



INTERIOR BOARD OF INDIAN APPEALS

In Re Status of Gladys Rose Charles Whims, et al.

13 IBIA 94 (02/12/1985)



United States Department of the Interior

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

IN RE STATUS OF GLADYS ROSE CHARLES WHIMS,
THELMA CHARLES DICK, AUGUST CHARLES, AND JOSEPH CHARLES

IBIA 83-22-A

Decided February 12, 1985

Reopening of Indian probate estates for the purpose of determining whether appellants are Indians for whom the United States may hold land in trust.

Recommended decision adopted.

1. Indian Probate: Reopening: Generally--Indians:
Citizenship/Nationality

When reopening of a closed Indian estate is sought for the sole purpose of determining the appellant's nationality or Indian status, and no alteration in the distribution of the decedent's estate is sought, reopening will be allowed under 43 CFR 4.206 without regard to the restrictions set forth in 43 CFR 4.242 and in previous decisions of the Board of Indian Appeals interpreting that regulation.

APPEARANCES: Harry L. Johnsen, Esq., Bellingham, Washington, for appellants; Vernon Peterson, Jr., Esq., Office of the Field Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Department of the Interior. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On March 22, 1983, the Board of Indian Appeals (Board) received a notice of appeal from Gladys Rose Charles Whims and Thelma Charles Dick (appellants). Appellants sought review of a February 2, 1983, order denying reopening entered by Administrative Law Judge Robert C. Snashall. Appellants, on behalf of themselves and their deceased brothers, August Charles and Joseph Charles, had sought reopening of two estates closed in the 1950's in an attempt to reverse a finding that they were Canadian Nationals and, therefore, not persons for whom the United States could hold land in Indian trust status.

[1] In an order dated June 20, 1983, the Board determined that nationality is a fundamental right and that a petition for reopening that seeks only to question a Departmental determination of nationality should be permitted under 43 CFR 4.206 and 4.320 without regard to the restrictions of 43 CFR 4.242 and its interpretations which apply to a petition for reopening

that seeks to alter the distribution of a decedent's estate. See also Estate of Joseph Dupoint, 13 IBIA 6 (1984); Estate of Edward (Agopetah) Bert, 12 IBIA 253, 91 I.D. 235 (1984).

On August 29, 1983, the Board received copies of the records of the Departmental proceedings concerning the estates of August Charles and Joseph Levi Charles, and of the Departmental determinations of the American Indian status of Gladys Rose Charles Whims and Thelma Charles Dick. These records show that all four individuals were found not to be persons for whom the United States could hold land in trust.

After reviewing the records and preliminary briefs, the Board found that material questions of fact remained unresolved. Therefore, on November 9, 1983, it referred the case to the Hearings Division of the Office of Hearings and Appeals for an evidentiary hearing and recommended decision. The case was assigned to Administrative Law Judge E. Kendall Clarke. Judge Clarke held a hearing on March 4, 1984, and issued a recommended decision on December 19, 1984.

The Board has reviewed the record created before Judge Clarke, the recommended decision, which is attached to this opinion and incorporated by reference, and the brief filed with the Board by the Office of the Solicitor on January 14, 1985. The Board adopts the recommended decision, 1/ but emphasizes that the determination that appellants are United States citizens applies to Gladys Rose Charles Whims and Thelma Charles Dick only. Because August Charles and Joseph Charles are deceased, the Department cannot determine whether either of them took any action during his lifetime that could constitute a renunciation of United States citizenship.

Therefore pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the December 19, 1984, recommended decision of Judge Clarke is adopted. The Bureau of Indian Affairs is instructed to assist Gladys Rose Charles Whims and Thelma Charles Dick in any way necessary to assure them of their rights as Indians for whom the United States may hold land in trust.

//original signed
Bernard V. Parrette
Chief Administrative Judge

We concur:

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative Judge

1/ We note that on page 2 of the recommended decision the Administrative Law Judge states that Mrs. Whims was never legally married although her marriage was recognized as a common-law marriage. We assume the Judge intended to say "ceremonially" rather than, "legally," since such marriages are legal in the jurisdictions that recognize them.



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
HEARINGS DIVISION
2020 HURLEY WAY, SUITE 170
SACRAMENTO, CALIFORNIA 95825

December 19, 1984

IN RE STATUS OF: : Docket No. IBIA 83-22-A
GLADYS ROSE CHARLES WHIMS, :
THELMA CHARLES DICK, :
AUGUST CHARLES, and :
JOSEPH CHARLES :

RECOMMENDED DECISION

On November 9, 1983 the Interior Board of Indian Appeals determined that the captioned appeal, seeking the reopening of certain Indian probate estates decided by the Department of the Interior in the early 1950's, should be permitted for the limited purpose of redetermining their nationality.

The Department previously found that the applicants were Canadian Nationals and so were not persons for whom the United States had a trust responsibility. The IBIA determined that it was not possible from the facts in the record to determine the factual issues concerning the nationality of these applicants and therefore required a hearing by an administrative law judge concerning that particular issue of fact; particularly as to their present status.

A hearing was held on March 14, 1984 in Bellingham, Washington where testimony was received from Gladys Rose Whims, her sister Thelma Dick, and an elder from the Lummi Indian Tribe who was acquainted with the family and knew their father, Gus Charles.

Gladys Whims testified that her mother was Adeline Mike from the Lummi Indian Reservation and her father was Gus Charles. She was born, she believed or was always told, January, 1932, but her birth certificate states she was born March 1, 1933 (Tr. 12). She had two older brothers, Ronald and August, Jr. Her sister Thelma Dick was two years younger and she had a brother Joey born in 1938 at which time her mother died in childbirth (Tr. 13).

Her father had told her that he lived in the Port Angeles, Washington area when he was a child. When he was 12 years old he

went to a residential school on Cooper Island, which is in Canada off the coast of Vancouver Island. The Lummi Indian Reservation is ten miles from Bellingham, in Washington State. Port Angeles is in Washington State on the Olympic Peninsula. His father, Henry Charles, was from an Indian tribe at Elwha, Washington. She did not know her father's mother as she had died in childbirth, but she was told she was from the Beecher Bay, Vancouver Island, British Columbia Indian Reservation. Her father was born in 1900.

After being at school in Cooper Island her father came to the Lummi Indian Reservation (Tr. 18). There he married Adeline Mike. Adeline's father was Lewis Mike and who died in 1942 or 1943. Her father spoke Lummi. After her mother died, her father married her step-mother and the children lived with the grandfather for ten months. After that the family moved to Beecher Bay and the children went to Cooper Island, the same school to which their father had gone (Tr. 20).

The father moved around a bit. He went to Portland, Oregon in 1943 or 1944 and then back to the Lummi Indian Reservation where he stayed six or eight months. At that point a tree fell on the house and killed their sister, the only child of her father and step-mother. The oldest brother died the same year. That was Ronald. Her father was so upset, and distraught with the memories of the tragedies that he burned the house down and they all moved to Canada in 1946.

Mrs. Whims said that at that time she and her sister were both discovered to have TB and were sent to an Indian hospital in Nanaimo, British Columbia for six and a half years. Then she went to Shaghnassy Hospital in Vancouver, British Columbia where they removed part of her lung. After that she was sent to Chilliwack in British Columbia, another sanitarium. She finally got out of the hospital in 1955 and went to Victoria where she married Mr. Whims. Actually they were never legally married, their marriage was recognized as a common-law marriage.

She is still a member of the Lummi Indian Tribe. She has never done anything to give up the right in the Lummi Tribe. She became enrolled in the Beecher Bay Band through her father's affiliation.

Her brother Joey died of meningitis in a Washington hospital in Tacoma.

In 1955, Mrs. Whims filled out a form for Canadian citizenship but it was rejected because of her poor health (Tr. 29).

