

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
TRIBAL COURT

KYLE S. E. CUTLER,

Plaintiff,

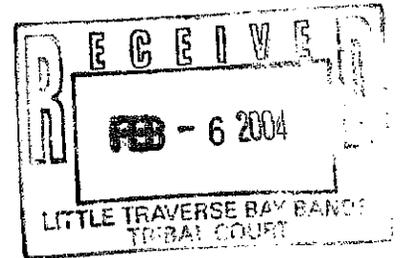
Case No. C-045-0903

v.

Enrollment Appeal Decision

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS ENROLLMENT OFFICE,

Defendant.



DECISION OF THE COURT

A. Issue Presented:

Whether the Tribe made **clear error** denying Plaintiff's application for membership?

B. Background:

Plaintiff applied to become a tribal member on June 02, 2003. She was denied for the reason that she did not meet the $\frac{1}{4}$ minimum blood quantum requirement. It is from that denial that she appeals.

C. Findings of Fact: The facts of this matter are not in dispute. They are as follows:

1. Plaintiff applied to become a member of this Tribe in June 2003.
2. Her application was denied for the reason that she did not meet the $\frac{1}{4}$ minimum Indian blood requirement.
3. On May 23, 1999 the Tribal Council enacted *WOS 1999005* which included the following provision:

All Persons listed on the Durant Roll who resided

within the reservation or areas of residency listed in Section V(B)(1) at the time the payrolls were written shall be considered full Little Traverse. Section III (4).

4. This provision of law was enacted notwithstanding an express requirement in the tribal constitution that the primary roll of the Tribe be the Durant Roll, **according to its field notes**. See WOTC § 1.104(A)(1) (emphasis added).
5. WOS 1999005 was the statutory provision that provided the opportunity for some who are actually less than $\frac{1}{4}$ Indian blood to become members of the Tribe.
6. Subsequent to the above-mentioned enrollment of some who are actually less than $\frac{1}{4}$ Indian blood, the Tribal Council repealed WOS 1999005 and enacted in its place WOS 2001-14.
7. WOS 2001-14 is intended to correct what was believed to be an earlier error.
8. The correction was made in a manner that did not jeopardize the membership rights of those who had enrolled *under* WOS 199905.
9. WOS 2001-14 states in pertinent part:

The Enrollment Statute of December 19, 1999, being Waganakising Odawak Statute 1999014, is amended by deleting Sections V(B)(3) and VI, and adding the following new Section V(C):

The blood quantum of persons whose names appear on the Durant roll will be determined by the notations contained on the roll and accompanying field notes. Provided, solely for purposes of their own Tribal enrollment, the blood quantum of Tribal members who enrolled in reliance of the statutory provision in place from May 23, 1999 [WOS 1999005, Section V(B)(4); WOS 1999014 Section V(B)(3)], and the blood quantum of persons who submit their enrollment applications by December 31, 2001, shall not be effected by this amendment. WOS 2001-14 (emphasis added).

10. WOS 199905 was in effect from May 23, 1999 to December 31, 2001. Thus, it was only in effect for slightly over a year and a half.
11. Plaintiff did not submit her enrollment application by the statutory deadline to take advantage of the full blood determination of WOS 1999005.
12. Plaintiff asks this Court to make an exception in the law for her because she did not know of the deadline.

D. Conclusions of Law:

1. The beginning points for legal analysis of this appeal are the legal requirements for membership and the standard of review applicable to the instant matter.
2. WOTC § 2.114(C) provides *“The sole purpose of the Appeals Process will be to determine if there has been a **clear error** ... based on the evidence and documentation provided by the applicant to the Enrollment Department. The Tribal Court shall only overrule the declination ... if the evidence cannot reasonably be construed to support the action of the Tribal Council.”* (Bold added for emphasis).
3. When Plaintiff applied for tribal membership one of the membership requirements in place was ¼ minimum Indian blood. Plaintiff’s application was considered under this standard. Thus, Plaintiff fails to meet the burden of establishing clear error.
4. The ¼ minimum Indian blood requirement has been the standard throughout time, with the brief exception noted in the *Findings of Fact* above.
5. This Court has found in the previous membership appeals just like this appeal that the Tribe did what it could to keep Tribal members notified of changing tribal membership requirements.
6. Changing membership requirements from time to time creates the unfortunate reality that some members of individual families might become enrolled members while other members of the same family do not. It hardly seems fair to those ultimately denied membership. For this very humane consideration, membership requirements should not be changing through time.

7. Plaintiff asks this Court to make an exception in the law as it applies to her application. This the Court cannot do because the Court itself is bound by the law.

WHEREFORE, FOR ALL OF THE FOREGOING, this Court denies Plaintiff's appeal and hereby dismisses this matter.

02/06/04
Date

Honorable Michael Petoskey
Chief Judge