

In the United States Claims Court

No. 102-63

(FILED JANUARY 25, 1989)

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PIRTLE, MORISSET
SCHLOSSER & AYER

JESSIE SHORT, ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES,)
)
 Defendant,)
)
 and)
)
 THE HOOPA VALLEY TRIBE OF INDIANS,)
)
 Defendant-Intervenor.)

O R D E R

QUALIFICATION OF PLAINTIFFS UNDER ELIGIBILITY
STANDARD B AND THE MANIFEST INJUSTICE EXCEPTION

The following plaintiffs filed a motion seeking to qualify as "Indians of the Reservation" under eligibility standard B and the manifest injustice exception. The defendant United States and the defendant-intervenor Hoopa Valley Tribe (Tribe) oppose the motion. The plaintiffs are listed below:

| <u>Plaintiff Number</u> | <u>Name</u> | <u>Standard</u> |
|-----------------------------|-------------------------|-----------------|
| 1190 | Earl Vernon Howard, Sr. | B, MI |
| 1198 | Richard Lynn Howard | MI |
| 1187 | Cheri Linette Howard | MI |
| 0174 | Dennis Wayne Barnes | MI |

DISCUSSION

Earl Vernon Howard, deceased, claims eligibility under standard B as a lineal descendant of his mother, Minnie Ruben Johnnie, whom he alleges is eligible under

that standard. The parties disagree on whether Minnie Ruben Johnnie was a resident of the Hoopa Valley Reservation on October 1, 1949, as required for eligibility under standard B. To establish Minnie Ruben Johnnie's residency, plaintiffs offer the 1988 declaration of Earl Vernon Howard's wife, Imogene Gifford Howard, stating that Minnie Ruben Johnnie spent half her time on the reservation during the applicable time frame. The Tribe, on the other hand, offers Imogene Gifford Howard's 1975 declaration, made on behalf of her husband Earl Vernon Howard, which states that Minnie Ruben Johnnie only resided on the reservation from 1914-18. In addition, the 1950 Roll of California Indians lists Minnie Ruben Johnnie's residence as Etna, California, which is not on the reservation. Because Minnie Ruben Johnnie's alleged residency on the reservation was not permanent at the time, and because of the disparity in the declarations, the court concludes that the plaintiffs have failed to establish that Minnie Ruben Johnnie was a resident on the reservation on October 1, 1949. Accordingly, Earl Vernon Howard's motion for entitlement under standard B is denied.

Earl Vernon Howard also claims entitlement under the manifest injustice exception. The court is not convinced that Earl Vernon Howard resided on the reservation for approximately 10 years or had significant personal or ancestral ties to reservation land, as required to qualify under the exception. Even if the court were to credit Imogene Gifford Howard's declaration that her husband resided on the reservation from 1914-18--four years is not sufficient. This court declines to substitute occasional visits to the reservation for the remaining years of residency. Moreover, the reliability of Imogene Gifford Howard's version of her husband's residency during this time must be viewed in light of the fact that she did not marry Earl Vernon Howard until 1941 and did not make her declaration until 1988. Earl Vernon Howard's manifest injustice claim, therefore, is denied.

The grandchildren of Earl Vernon Howard--Richard Lynn Howard, Cheri Linette Howard and Dennis Wayne Barnes--also claim eligibility under the manifest injustice exception. These three plaintiffs do not have the requisite degree of Indian blood or residence on the reservation. Their motion, therefore, is denied.

CONCLUSION

For the reasons stated above, the motion to qualify Earl Vernon Howard, Sr., Richard Lynn Howard, Cheri Linette Howard and Dennis Wayne Barnes is denied.

Lawrence S. Margolis

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