



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

SURNAME:

By: *Flaming* 1/19/99

[Signature]

IN REPLY REFER TO:

Tribal Services - AR
MS 4603-MIB

JAN 19 1999

Mr. Thomas B. Mote
Mr. Walker Dan Davis
P.O. Box 607
75-A Enota Street
Dahlonega, Georgia 30533

Dear Mr. Mote and Mr. Davis:

The Bureau of Indian Affairs (BIA), Branch of Acknowledgment and Research (BAR) has completed a second technical assistance (TA) review under sections 83.10(b) and (c) of the acknowledgment regulations, 25 CFR Part 83, of the Georgia Tribe of Eastern Cherokee petition for Federal Government acknowledgment as an Indian tribe.

This TA letter is issued under section 83.10(c). It describes obvious deficiencies or significant omissions apparent in the documented petition submitted by the Georgia Tribe of Eastern Cherokee. Your group filed a letter of intent to petition on November 6, 1979. It submitted documentation on February 5, 1980. The BIA issued an obvious deficiency (OD) letter on August 22, 1980. Your response to the OD letter was received by the BIA on August 10, 1998. The Georgia Tribe of Eastern Cherokee council explicitly stated by a resolution dated August 7, 1998, that this response was the group's address to the OD letter, and requested that the BIA issue a second TA letter.

The Federal Government acknowledgment regulations provide this TA review to ensure that your case is not rejected because of technical problems you may have putting together your petition. The goal is to clarify your group's status based on the historical and genealogical merits of your case, not on your ability to deal with bureaucratic requirements. After reading this TA review, your group may withdraw your petition for further work or submit additional information and/or clarification.

I. General comments about your petition

- A. The Georgia Tribe of Eastern Cherokee's submission consists of one manila folder and one black, three-ring binder with a manuscript entitled "The Children of Te-cah-ne-ye-skee (Corn Tassel): A book of genealogy of descendants of the Cherokee who once resided on the Etowah River near Dahlonega, Georgia." In your response, you submitted an estimated total of 20 pages in the manila folder and 532 pages in the ring binder.

- B. The manila folder listed under A. contains a resolution dated August 7, 1998, signed by the Georgia Tribe of Eastern Cherokee Council, stating, "... we hereby include the updated Tribal Roll as of August 10, 1998." The BIA researcher's notes from the TA meeting indicate that you stated there were 480 persons on your membership list. However, in reviewing your submissions, we have not been able to identify a membership list. It was not included in the manila folder and does not constitute one of the items in the table of contents in the black ring binder.
- C. The OD letter dated August 22, 1980, identified the following points:
1. Need for an official certification of the petition by the group's governing body. Your response has addressed this concern.
 2. More description of the political structure and leadership of the group, especially for the period before Daniel Davis became a leader. You addressed adequately the supplementary query concerning information on the land holdings of Daniel Davis.
 3. A fuller description of the nature of the group as it exists today, including group events, informal gatherings of all or part of the group, copies of council minutes and attendance lists, etc.
 4. More detail and supporting evidence for statements in the petition which imply that the family's land and the associated church and schools were the focus of social relationships within the community.
 5. Updating and certification of your membership list.
- D. Our review indicates that there are still significant omissions in your petition in criteria 83.7(b), (c), and (e), with possible omissions under 83.7(d), (f), and (g). For this reason, we recommend that you review the acknowledgment criteria 25 CFR for criteria 83.7(b), (c), and (e) carefully and direct your additional research toward providing the evidence that will demonstrate that your group meets these criteria.
- E. The Federal Government distinguishes between Indian descendants and Indian tribes. Many Indian descendants have not maintained their tribal connections. Rather, they descend from an Indian individual who left or was separated from his or her tribe long ago. The modern family lines of these individuals would not meet the criteria for acknowledgment under 25 CFR 83, which only acknowledges Indian tribes which have continued to exist as social and political entities. To show that your members are not only descendants, but also are participants in a

continuously existing tribe, you need to show your group doing things together, such as making decisions, having arguments and resolving disputes, perhaps marrying one another or living in close proximity in a settlement identified by outsiders as Indian, following their leaders, maintaining property such as a cemetery or any number of other activities which show the tribal members acting together. Even though many of these activities are represented in your documentation, more contemporary examples are needed. Perhaps documentation for activities exists to show the group doing things together or copies of annual meeting notices. You might also rely on church records to support group and tribal activities in the community. These activities should go on continuously from the time of first sustained contact to the present.

- F. The acknowledgment regulations may not be used to acknowledge a group of Indian descendants when they rejoin together after several generations apart and want to set up or re-create an Indian tribe with sovereign rights. Once the sovereign entity's tribal activities have lapsed, the secretary does not have the authority to re-create a tribe in the modern day. This requirement of "continuous existence of the tribal entity" is the foundation of the acknowledgment regulations and the basis for acknowledgment policy.

II. Specific comments about criteria (a) through (g)

It is important that you review the Federal Government acknowledgment criteria 25 CFR 83.7 (a)-(g) carefully and direct your additional research toward providing the evidence that will demonstrate that your group meets each criterion. Below is a discussion of the specific criteria, in light of the points raised in the August 22, 1980, OD letter and your response to it submitted August 10, 1998.

A. **Criterion 83.7 (a): External Identification of the Group an American Indian Entity on a Substantially Continuous Basis since 1900**

This criterion requires proof of the external identification of your group as an American Indian entity since 1900. The criterion is intended to exclude from acknowledgment those entities which have only been identified as being Indian in recent times or those whose "Indian identity" is based solely on self-identification. The OD letter did not address any questions to you concerning criterion 83.7(a). Without an in-depth review of your 1980 petition, we will presume that the materials you have submitted are adequate for the Assistant Secretary - Indian Affairs (AS-IA) to make an evaluation of your group under criterion 83.7(a).

B. Criterion 83.7(b): A Predominant Portion of the Petitioning Group Comprises a Distinct Community and Has Existed as a Community from Historical Times Until the Present.

Criterion 83.7(b) requires you to show that the petitioning group has been a community from historical times until the present. The materials you have submitted are not adequate for the AS-IA to make an evaluation of your group under criterion 83.7(b).

1. The OD letter specifically requested a fuller explanation of the nature of the modern group. You did not provide any extensive material pertaining to this criterion in your response, except in so far as it may be in the specifically genealogical data.
2. The kinds of records which others have found especially useful in doing this task include: vital records that show your ancestors marrying one another, witnessing for each other, burying one another, and so forth; land records that show your ancestors living near to one another, buying and inheriting land from each other, migrating to new locations, and so forth; tribal records such as meeting minutes, newsletters, correspondence files, rolls and enrollment records, and any other records which would show the tribe acting together; newspaper articles and other publications which discuss the activities of the group; photographs or videos showing the members of the tribe doing things together; transcripts, videos or tape recordings of oral histories and reminiscences which discuss your group's activities; local, state or Federal records showing governments dealing with the tribe as a group. Carryover from (b) to (c) may apply.
3. This is particularly important because it has been 18 years since your group's original petition was submitted. In evaluating "modern community" within a petitioner, the BIA focuses on the last 20 years. Essentially, therefore, your petition now contains not only insufficient data on the more recent historical community of the mid-20th century, but none whatsoever on the modern period.

C. Criterion 83.7(c): The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

Criterion 83.7(c) requires a demonstration that a petitioning group does now and has in the past exercised political influence over its membership. This means that there were in the past, and are now, leaders who have followers whom they influence, and who influence them in significant ways. This does not mean that

there had to be a formal structure with a chief and council. Nevertheless, you must provide the BIA with information concerning who led the group, and how that leadership was exercised.

1. You have not submitted additional information on historic leaders of your group prior to Daniel Davis, as requested in the OD letter.
2. You have also not submitted information concerning leadership, and activities of your leaders, since 1980. There is one letter in BAR files from you, dated 1996, listing your council members at that time. There is limited data in your case's administrative file at BAR concerning conflicts with the other Georgia group utilizing the name Georgia Tribe of Eastern Cherokee. This is not sufficient to permit an evaluation of your group's modern political structure under 83.7(c).
3. In responding to this issue, you may present evidence that your group's leaders have been authorized to represent it to outsiders or mediate with outsiders in matters of significance. You need to document their activities and discuss other important leaders, including informal leaders and women leaders, who may have been important in your past or are important today. You should clearly identify each person by name and give the date and location of the activities discussed, and who other participants may have been.
4. Also, try to describe in detail how your group has responded to important issues in the immediate past. Be very specific in describing the issues involved and how the group managed the issue. Describe in detail how group events have been organized and carried out, particularly from World War II to the present.
5. Answers to questions such as the following would further our understanding of the political processes of your group. Did your group hold meetings, events, powwows, parties, classes, memorials, church revivals, etc.? What happened at these events? Who attended? Do you have any sign-in lists, minutes, documents or photographs to demonstrate that these get-togethers occurred and were tribal events rather than family reunions or social get-togethers? What kind of tribal business was discussed at meetings, if you had them? How did one become a leader? How were decisions made and what were the decisions? Did disagreements arise? How were conflicts resolved? Church records are often an excellent source for illustrating group and tribal activities in the community. Perhaps you could submit recent copies of annual meeting notices and minutes of general membership meetings and council meetings.

6. Be sure to give specific examples when describing how members emerged as leaders and then how they exercised their authority over the membership. For many petitioners political processes are most apparent during changes in leadership.
7. Answers to questions such as the following would further our understanding of the political processes of your group. "Who was the last sachem?" "How was the transition made to your leadership?" "Did anyone compete for the position?" "How did the membership line up behind the various candidates?"
8. It must be shown that there is a political connection between the membership and leaders which exist broadly among the members. It has sometimes been phrased that not only must there be leaders, but there must also be followers. This policy has withstood several District Court challenges. On occasion, a small body of people carries out legal actions or makes agreements affecting the economic interests of a group, and the membership may be significantly affected without the slightest awareness or consent of those affected and without significant political processes occurring. A group which operates in this way, generally does not demonstrate evidence which would meet criterion 83.7(c). Discussions concerning how your group makes important decisions on its various activities mentioned in the newspaper articles may illustrate important political processes. Most petitioners submit notes or minutes from meetings or newspaper articles and other communications among members as evidence for criteria 83.7(b) and 83.7(c).
9. It has been 18 years since your original petition was submitted. In those years, there will have been changes in leadership, political events will have occurred, and conflicts will have arisen and been, or possibly will not have been, resolved. You need to include an update of your group's political history in the modern period.

D. Criterion 83.7(d): Governing Document

This criterion illustrates the importance of tribal political status. The United States, in the Federal Government acknowledgment process, extends acknowledgment to political entities, not merely to the individuals, groups of unaffiliated individuals or families who have Indian heritage. The regulations, therefore, require that you submit your group's governing documents. This requirement is found at 25 CFR 83.7(d):

A copy of the group's present governing document including its membership criteria. In the absence of a

written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

1. We note that the title of your group's governing body has changed between 1980 and 1998 from "board of directors" to "council." Was this change accompanied by any other changes in your governing document? That is, have you revised or amended your constitution or bylaws? If so, you will need to submit a copy of the current version.
2. If there have been interim changes in your governing document between 1980 and the present, please submit copies of the interim versions as well.

E. Criterion 83.7(e): Current Membership List

This criterion is designed to show that the members of a petitioning group descend from a historical Indian tribe, or from historical Indian tribes which combined and functioned as a single autonomous entity. The regulations at 25 CFR § 83.7(e)(2) read as follows:

The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

1. We noted that your response included a certificate of a current membership list as of August 10, 1998, but did not include the list itself. Please submit a copy of the list.
2. If your group has compiled any other membership lists between 1980 and 1998, you also need to submit copies of these prior membership lists. This is particularly important in light of the controversy that has developed in recent years between your group and the group using the same name headed by Mr. William Dover. The BIA will need to be able to determine membership at various stages of the controversy.
3. In evaluating other criteria such as 83.7(a), 83.7(b), and 83.7(c), the BIA evaluators will focus on the community defined in the membership list. For this reason, it is extremely important that the membership be defined

accurately. Otherwise, the petitioner runs the risk of failing to meet other criteria because the group, as defined by its membership list, represents only a portion of a community or, conversely, includes a large number of people who are not demonstrably part of the community.

4. A supplemental membership will be required after you have responded adequately to the deficiencies listed for 83.7(e), and after you have been notified the petition is being placed on active consideration. The supplemental list should include those additions to the membership, such as new births, who are considered to be members, any individuals who were inadvertently omitted from the list submitted with the petition, and a note of those members on the original list who are deceased at the time the petition is placed on active consideration.
5. Your enrollment files should be consistent with your membership list. We strongly advise you to use a computer program to keep track of the genealogies. The BIA would prefer that, if possible, you also submit the ancestry in diskette form on a standard genealogical program. This also simplifies generating the ancestry charts, as the data need be entered only once, and then the chart can be printed out for each of your current members. These programs are excellent for diagramming the interrelationship among various family lines within your membership. If you do not already have one, please call the BAR to discuss which software will be most helpful to you, your skill levels, computer and financial resources. If you are already using software, we would like to work with you to determine how to use or transfer your data to one of the software programs compatible to that used by the BIA. By selecting a compatible program, you can speed up the evaluation time considerably.
6. How you maintain your files for each member is your decision; however, an enrollment file should contain some application form which is signed in ink by the adult applicant, parent, legal parent (cases involving custody), legal representative, or legal guardian of minor or an incompetent applicant. The documentation in the enrollment file should include, but not be limited to, clear legible records that are certified copies of birth, marriage, divorce, death, and any other legal document(s). Each generation must be documented. It should also contain information about when the member was accepted into membership and through what enrollment process.
7. Your files will be audited during the active consideration phase to make sure that the files are current, accurate, and consistent with the "certified" final roll before a Final Determination is made. You should have clear

evidence, such as application forms, consent forms, and/or relinquishment forms, that the individual clearly intends to be a member of the petitioning group.

8. This regulatory process must identify exactly those who descend from the historic tribe, and those who do not descend. The governing body of the petitioner may take action by either adoption, constitutional revision, membership ordinance, or removal of individuals who do not meet your own criteria for membership or who do not descend from the historical tribe.
9. We note that your genealogical notebook describes your membership in light of descent from a single ancestor, Corn Tassel. Please provide us with information that demonstrates descent of your membership from a continuously existing band or subgroup of the Cherokee, not just from a single family.

F. Criterion 83.7(f): Members of the Petitioning Group May Not be Enrolled in Any Recognized Tribe.

This criterion prohibits the BIA from acknowledging groups which are composed principally of members of recognized tribes.

1. A statement from the current members of the Georgia Tribe of Eastern Cherokee, perhaps included on an application for membership, that the applicant is not an enrolled member of a recognized Indian tribe would assist in evaluating this criterion. If you do not have such statements, please include in your petition narrative, which is signed by your governing body, a statement that the predominant portion of your membership is not enrolled in any other federally acknowledged American Indian tribe.
2. This is particularly important in the light of the involvement of the other group using the name Georgia Tribe of Eastern Cherokee with the United Keetoowah Band, and the possible enrollment ambiguities which may derive from this situation. The BIA needs adequate information on which to resolve these questions in evaluating your petition.

G. Criterion 83.7(g): Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Though neither the Georgia Tribe of Eastern Cherokee nor its members appear, from the materials you have sent, to be part of a group that are the subject of

congressional legislation that has expressly terminated or forbidden a Federal relationship, please include a formal statement to that effect in the petition materials.

III. Summary

- A. We have pointed out to you in this letter that there are critical deficiencies which need to be addressed before your petition is placed on active consideration. These critical deficiencies are in criteria §83.7. If we have identified deficiencies under criteria 83.7(e), (f), or (g), please consult the provisions in the regulations which allow for the issuance of an expedited negative proposed finding if you do not address these problems in response to this TA letter.
- B. The Government has not made a decision concerning your case. This TA review is not meant to be a preliminary determination of your case. It does not make conclusions that your petition will result in a positive or negative decision. In addition, you should not assume that positive conclusions are made about portions of the petition that are not discussed in this letter. Finally, do not presume that your group will meet the seven mandatory criteria by simply submitting additional data.
- C. In order to make this letter as useful to you as possible, we are raising here any possible problems that we detected reviewing your submission. These are only obvious problems that were identified during this limited review. There may be others that may be revealed after a more in-depth review is conducted.
- D. One purpose of this letter is to request information and/or documentation not currently in the petition which the BIA experts believe they need to evaluate your case when it is placed on active consideration. The BIA's research during the active consideration period is to verify an already completed petition. The staff's caseload no longer permits them to do the research necessary to fill in gaps in the petition on behalf of the petitioner to the extent they have sometimes done in the past.
- E. Petitioners have the option either of responding in part or in full to the TA review, of withdrawing the petition, or of requesting in writing that the AS-IA proceed with the active consideration of the documented petition using the materials already submitted. However, we will determine whether or not your petition is ready to be placed on active consideration. Sometimes, petitioners have not submitted required materials and it has been impossible to evaluate them. In your case, you have declined to submit your group's membership list as required by the regulations, and we would be unable to evaluate your petition without it. In

addition, as detailed in this letter, other critical documentation, including genealogies of your group's members, the governing documents, and documentation of tribal activity before 1997, is also missing.

- F. If your group asks us to evaluate the new materials you submit in response to this review, we will do that. However, you must request a second TA letter in writing. When more materials are received from you, we will do one of the following: we may evaluate your petition and issue an expedited finding under §83.10(e) of the acknowledgment regulations; we may place your petition on the list of petitioners waiting for active consideration; and finally, we may request further documentation.

Once you have had an opportunity to review this letter thoroughly and share its contents with your researchers and general membership, we recommend that you contact the BIA staff so that we can make arrangements to provide an additional TA to you and your researchers. We also invite you to visit the BAR's home page at http://www.doi.gov/bia/ack_res.html. There, you will find an assortment of findings, guidelines, the regulations, and decisions which should be helpful in completing your petition. You may write the BIA, Branch of Acknowledgment and Research, 1849 C Street, N.W., MS 4603-MIB, Washington, D.C. 20240, or call (202) 208-3592.

Sincerely,

/SGD/ DEBORAH J. MIDDOX

Director, Office of Tribal Services

cc: Interested/Informed Parties List : *Gov of GA & all tribes, Sen of GA*