
(6) Final Determination Documents

- June 13, 1988



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Tribal Government Services - AR

MEMORANDUM

To: Assistant Secretary - Indian Affairs

From: *[Signature]* Deputy to the Assistant Secretary - Indian Affairs
(Tribal Services)

Subject: Recommendation and summary of evidence for the final determination against Federal acknowledgment of the Machis Lower Alabama Creek Indian Tribe, Inc., pursuant to 25 CFR 83

RECOMMENDATION

We recommend that the Machis Lower Alabama Creek Indian Tribe, Inc., not be acknowledged as an Indian tribe with a government-to-government relationship with the United States and entitled to the same privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes.

A brief summary of the evidence for this final determination can be found in the attached Federal Register notice. More detailed information appears in the accompanying report of the evidence for the final determination.

We request that you sign the attached Federal Register notice and indicate your approval of the accompanying summary report which discusses the evidence for the final determination against Federal acknowledgment of the Machis Lower Alabama Creek Indian Tribe, Inc.

Attachments

cc: Surname;Chron;RF440;440B
Hold;BThompson;jrb;5-27-88;x3592 - mach-mfd/o

4310-02

JUN 13 1988

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

FINAL DETERMINATION AGAINST FEDERAL ACKNOWLEDGMENT OF THE MACHIS LOWER
ALABAMA CREEK INDIAN TRIBE, INC.

This notice is published in the exercise of authority delegated by the
Secretary of the Interior to the Assistant Secretary - Indian Affairs by
209 DM 8.

Pursuant to 25 CFR 83.9(h), notice is hereby given that the Assistant
Secretary declines to acknowledge that the

Machis Lower Alabama Creek Indian Tribe, Inc.

c/o Mrs. Pennie Wright

708 S. John Street

New Brockton, Alabama 36351

exists as an Indian tribe within the meaning of Federal law. This
notice is based on a determination, following a review of public
comments on the proposed findings, that the group does not meet four of
the mandatory criteria set forth in 25 CFR 83.7 and, therefore, does not

meet the requirements necessary for a government-to-government relationship with the United States.

Notice of the proposed findings to decline to acknowledge the Machis Lower Alabama Creek Indian Tribe was published on page 34319 of the Federal Register on September 10, 1987. The proposed findings were based on a determination that the petitioner met criteria d, f, and g, but did not meet criteria a, b, c, and e of Part 83.7 of the Acknowledgment regulations (25 CFR, Part 83). In accordance with 25 CFR 83.9(g), interested parties were given 120 days in which to submit factual or legal arguments and evidence to rebut or support the evidence relied upon in the findings. Pursuant to a request by the petitioner, the Assistant Secretary - Indian Affairs, by a letter dated December 17, 1987, extended the comment period an additional 90 days.

During the comment period, a rebuttal containing evidence and arguments challenging the proposed findings was submitted by the petitioner. One other comment was received during this period which agreed with the conclusions reached in the Genealogical Report of the proposed findings that certain ancestral families did not possess Indian ancestry, but did not include any new evidence.

The arguments and evidence submitted by the petitioner in response to the proposed findings did not specifically address the criteria or the conclusions made in the summary under the criteria or in the technical reports. Although the petitioner continues to claim that their ancestors came from the Creek town of Tamali, and, in the rebuttal, made

new claims of other ancestral Creek towns, no evidence was submitted to substantiate their claim. No discussion of any historic community or their contemporary community was included in the petitioner's rebuttal. The petitioner asserts that the Dawes Severalty Act of 1887 (24 Stat. 388) took away political authority over the members of the group. The Dawes Act was to provide for the allotment of tribal lands to individual tribal members on the various reservations. The law contained no specific provision affecting the powers of tribal authority. Since there is no other evidence that the petitioner was identified as an Indian entity prior to 1982, the Dawes Act did not apply to the group. The evidence that the petitioner submitted in its rebuttal pertaining to the group's ancestors did not identify the ancestors as Indian or members of any tribal entity.

The petitioner's response is critical of the fact that the Bureau contracted with Professor J. Anthony Paredes, an anthropologist at Florida State University, to conduct a preliminary ethnohistorical and ethnographic report on the petitioner. Dr. Paredes did not write the proposed findings. He was contracted to provide background information on the petitioner within the general context of the ethnohistory and ethnography of Creek Indians in Alabama. His report, which was based on both archival research and interviews with group members and others, presented his findings in an objective manner. Dr. Paredes did not conduct any detailed genealogical research. His report did not draw any conclusions regarding whether or not the petitioner met the mandatory criteria for acknowledgment. The recommendations contained in the proposed findings not to acknowledge the petitioner, and the factual

conclusions on which they are based, were written, solely and entirely, by the Acknowledgment research team which evaluated the petition for acknowledgment. The Acknowledgment research team utilized the Paredes report to a considerable extent, but also conducted its own research in order to expand, supplement, and/or refute information presented in both the petition and the Paredes report.

The petitioner's response does point out some minor errors in the technical reports. The errors have been noted in a report summarizing the Department's response to the evidence and arguments submitted to refute the proposed findings. This report is available to the petitioner and interested parties upon written request. Requests for copies of the report or the proposed findings should be addressed to the Assistant Secretary - Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242, Attention: Branch of Acknowledgment and Research, Mail Stop 1352-MIB.

In accordance with 83.9(j) of the acknowledgment regulations, an analysis was made to determine what, if any, options other than acknowledgment are available under which the Machis Lower Alabama Creek Indian Tribe, Inc., could obtain services and other benefits. No viable alternative could be found due to the group's unsubstantiated Indian ancestry and the group's lack of inherent social and political cohesion and continuity as an Indian entity. This conclusion is based on independent research conducted by the Acknowledgment staff and on factual arguments and evidence presented in the group's petition and in the rebuttal which challenged the proposed findings.

This determination is final and will become effective 60 days after publication unless the Secretary of the Interior requests the determination be reconsidered pursuant to 25 CFR 83.10(a-c).

/S/ W. P. Ragsdale

Acting Assistant Secretary - Indian Affairs

cc: Surname;RF440;Chron;400;101A
Sec. Surname;Sec.RF(2);AS/IA
850;440B;Holdup
BThompson;jrb;x3592:5-31-88 -- machis-frf/y

RECOMMENDATION FOR FINAL DETERMINATION THAT THE MACHIS LOWER ALABAMA CREEK INDIAN TRIBE, INC., DOES NOT EXIST AS AN INDIAN TRIBE PURSUANT TO 25 CFR 83

I. RECOMMENDATION

The Branch of Acknowledgment and Research recommends that a final determination be made that the Machis Lower Alabama Creek Indian Tribe, Inc., does not exist as an Indian tribe within the meaning of Federal law. It further recommends that a letter of such determination be forwarded to the petitioner, and that a notice of final determination that the petitioner does not exist as an Indian tribe within the meaning of Federal law be published in the Federal Register.

II. INTRODUCTION

On September 10, 1987, the Assistant Secretary - Indian Affairs published in the Federal Register the proposed findings to decline to acknowledge that the Machis Lower Alabama Creek Indian Tribe, Inc., exists as an Indian tribe within the meaning of Federal law. This finding was based on a determination that the petitioning group did not meet four of the seven mandatory criteria set forth in 25 CFR 83.7 (specifically, criterion a, b, c and e). Upon publication of this preliminary determination in accordance with 25 CFR 83.9(g), the petitioner and all other interested parties were provided a 120-day response period, or until January 8, 1988, to present factual or legal arguments and evidence to rebut or support the evidence relied upon in the proposed findings. Pursuant to a request by the petitioning group, the Assistant Secretary - Indian Affairs, by a letter dated December 17, 1987, extended the comment period an additional 90 days, or until April 7, 1988.

Comments were received from two parties during the comment period. A letter from Mrs. Faye P. Porter, dated December 25, 1987, agreed with the conclusions reached in the Genealogical Report of the proposed findings that certain ancestral families did not possess Indian ancestry. However, the letter did not present any new evidence. The petitioning group submitted a rebuttal postmarked April 7, 1988, within the timeframe of the comment period. The arguments and evidence submitted by the petitioner in response to the proposed findings did not specifically address the criteria or the conclusions made in the summary under the criteria or in the technical reports. The petitioner's response argued that the Acknowledgment staff did not do a thorough investigation of its petition and relied on a report prepared by an outside anthropologist under contract. The response also pointed out errors in the technical reports, and included documents pertaining to group ancestors.

The response was carefully considered, the new evidence submitted was evaluated, and data and conclusions reconsidered in light of the arguments. The rebuttal did not present evidence which would warrant changing the conclusion that the Machis Lower Alabama Creek Indian Tribe, Inc. (hereafter referred to as MLACIT), does not meet four of the criteria set out in 25 CFR 83 (specifically Section 83.7 (a, b, c, and e), and therefore, does not exist as an Indian tribe within the meaning of Federal law.

III. EVALUATION OF THE PETITION

The petitioner's response is critical of the fact that the Bureau contracted with Professor J. Anthon Paredes, an anthropologist at Florida State University, to conduct a preliminary ethnohistorical and ethnographic report on the MLACIT. It states that "We feel this is an injustice to us" (p. 20). The response quotes the Chief of the Branch of Acknowledgment and Research as telling the petitioner that by contracting this research the Branch was going to take a "short cut" on the MLACIT petition, and states further that "We did not ask for any short cuts" (p. 20). It is clear from these statements that the petitioner has misinterpreted both the remarks of the Branch Chief and the Bureau's purpose in working with an outside expert.

Dr. Paredes, who previously conducted research on behalf of the Poarch Band of Creeks, a petitioner acknowledged in 1985, is a recognized authority on Eastern Creek Indians. His study was contracted by the Bureau because it was felt that, as an established expert on Alabama Creeks, he could provide background information to supplement the limited data contained in the MLACIT petition in a more thorough manner and in less time than could the Acknowledgment staff. The so-called "short cut" was therefore an expedient to provide the Bureau with more detailed information on which to evaluate the petition, and not a means to abbreviate the process or in any way give the MLACIT a less thorough review.

The petitioner stated in its rebuttal that the Bureau hired Dr. Paredes "to do our research" and that "too many things were left out of the petition that was sent to the BIA" (p. 20). Dr. Paredes was not hired to conduct research on behalf of the petitioner, but rather to provide the Bureau with an objective background report. The Acknowledgment regulations make it clear that the burden of proof in the administrative process lies with the petitioner and not with the Bureau. It is, therefore, the petitioner's responsibility to provide the Bureau with as much information as possible relevant to the seven mandatory criteria set forth in the regulations. If this is not done prior to the publication of the proposed findings by the Bureau, the regulations provide that new information and/or arguments may be submitted during a 120-day response period. In the case of the MLACIT petition, this period was extended an additional 90 days by the Assistant Secretary, at the request of the petitioner, in order to allow the petitioner to gather and submit more data. Neither the initial petition, the Paredes report, the research conducted by the Acknowledgment staff, nor the petitioner's response to the proposed findings have provided sufficient evidence that the MLACIT meets criteria 87. 7(a), (b), (c), or (e).

IV. PAREDES REPORT

The petitioner's response indicates that there is a misunderstanding regarding the nature of the Paredes report. Dr. Paredes did not write the proposed findings. He was contracted to provide background information on the petitioner within the general context of the ethnohistory and ethnography of Creek Indians in Alabama. His report, which was based on both archival research and interviews with group members and others, presented his findings in an objective manner. It did not draw any conclusions regarding whether or not the petitioner met the mandatory criteria for acknowledgment.

The recommendations contained in the proposed findings not to acknowledge the MLACIT, and the factual conclusions on which they are based, were written, solely and entirely, by the Acknowledgment research team which evaluated the petition. The team utilized the Paredes report to a considerable extent, but also conducted its own research in order to expand, supplement, and/or refute information presented in both the MLACIT petition and the Paredes report. The Anthropologist and the Historian on the case both conducted field research in Alabama. The Genealogist also conducted extensive archival research in order to reconstruct the ancestry of the petitioning group. The specifications for Dr. Paredes contract did not include any detailed genealogical research. Consequently, his report had no influence on the Bureau's proposed findings that the petitioner did not meet criterion 83.7(e).

V. PETITIONER'S RESPONSE TO THE PROPOSED FINDING

The petitioner's response continues to claim that their ancestors came from the Creek town of Tamali. There are also new claims of other ancestral Creek towns such as Chicka Tolofa. Chicka Tolofa was considered a Lower Creek town in the latter 1700s, but, in 1820, it was reported to be a Seminole village of over 500 people. No evidence was included in the petitioner's response to substantiate its claim that any of these Lower Creek towns were the ancestral homes of the petitioner's ancestors. There is no discussion of any historic community or contemporary community that the group inhabits or lives in which is viewed as American Indian and distinct from other populations in the area.

The petitioner's response asserts that the MLACIT has not been continually identified as an Indian political entity because the Dawes Severalty Act of 1887 "took away the tribal control and gave it to the individual tribal members" (p. 17). The main thrust of the Dawes Act (24 Stat. 388) was to provide for the allotment of tribal lands to individual tribal members on the various reservations. While its implementation may have indirectly reduced the political influence or authority of tribal entities, the law contained no specific provisions affecting the powers of tribal governments. The petitioner never had a reservation and there is no record that its members ever applied under the act to have any public lands allotted to them anytime prior to 1934, when the Indian Reorganization Act voided the allotment policy. Since there is no other evidence that the petitioner was identified as an Indian entity prior to 1982, the Dawes Act did not apply to the MLACIT. It is interesting to note that Section 8 of the Act specifically exempted the only Creek entity then recognized by the Federal Government (the Creeks in what became Oklahoma) from all of the statute's provisions.

The petitioner's response does not address either criterion 83.7(e) or the Genealogical Report. Documents were submitted with the response regarding the ancestors of the petitioner's members. Two Covington County, Alabama, marriage licenses and returns submitted with the response prove that the two couples were married and does provide some circumstantial evidence regarding the brides' parents. The two records do not identify either the groom or bride as Indian. One of the two Dale County, Alabama, marriage licenses and returns submitted with the response had been submitted previously with the petition. A discussion of this marriage record can be found on page 13 of the Historical Report in the proposed findings. The other marriage record does not identify the couple as Indian. An affidavit from a Covington County funeral home does not provide any further information other than the dates

and places of death and burial for one of the group's ancestors. Copies of the Soundex to the 1880 Federal population census schedules for two ancestors only prove where the entries for the two ancestors can be found in the census. Copies of the entries in two county tract books for two ancestors do not provide any evidence that the ancestors were Indian or members of the Creek tribe.

The response (on p. 16) claims that one ancestor, Levin Wright, was forced to fight in the Seminole War, and, although there is no mention of him on "the White Man's Roll," he received a military bounty-land warrant. The actual military bounty-land warrant file was submitted with the response. Warrant #552050 was granted not to Levin Wright but to Hiram H. Swainey, under the Act of 1850, for his service as a private in Captain Gordon's Company, Alabama Volunteers, in the Florida War. Hiram H. Swainey assigned his warrant on 29 June 1852 to Levin A. Wright. Wright then was granted the 40 acres that was obtainable by the warrant assigned to him.

The conclusion made in the proposed findings was that the ancestors whom the petitioner claimed were Indians and members of the Creek tribe began settling in Alabama after 1820, the majority of the ancestors settling in Alabama after the 1832 Creek treaty. There was no evidence that any of the ancestors were identified as Indian or were members of any historical tribe. The response and documents submitted during the comment period did not provide any evidence to warrant changing this conclusion.

VI. ERRORS IN THE PROPOSED FINDINGS

The petitioner's response (on p. 18) documents an error that was made in the Historical Report on the MLACIT regarding the location of the Red Oak Baptist Church, where Josie Pearl McGlaun Blow or "Aunt Pearl," an important family leader, was an active member. The church is located in Covington County and not in Dale County as stated on page 13 of the Historical Report. The petitioner's response blames this mistake on Dr. Paredes, but his descriptions of Aunt Pearl's activities made no reference at all to the Red Oak Baptist Church (see Paredes 1985, 29-30). This information was based instead on Aunt Pearl's obituary in the March 4, 1943 edition of The Andalusia Star, which the Historian found in the Alabama State Archives. This factual error has no relevance to the mandatory criteria.

The Historical Report also states on page 13 that the "gatherings" of the McGlaun and Wright families, which included "covered dish" suppers and Sacred Harp singing, ceased after the death of Aunt Pearl. This information was based, in part, on the Paredes report, which stated (on pp. 29-30) that "Such gatherings were held until about the time 'Aunt Pearl Blow' died." The intent of the statement in the Historical Report was to indicate that the family gatherings ended in 1943. The Paredes report made it clear that the tradition of "shape note" singing from the Sacred Harp hymnal was continued among MLACIT members up to the present time, and this was corroborated by the Anthropologist during his field research. The petitioner's response claims that the "singing, gatherings did not cease" and points out that the Creeks in Oklahoma also have "Family reunions" (p. 18). Yet it does not provide any documentation of more recent MLACIT activities and fails to offer any evidence that either its family gatherings or its singing events represented the organized community activities of an Indian tribal entity and are therefore relevant to the mandatory criteria.

The Historical Report stated on page 14 that no evidence was found to indicate that MLACIT members "had contact or were in any way involved" with other Creek groups in Alabama "prior to the 1930s." The petitioner's response attempts to refute this statement by indicating (on p. 18) that its members attended powwows at Florala, Atmore, and Escambia, Alabama, but offers no dates for or documentation of these contacts. The Paredes report noted MLACIT contacts with Creek and other Indian descendant groups in Alabama, Florida, and Georgia, all of which were described as having taken place "in recent years" (p. 31).

The Historical Report also makes reference on page 14 to the fact that Deane Chapman and Debbie Hicks, two student researchers who traveled throughout Alabama in the late 1970's in search of remnant Indian groups, did not discover any reference to the MLACIT or its individual members. A similar statement is contained in the Paredes report (on p. 17). The petitioner's response has interpreted this to mean that Chapman and Hicks "did not discover any Indians in southeast Alabama" (p. 19). It then proceeds to enumerate three other Indian groups in the region. Chapman and Hicks did learn of other Creek and Cherokee groups and descendants within the area, which they described in their report. Their contacts are also summarized in the Paredes report (p. 17).

The Historical Report stated on page 13 that the marriage record of William Johns and Willie Mae Bryant, one of the two sources found which possibly indicated an Indian identity for MLACIT ancestors, had noticeably been changed under the listing for Race from a "W," presumably for White, to an "I," presumably for Indian. This fact was also noted on page 12 of the Paredes report. The petitioner's response claims that at least 12 other entries in the Dale County marriage record book were similarly altered, although it presents no evidence of this and does not indicate that the other alleged alterations involved the records of other MLACIT ancestors. It then asks for an explanation of why there have been so many alterations and why the other changes were not noted in the proposed findings. Neither Dr. Paredes nor the Acknowledgment research team would have had cause to look at the other entries in the marriage book if they did not pertain to ancestors of the group. The Acknowledgment staff declines to offer an explanation for the alterations, but must continue to conclude that the altered record of the Johns-Bryant marriage cannot be accepted as proof, in the absence of any other evidence, that these individuals were Indian or the descendants of Creek Indians.

In the Anthropological Report (p. 19), the reference to Fort Sims should be Fort Mims. The petitioner's response maintains that Dr. Paredes "could not locate any other Indians [in Alabama] other than the Poarch Creek Indians" (p. 20), and notes that it finds this ironic, since Dr. Paredes previously conducted petition research on behalf of the Poarch Band. This statement cannot be substantiated. Dr. Paredes has not denied the existence of other Indian groups and descendants in Alabama outside the Poarch Creek community, either in his report on the MLACIT, or in his numerous publications.

VII. OTHER OPTIONS

In accordance with Section 83.9(j) of the Acknowledgment regulations, an analysis was made to determine other options, if any, under which the Machis

Lower Alabama Creek Indian Tribe, Inc. could obtain services and other benefits. No viable alternatives could be found due to the group's unsubstantiated Indian ancestry and the group's lack of inherent social and political cohesion and continuity as an Indian entity. This conclusion is based on independent research conducted by the Acknowledgment staff and on the factual arguments and evidence presented in the MLACIT petition and response to the proposed findings. A detailed analysis of this research and the evidence relied upon will be found in the foregoing report and in the report which was prepared to support the proposed findings which were published in the Federal Register on September 10, 1987.