 45 IBIA at 295 (Board declined to refer an alleged ground for reconsideration that was speculative and failed to articulate its relevance).

In the present case, the Board concludes that none of the allegations contained in Petitioner's request for reconsideration are articulated with sufficient clarity or focus to

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[6] Subsection 83.11(c)(2) of 25 C.F.R. provides that the Board shall determine whether it has jurisdiction over any of the allegations in a timely filed request for reconsideration within 120 days after notice of a final acknowledgment determination is published in the Federal Register. In this case, the notice was published on March 30, 2012. *See supra* note 1.

[7] Sexton's assertion that the Final Determination has "no grounds of fact" is an allegation that appears to challenge the sufficiency of the evidence for the Final Determination, but Sexton does not allege that a substantial portion of the evidence actually relied upon in the Final Determination was unreliable or of little probative value. The Board does not have jurisdiction to review allegations regarding the sufficiency of otherwise probative evidence. *See In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 IBIA 30, 36 (2005).

permit the Board to meaningfully describe those allegations in a referral to the Secretary. Therefore, we would not refer the allegations to the Secretary, even assuming that Sexton could demonstrate standing and otherwise overcome the Council's objection to her request.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, and 25 C.F.R. § 83.11, the Board dismisses the request for reconsideration.

I concur:

Steven K. Linscheid
Chief Administrative Judge

Debora G. Luther
Administrative Judge

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