



(4337-15)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD / AAKC001030 / A0A501010.999900]

Proposed Finding Against Acknowledgment of the Georgia Tribe of Eastern Cherokee, Inc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Finding.

SUMMARY: The Department of the Interior (Department) gives notice that the Acting Assistant Secretary – Indian Affairs (AS-IA) proposes to determine that the petitioner known as the Georgia Tribe of Eastern Cherokee, Inc. is not an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner has not submitted sufficient evidence to satisfy all seven of the criteria set forth in the applicable regulations and, therefore, does not meet the requirements for a government-to-government relationship with the United States.

DATES: Comments on this proposed finding (PF) are due on or before [INSERT DATE 180 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and requests for a copy of the summary evaluation of the evidence should be addressed to the Office of the Assistant Secretary – Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, NW, Mail Stop 34B–SIB, Washington, DC 20240. Interested or informed parties who make submissions to the AS-IA must also provide copies of their comments to the petitioner at Georgia Tribe of Eastern Cherokee c/o Thomas Mote, P.O. Box 1411, Dahlonega, Georgia 30533.

FOR FURTHER INFORMATION CONTACT: Ms. Alycon T. Pierce, Acting Director, Office of Federal Acknowledgment, (202) 513-7650.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 83.10(h), the Department gives notice that the AS-IA proposes to determine that the Georgia Tribe of Eastern Cherokee (GTEC, Petitioner #41), c/o Thomas Mote, P.O. Box 1411, Dahlonega, Georgia 30533, is not an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy all seven criteria in Part 83 of Title 25 of the Code of Federal Regulations (25 CFR part 83), specifically criteria 83.7(a), 83.7(b), and 83.7(c). Therefore, it does not meet the requirements for a government-to-government relationship with the United States.

The Department publishes this notice in the exercise of authority that the Secretary of the Interior delegated to the AS-IA by 209 DM 8. The Principal Deputy AS-IA assumed these duties as acting AS-IA on January 1, 2016.

On December 3, 1978, Chairman Thomas B. Mote, and nine board members of the “Georgia Tribe of Cherokees, Inc.” signed resolution “No. 2-78” to apply for Federal acknowledgment. The Department received it on January 1, 1979, and designated GTEC as Petitioner #41. The petitioner submitted petition materials on February 5, 1980. The Department conducted an initial review of the petition on August 22, 1980, and issued a letter providing technical assistance (TA).

The petitioner claims to have evolved from the pre-Removal Cherokee Nation and to represent a specific Cherokee family that did not remove westward with the Tribe in the 19th century. The vast majority of the petitioner’s members identify descent from Rachel Martin, a Cherokee woman, her husband Daniel Davis, and primarily their three children who remained

near Dahlonega, Georgia, after the Cherokee Nation removed to Indian Territory in the 1830s. The petitioner also stated that the Cherokee who remained near Dahlonega “clustered around the Davis Plantation” and that the “Davis family played a central leadership role in the tribe.” The petitioner claims to connect historically to the Cherokee Nation in Oklahoma more than to the Eastern Band of Cherokee Indians in North Carolina. The GTEC’s petition narrative maintains that its ancestors were part of the Cherokee Nation into the early 20th century.

On August 10, 1998, Thomas B. Mote and other leaders of GTEC delivered the petitioner’s response to the Department’s 1980 letter and asked the Department to review the petition under the 1994 regulations. On January 19, 1999, the Department issued a TA review letter. The GTEC provided additional materials to the Department on February 14, 2002, September 11, 2006, and October 3, 2006, including a new membership list certified and dated September 1, 2006. On October 23, 2006, the Department placed GTEC (Petitioner #41) on the “Ready, Waiting for Active Consideration” list.

On May 31, 2013, the Department offered “ready” petitioners the option of suspending evaluation of their petitions as the Department was proposing to revise the acknowledgment regulations. On June 21, 2013, GTEC waived its option to suspend evaluation and elected “to proceed under the current standards and criteria.”

In July 2014, the Office of Federal Acknowledgment (OFA) notified GTEC that its sampling of birth or similar records submitted in 2013 was insufficient for analysis, gave GTEC an additional 180 days to submit the necessary documentation, and noted that the evaluation team was diverted to another petition and litigation. As a result, the AS-IA found good cause to suspend active consideration under § 83.10(g) for 180 days to January 27, 2015, and extend active consideration under § 83.10(h) for up to 180 additional days, or until July 27, 2015. The

OFA provided GTEC a list of members and ancestors lacking evidence demonstrating the child-to-parent link and a list of individuals with missing or incomplete addresses. Review of the GTEC petition was extended further until January 22, 2016, allowing the research team to make visits to the GTEC offices to review records and conduct interviews.

In response to a letter under § 83.7(b) of the current regulations, effective July 31, 2015, all members of GTEC's governing body requested evaluation of its petition under the 1994 regulations, declining the option to be evaluated under the current regulations. The projected January 22, 2016, date for issuing the proposed finding was subsequently extended to May 6, 2016. This evaluation is under the 1994 regulations as requested by the petitioner.

The evidence submitted by the GTEC petitioner and evidence Department staff obtained through its research does not meet three of the seven mandatory criteria for Federal acknowledgment: criteria 83.7(a), 83.7(b), and 83.7(c). The petitioner has submitted evidence sufficient to meet: criteria 83.7(d), 83.7(e), 83.7(f), and 83.7(g). In accordance with the regulations 25 CFR Part 83, the failure to provide evidence sufficient to meet all seven criteria requires a proposed finding that the petitioning group is not an Indian tribe within the meaning of Federal law. An explanation of the Department's evaluation of each criterion follows below.

Criterion (a) requires that external observers have identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. The records show the petitioner is a recently organized group almost entirely composed of descendants of the Davis family. There are no contemporary identifications of an Indian entity in Lumpkin County, although a few records identify individuals as Indian. Many of the documents submitted relate the Cherokee Nation's history leading up to and through the Removal Era in the 1830s and identify Cherokee individuals on various historical lists. There are few original, contemporary documents for 1900

to the present. This PF finds insufficient evidence of substantially continuous identifications of the GTEC petitioner from 1900 to the present. Therefore, the GTEC petitioner does not meet the requirements of criterion 83.7(a).

Criterion (b) requires that a predominant portion of the petitioning group comprise a distinct community from historical times to the present. The evidence demonstrates that petitioner's ancestors were active participants in Cherokee society before 1838. There is no evidence, however, that after the Cherokee Removal the petitioner's ancestors established a separate and distinct community of other Cherokee who did not remove, but remained in Georgia, and there is no evidence that they continued to participate in Cherokee society in Indian Territory. The Davises and their non-Indian neighbors lived together in a rural neighborhood, called Davis District, west of Dahlonega, Georgia. Only one of these families –“the Davises” – were Cherokee descendants and only their descendants are enrolled in GTEC. Therefore, the GTEC petitioner does not meet criterion 83.7(b).

Criterion (c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The petitioner's ancestors were from a politically influential Cherokee family and part of a political network that advanced interests within the Cherokee Nation when it was in Georgia. After the Removal, the petitioner's ancestors—the Davis family in Georgia—did not establish an autonomous political organization composed of Cherokee who remained in Georgia, nor did they continue to participate in Cherokee political activities in Indian Territory. The petitioner submitted evidence dating between the 1880s and 1925 about the neighborhood church and school, but these institutions were not Indian institutions. Rather, they served Davis descendants and non-Indians, and do not provide evidence of political influence or authority within the

petitioner. Although the petitioner named specific individuals as leaders between 1870 and 1950, it did not support these claims with documentation showing political processes within an Indian group. Between 1838 and 1976—138 years—the petitioner has not provided any evidence that the petitioner’s ancestors maintained formal or informal political relationships that advanced issues of interest to a distinct group of Cherokee descendants. From 1976 to the present, the petitioner submitted almost no evidence showing how the petitioner organized activities, dealt with conflict and threats to Indian descendants, or represented the interests of its members other than by seeking acknowledgment and protecting GTEC’s name in court. Therefore, the petitioner does not meet criterion 83.7(c).

Criterion (d) requires a copy of the group’s present governing document, including its membership criteria. The petitioner provided two versions of its 2002 constitution and bylaws, which describe how the group determines its membership and how it governs itself. The GTEC petitioner provided evidence that satisfies the requirements of criterion 83.7(d).

Criterion (e) requires that the petitioner’s membership consist 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 current membership list, dated August 10, 2013, which the governing body separately certified, has the required elements. The petitioner has demonstrated that about 90 percent of its members (413 of 458) descend from the historical Cherokee Nation as it existed before the 1838 Removal. Therefore, the GTEC petitioner satisfies the requirements of criterion 83.7(e).

Criterion (f) requires that the membership of the petitioner be composed principally of persons who are not members of any acknowledged North American Indian tribe. The OFA found no members of GTEC enrolled with the Eastern Band of Cherokee Indians, a federally

recognized Indian tribe. The OFA found that 13 members of GTEC are enrolled with the Cherokee Nation, a federally recognized Indian tribe. The membership of the GTEC petitioner is composed principally of persons who are not members of any North American Indian tribe. Thus, the GTEC petitioner satisfies the requirements of criterion 83.7(f).

Criterion (g) requires that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. No evidence has been found to indicate that the petitioner was subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.7(g).

Based on this preliminary factual determination, the Department proposes to decline to acknowledge the GTEC petitioner as an Indian tribe within the meaning of Federal law.

A report summarizing the evidence, reasoning, and analyses for the PF will be provided to the petitioner and interested parties. The PF is available to other parties upon written request as provided by 25 CFR 83.10(h) or available on the Department of the Interior's Web site at <http://www.doi.gov>. Requests for a copy of the summary evaluation of the evidence should be addressed to the Federal Government as instructed in the ADDRESSES section of this notice.

Publication of this notice of the PF in the Federal Register initiates a 180-day comment period during which the petitioner and interested and informed parties may submit arguments and evidence to support or rebut the evidence relied upon in the PF. Comments on the PF should be addressed to both the petitioner and the Federal Government as required by 25 CFR 83.10(i) and as instructed in the ADDRESSES section of this notice by the date listed in the DATES section of this notice.

The regulations, 25 CFR 83.10(k), provide the petitioner a minimum of 60 days to respond to any submissions on the PF received from interested and informed parties during the comment period. After the expiration of the comment and response periods described above, the Department will consult with the petitioner concerning establishment of a schedule for preparation of the FD. The AS-IA will publish the FD of the petitioner's status in the Federal Register as provided in 25 CFR 83.10(l), at a time that is consistent with that schedule.

Dated: May 6, 2016

Lawrence S. Roberts,
Acting Assistant Secretary – Indian Affairs.
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