

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 STANDARDS B, C AND THE MANIFEST INJUSTICE EXCEPTION

The following plaintiffs filed motions to qualify as "Indians of the Reservation" under standards B, C and the manifest injustice exception. The defendant United States and defendant-intervenor Hoopa Valley Tribe (Tribe) oppose these motions. The plaintiffs are listed below:

<u>Plaintiff Number</u>	<u>Name</u>	<u>Standard</u>
1675	Evan Lee McDonald	B, C, MI
0378	Frank Henry Caetano	MI
0380	Thomas James Caetano	MI
0377	Deborah Marie Caetano	MI

DISCUSSION

The only disputed issue concerning Evan Lee McDonald's entitlement to recover under standard C is his length of residence on the Hoopa Valley Reservation

prior to June 2, 1953. The Tribe maintains that Evan Lee McDonald has, at the most, 14 years of residence on the reservation during the specified time frame. Evan Lee McDonald stated that he resided on the reservation from his birth in 1909 until 1919 and then again from 1929 until 1933. Thereafter, Evan Lee McDonald periodically came onto the reservation for hunting and fishing purposes between 1934 and 1953. Absent any proof to the contrary, the court is satisfied that Evan Lee McDonald accumulated sufficient residency time between 1933 and 1953 to qualify for entitlement under standard C. There is no need, therefore, to consider his standard B or manifest injustice claims.

The remaining plaintiffs, Frank Henry Caetano, Thomas James Caetano, and Deborah Marie Caetano seek entitlement under the manifest injustice exception. In order to qualify under the manifest injustice exception, a plaintiff must have at least 1/4 Indian blood and residence on the reservation for approximately 10 years. All three Caetano plaintiffs, by their own admission, acknowledge that they do not possess the required Indian blood or residence on the reservation. They request, instead, that the court dilute the standards established for applying the manifest injustice exception. The court will not entertain this request. Plaintiffs Frank Henry Caetano, Thomas James Caetano, and Deborah Marie Caetano do not qualify as "Indians of the Reservation" under the manifest injustice exception. Their motion is denied.

CONCLUSION

For the above reasons, Evan Lee McDonald's motion for entitlement under standard C is granted. The motion of Frank Henry Caetano, Thomas James Caetano, and Deborah Marie Caetano for entitlement under the manifest injustice exception is denied.

Lawrence S. Margolis

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