

(10) Reconsidered Final Determination Documents

- November 26, 1999



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

NOV 26 1999

Samuel M. Hill, Esq.
Sirote & Permutt
2222 Arlington Avenue South
Birmingham, AL 35205

Re: Request for Reconsideration of Determination Against Acknowledgment of the
Mobile - Washington County Band of Choctaw Indians ("MOWA") of South
Alabama

Dear Mr. Hill:

This letter is in further response to your Request for Reconsideration dated March 23, 1998, on behalf of the MOWA Band of Choctaw Indians, in which you sought review of a "Final Determination Against Acknowledgment" (Final Determination) of the MOWA as an Indian Tribe. The Assistant Secretary - Indian Affairs (Assistant Secretary) signed the Final Determination on December 17, 1997, and it was published in the Federal Register on December 24, 1997, 62 Fed. Reg. 67398. The Department's Board of Indian Appeals (Board) upheld the Final Determination by decision dated August 4, 1999. In re Federal Acknowledgment of the Mobile-Washington County Band of Choctaw Indians of South Alabama, 34 IBIA 63. In accordance with the Department's regulations governing Federal acknowledgment of Indian tribes, however, 25 CFR § 83.11, the Board referred one issue to the Secretary of the Interior for possible reconsideration by the Assistant Secretary. As explained below, the Secretary declines to order further reconsideration of this matter.

The Final Determination concluded that there was no evidence that established the Choctaw or other Indian ancestry of 99 percent of the MOWA membership. Rather, the evidence tended to disprove Indian ancestry. Thus, the MOWA failed to meet one of the mandatory criteria for Federal acknowledgment set out in the Department's regulations governing the acknowledgment of Indian tribes, 25 C.F.R. § 83.7(e), which requires a showing 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." The Final Determination was accompanied by a 50-page Technical Report dated December 16, 1997, prepared by the Branch of Acknowledgment and Research (BAR) of the Bureau of Indian Affairs

(BIA) which addressed and assessed the evidence on which the decision against Federal acknowledgment of the MOWA was based.

In its request for reconsideration to the Board, the MOWA argued that its own research had been inadequate or incomplete. The Board rejected this argument on the merits. It concluded that the MOWA had failed to show that any additional research would produce material information that the BIA had failed to consider. 34 IBLA at 69.

The Board referred to the Secretary the following additional allegation raised by the MOWA because it concluded that this contention was outside its jurisdiction.

BIA applied a standard of proof higher than the standard set in 25 C.F.R. §83.6 in that it required conclusive proof that Petitioner meets the criterion in 25 C.F.R. §83.7(e) rather than the lesser proof that would be needed to 'establish a reasonable likelihood of the validity of the facts relating to that criterion.' Petitioner contends that it was greatly prejudiced by BIA's application of an unauthorized 'conclusive proof' standard. (34 IBLA at 69) (footnote omitted)

The acknowledgment regulations allow parties to submit comments to the Secretary on issues referred by the Board, 25 C.F.R. § 83.11(f)(2), but the MOWA submitted no comments.

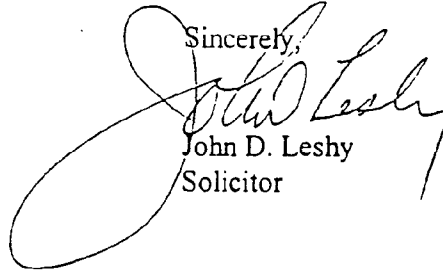
The issue referred by the Board involves a technical question of the amount of evidence a petitioning group must present to carry its burden of proof. The Final Determination makes clear that the evidence did not under any standard establish that the MOWA was descended from a historical Indian tribe. Further, the Board decision makes clear that the MOWA did not present any new evidence in its request for reconsideration to show that its members were descended from a historical Indian tribe. See, 34 IBLA 64, 69. Further review would not change the result reached in the Final Determination and in the Board decision against Federal acknowledgment.

Further, the MOWA was accorded an ample opportunity to be heard and to make its case for Federal Acknowledgment before the BAR, the Assistant Secretary and the Board. The MOWA submitted its petition for Federal Acknowledgment on April 28, 1988. It submitted additional information on November 8, 1991 in response to a notice from the BIA that the petition had "obvious deficiencies" in making a case for Federal acknowledgment. Following the Assistant Secretary's issuance of a proposed finding against acknowledgment on January 5, 1995, the MOWA submitted a response on July 1, 1996. The MOWA also submitted a petition for reconsideration to the Board following the Assistant Secretary's Final Determination against

Federal acknowledgment. The MOWA, therefore, has been accorded a full opportunity to be heard before the Department.

For the reasons set out above, the Secretary declines to refer to MOWA petition for Federal acknowledgment to the Assistant Secretary for further consideration. This letter will notify all the parties to this proceeding of the Secretary's action.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Leshy". The signature is stylized with a large, sweeping loop on the left side and a long, thin tail on the right side.

John D. Leshy
Solicitor

cc: Interested Parties
Assistant Secretary – Indian Affairs
Interior Board of Indian Appeals