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JUN 23 1986

In the United States Claims Court

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

(FILED JUNE 19, 1986)

JESSIE SHORT, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	No. 102-63
)	
THE UNITED STATES,)	
)	
Defendant,)	
)	
and)	
)	
THE HOOPA VALLEY TRIBE OF INDIANS,)	
)	
Defendant-Intervenor.)	

O R D E R

The defendant's Motion for Summary Judgment with Respect to Remaining Plaintiffs, filed June 18, 1985, is denied.

In the motion, the defendant seeks to preclude some 1,046 plaintiffs in this case from qualifying as Indians of the Reservation by asserting:

- a) that these plaintiffs cannot qualify under Eligibility Standards A or C;
- b) that these plaintiffs cannot qualify under Eligibility Standard B;
- c) that these plaintiffs cannot qualify under Eligibility Standards D or E because their parents cannot qualify or are not plaintiffs in this suit; and

- d) that these plaintiffs cannot meet the defendant's proposed manifest injustice standards.

With respect to items b) and c), the court has already ruled on these issues in its orders of June 6, 1986 and June 13, 1986.

In certain instances, the facts alleged by plaintiffs differ from information in public records relied upon by the defendant. In support of its motion for summary judgment, the defendant evaluated the facts and "[w]here Plaintiff's information was inconsistent with the latter, [defendant] concluded that it was inaccurate." Defendant's Exhibit 6, page 7. In essence, the defendant asks the court to resolve factual disputes summarily. However, summary judgment is inappropriate where, as here, genuine material issues of fact are disputed. Weide v. United States, 4 Cl. Ct. 432 (1984). Moreover, facts that are disputed should be viewed in a light most favorable to the party opposing summary judgment. South Louisiana Grain Services, Inc. v. United States, 1 Cl. Ct. 281 (1982). Furthermore, the "rules of analysis typically employed by the Bureau of Indian Affairs" with regard to determining the facts, do not necessarily bind this court.

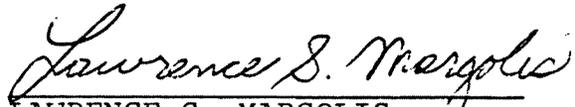
Finally, the defendant alleges that none of the 1,046 plaintiffs qualify under the following standards proposed by the defendant for qualifying plaintiffs under the manifest injustice exception:

1. Assignees of land on any part of the Reservation, living on October 1, 1949, and lineal descendants of assignees living on October 1, 1949.
2. Persons living on June 2, 1953, who have at least $\frac{1}{4}$ Reservation blood, as defined for the primary standards, who were listed on Reservation census rolls for 18 years prior thereto, and who were resident on the Reservation for 15 years prior to June 2, 1953.
3. Plaintiffs (1) who are children born to a qualified Schedule D or E plaintiff and (2) who, if born after October 1, 1949 and before August 9, 1963, possess $\frac{1}{4}$ Indian blood or, if born on or after August 9, 1963, are

of at least $\frac{1}{4}$ Indian blood, derived exclusively from the qualified parent or parents.

The court agrees that plaintiffs satisfying the defendant's proposed standards will qualify under the manifest injustice exception, if not qualified under Eligibility Standards A-E. But by indicating that those plaintiffs who meet the defendant's proposed standards will qualify, the court does not mean to suggest that plaintiffs who fail to meet the standards will not qualify. The court refuses to adopt the standards proposed by the defendant as the only circumstances for determining "manifest injustice." It was the court's desire to avoid the harsh inflexibility that standards can produce that gave birth to the manifest injustice exception. Qualification under the manifest injustice exception necessarily involves a case-by-case analysis.

For the foregoing reasons, the court denies the defendant's motion.


LAWRENCE S. MARGOLIS
Judge, U.S. Claims Court