



(4310-G1-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Acknowledgment of the Brothertown Indian Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: The Department of the Interior (Department) gives notice that the Assistant Secretary – Indian Affairs (AS-IA) declines to acknowledge the petitioner known as the Brothertown Indian Nation as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy criterion 83.7(g) in the applicable regulations and, therefore, the Department lacks the authority to extend acknowledgment as an Indian tribe to the petitioner.

DATES: This determination is final and will become effective 90 days from publication of this notice in the Federal Register on [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], unless the petitioner or an interested party files within 90 days a request for reconsideration before the Interior Board of Indian Appeals under 25 CFR 83.11.

ADDRESSES: Requests for a copy of the final determination that includes the summary evaluation under the criterion should be addressed to the Office of the Assistant Secretary – Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, N.W., MS: 34B–SIB, Washington, DC 20240. The complete final determination is also available at <http://www.bia.gov/WhoWeAre/AS-IA/OFA/RecentCases/index.htm>.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513-7650.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 83.10(1)(2), the Department publishes this notice that the Brothertown Indian Nation (BIN), Petitioner #67, is not an Indian tribe within the meaning of Federal law. The Department issued a proposed finding (PF) to decline to acknowledge the petitioner on August 17, 2009, and published notice of that preliminary determination in the Federal Register on August 24, 2009. This final determination (FD) affirms the PF that the Brothertown Indian Nation, does not satisfy criterion 83.7(g) in part 83 of title 25 of the Code of Federal Regulations (25 CFR part 83), and, therefore, the Department lacks the authority to extend acknowledgment as an Indian tribe to the petitioner .

The acknowledgment process is based on the regulations at 25 CFR Part 83. Under these regulations, the petitioner has the burden to present evidence that it meets the seven mandatory criteria in section 83.7. Failure to meet any one of the mandatory criteria results in a determination that the petitioning group is not an Indian tribe within the meaning of Federal law. This determination is issued under 25 CFR 83.10(m) and the Guidance and Direction notice (73 FR 30148) published by the AS-IA on May 23, 2008, which permits the Department to issue decisions against acknowledgment based on failure to meet fewer than seven criteria.

This FD on the petition of the Brothertown Indian Nation evaluates the evidence in the record, including evidence the petitioner and third parties submitted, documents located by the Office of Federal Acknowledgment (OFA), and the transcript of the on-the-record technical assistance meeting held on January 4, 2010. The petitioner submitted

evidence for the PF and FD, and OFA staff conducted limited research to verify and evaluate the evidence, arguments, and interpretation that the petitioner and third parties submitted. The burden of providing sufficient evidence under the criteria in the regulations rests with the petitioner.

The BIN petitioner does not satisfy criterion 83.7(g). This criterion requires that the petitioner not be subject to “congressional legislation that has expressly terminated or forbidden the Federal relationship.” The comments on the PF do not present any new evidence or arguments that provide a basis for revising the conclusion of the PF.

In the Act of 1839, Congress provided that the Brothertown Indian tribe’s “rights as a tribe,” and specifically its power to act as a political and governmental entity, would “cease and determine.” By expressly terminating its relationship with the Brothertown of Wisconsin, Congress has limited the authority of the executive branch to acknowledge the Brothertown as an Indian tribe. Thus, because the Act of 1839, by its “cease and determine” language, has both expressly ended and forbidden the Federal relationship for this petitioner, the BIN petitioner does not meet the requirements of criterion 83.7(g).

Based on this determination and the regulatory requirement in section 83.10(m), the Department issues the final determination declining to acknowledge the petitioner known as the Brothertown Indian Tribe as an Indian tribe within the meaning of Federal law.

A copy of the FD that includes the summary evaluation under criterion 83.7(g) and summarizes the evidence, reasoning, and analyses that are the basis for the FD will be provided to the petitioner and interested parties, and is available to other parties upon written request. It will be posted on the Bureau of Indian Affairs Web site

<http://www.bia.gov/WhoWeAre/AS-IA/OFA/RecentCases/index.htm>. Requests for a copy of the FD should be addressed to the Federal Government as instructed in the ADDRESSES section of this notice.

After the publication of notice of the FD in the Federal Register, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the publication of the FD in the Federal Register. The FD will become effective as provided in the regulations, 90 days after the Federal Register publication unless a request for reconsideration is received within that time.

Dated: September 4, 2012

Donald E. Laverdure
Acting Assistant Secretary–Indian Affairs

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