(4337-15-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900253G]

Final Determination against Federal Acknowledgment of the Georgia Tribe of Eastern Cherokee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) gives notice that the Principal Deputy Assistant Secretary– Indian Affairs, exercising the authority of the Assistant Secretary–Indian Affairs has determined that the Georgia Tribe of Eastern Cherokee (GTEC) is not an Indian Tribe within the meaning of Federal law. This notice is based on a determination that affirms the reasoning, analysis, and conclusions in the Proposed Finding (PF) that the petitioner does not satisfy the seven mandatory criteria for acknowledgment set forth in the applicable regulations. Therefore, it does not meet the requirements for a government-to-government relationship with the United States. Based on the limited nature and extent of comments, and consistent with prior practices, the Government is not producing a separate detailed report or other summary under the criteria to accompany this Final Determination (FD), because neither the petitioner nor interested parties have submitted significant new evidence or analysis that changes the conclusions in the PF. The PF, as supplemented by this notice, is affirmed. This notice constitutes the FD.

DATES: This FD is final and will become effective on [INSERT DATE 90 DAYS

AFTER PUBLICATION IN THE FEDERAL REGISTER], unless the petitioner or an interested party files a request for reconsideration pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Acting Director, Office of Federal Acknowledgment (OFA), (202) 513-7650.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 83.10(h), the Department publishes this notice in the exercise of authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary–Indian Affairs (PDAS–IA) by 209 DM 8. The Department issued a PF not to acknowledge the Georgia Tribe of Eastern Cherokee (GTEC), Petitioner #41, on May 6, 2016, and published notice of the PF in the **Federal Register** on May 13, 2016. This FD affirms the PF that the Georgia Tribe of Eastern Cherokee, P.O. Box 1411, Dahlonega, GA 30533, c/o Mr. Coleman J. Seabolt, does not meet the seven mandatory criteria for acknowledgment as an Indian Tribe. The petitioner seeks Federal acknowledgment as an Indian Tribe under 25 CFR part 83, "Procedures for Federal Acknowledgment of Indian tribes," dated July 1, 2015. The petitioner was under active consideration when the revised rule was published. It chose by letter of October 24, 2015, signed by its governing body, to have its petition evaluation completed under the superseded Federal acknowledgment regulations as published in 25 CFR part 83, revised as of April 1, 1994, as permitted in 83.7(b) of the 2015 Federal acknowledgment regulations. This FD is issued in accord with that request.

Publication of notice of the PF in the **Federal Register** initiated the 180-day comment period provided in the regulations at § 83.10(i). Neither GTEC nor other parties asked the AS–IA to hold an on-the-record technical assistance meeting under § 83.10(j)(2). After two 180-day extensions and one 90-day extension requested by the

petitioner, the comment period closed and GTEC submitted its comments on August 7, 2017. Principal Chief Bill John Baker of the Cherokee Nation, P.O. Box 948, Tahlequah, Oklahoma, 74465, submitted a two-page letter dated November 12, 2016, to OFA and provided a copy to GTEC, as required by the regulations per § 83.10(i). Chief Baker's letter supported the Department's PF not to acknowledge GTEC, but it did not contain new evidence or analysis.

The acknowledgment regulations at § 83.10(k) provide a petitioner 60 days to respond to comments on the PF from interested or informed parties. The petitioner's attorney submitted a response to Chief Baker's comments in the form of a letter postmarked October 2, 2017, within the regulatory deadline ending October 6, 2017. In a letter dated October 11, 2017, OFA informed the petitioner that it would move forward with the FD per § 83.10(1) on Wednesday, October 18, 2017, and issue a FD on or before Monday, December 18, 2017. The publication of this FD in the form of a **Federal Register** notice complies with that letter.

The petitioner submitted one three-ring binder containing its comments on the PF. It included narratives, chronologies arranged under the seven mandatory criteria, photocopies of Georgia laws, one oral history transcript, and a photograph of unnamed school children. These materials made reference to "supplement folders. . . included in the original petition," received in OFA February 14, 2002, and already evaluated in the PF. The binder also included a single page of eleven names of spouses either of current members or of ancestors. It claimed these spouses had Cherokee ancestry from "Cherokee bloodlines" that were different from the Cherokee lines of descent analyzed in the PF. GTEC did not submit vital records, charts, or other genealogical evidence and

analysis tracing these eleven spouses generation by generation to Indian ancestors in the Cherokee Nation before the final Removal in 1838, nor did the petitioner include any of the living spouses on its membership list.

This FD reviews and evaluates the petitioner's comments together with the record for the PF and third party comments to determine if they change the Department's reasoning, analysis, and conclusions under §§ 83.8 and 83.7. The PF found that the petitioner did not have unambiguous previous Federal acknowledgment and did not meet criteria 83.7(a), (b), and (c). The petitioner met criteria (d), (e), (f) and (g). The petitioner's comments contain the same, similar, or related documents already in the PF record. Because the PF is posted on OFA's Website and already addressed in detail most of these documents, readers should read this FD in conjunction with the PF.

The petitioner's comments raise the issue of pre-removal laws of the State of Georgia prohibiting the pre-removal Cherokee Nation from meeting in council, governing, or applying its laws within State boundaries, which Georgia considered included all of the territory simultaneously claimed by the Cherokee Nation. The Department's researchers evaluated Georgia laws pertaining to Indians, including the 1828 Act of the Georgia Assembly, which OFA sent to the petitioner during the comment period. The petitioner's leaders had told the Department's researchers during a field visit before issuing the PF and then in its September 29, 2017, comments that the Department should consider these laws, which the State repealed in 1970, as a "mitigating factor" when evaluating their petition. The regulations at § 83.6(e) direct the Government to take into account "historical situations and time periods for which evidence is demonstrably limited or not available" and the "limitations inherent in demonstrating the historical

existence of community and political influence or authority." Some evidence—war, illiteracy, discrimination, and, as in this case, hostile actions by States and localities—may hinder interactions and limit documentation, causing fluctuations in activity or documentation. Gasoline costs during the Great Depression and rationing during WWII, for example, limited some petitioners from meeting, but after the war, interactions became common again, and petitioners affected by such events have been acknowledged (*see* Cowlitz Indian Tribe). For purposes of evaluating the available evidence for purposes of continuous existence, there is a difference, however, between fluctuations in available evidence and activity over time, and both the absence of evidence for extended periods or the cessation of activity over time—in this case for more than 170 years. Here, the Department does not find a fluctuation because the period of inactivity was so long and the petitioner fundamentally represents a newly created descendant organization. Even after the law's repeal in 1970, GTEC did not provide sufficient evidence to meet all seven criteria.

After considering the petitioner's comments, the Department concludes that the materials submitted for the FD are essentially the same as those the petitioner provided previously and do not alter the overall conclusions of the PF. Even considering limitations in providing historical evidence, and taking into account the State laws, the Department concludes that at no time from 1838 to the present does the evidence demonstrate that GTEC formed a community distinct from non-Indians, established an autonomous governing entity, or had contemporary external identifications as an Indian entity. Thus, the petitioner does not meet the requirements for acknowledgment as an Indian Tribe under the regulations. This FD affirms the PF.

Unambiguous Previous Federal Acknowledgment: Previous Federal acknowledgment means "action by the Federal Government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States" (§ 83.1). Such unambiguous Federal acknowledgment must be demonstrated through substantial evidence. (§ 83.8(a)). This FD finds that evidence in the record does not show that the Federal Government took action clearly indicative of recognition of a political relationship between the United States and the petitioner as an Indian Tribe at any time.

The PF found that the petitioner's ancestors "separated" individually from the Cherokee "Nation when they did not remove with it." It also found that the petitioner is not "the same tribe that treated with the United States and was removed in 1838 and is still a federally recognized tribe." In its response, GTEC did not submit new evidence that GTEC's ancestors—largely a single extended family known as the "Davises"—with other Cherokee Indians, who did not remove, evolved from the Cherokee Nation since 1838 to become GTEC. The PF advised the petitioner to demonstrate that "it has evolved as a group out of the Cherokee Nation after 1838" in order to be evaluated under § 83.8. The petitioner did not submit such evidence. It submitted a new list of eleven spouses either of members or of ancestors, whom the petitioner claims were Cherokee in its response to the PF. However, it did not demonstrate that they were descendants of Cherokee Indians who formed a distinct Cherokee entity in Georgia with the petitioner's ancestors from 1838 to the present. Thus, the petitioner has not demonstrated that it is either a continuation of the recognized Cherokee Nation or a portion of the Cherokee Nation that has evolved and existed continuously since the Cherokee Removal, as

required by § 83.8 of the 1994 regulations. Moreover, there is no evidence that the United States has ever unambiguously acknowledged the petitioner, any of its individual ancestors, or the Davis family, as a distinct tribal entity at any time. The reasoning, analysis, and conclusions pertaining to previous acknowledgment under § 83.8 in the PF are affirmed. Because this FD finds that the Petitioner did not provide substantial evidence that demonstrates unambiguous previous Federal acknowledgment as an Indian Tribe, the provisions of § 83.8(d) do not modify the requirements of the mandatory acknowledgment criteria 83.7(a) through (c).

Historical Indian Tribe: The PF maintains that the historical Indian Tribe for this finding is the Cherokee Nation as it existed before 1838. The Department's analysis finds that the petitioner does not represent an entity existing within the Cherokee Nation that evolved over time to form a distinct Cherokee community in Georgia. There is also a lack of evidence showing the existence of a separate Cherokee entity in northern Georgia, or an Indian entity composed of the petitioner's ancestors. Therefore, the historical Indian Tribe remains the Cherokee Nation as it existed before 1838.

The petitioner's Indian ancestors and more than 90 percent of its members represent a multi-generation extended family founded in 1808 at the marriage of Cherokee ancestor Rachel Martin to non-Indian Daniel Davis. Their descendants, who self-identified as "the Davises" or "the Family," resided in a part of the historical territory of the Cherokee Nation, now Lumpkin County, Georgia, before 1838. Rachel Martin and her ten children were citizens of the Cherokee Nation in Georgia, and Daniel Davis held a special status as her spouse. The PF found that GTEC's ancestors interacted before 1838 with politically influential Cherokee families, who formed a political network that

advanced their interests within the Cherokee Nation. After the Removal, 22 Cherokee families stayed in Lumpkin County and nearby areas but did not form a Cherokee community with the Davises nor establish a political organization comprising Cherokee still in Georgia. Instead, GTEC's Davis ancestors lived in a rural neighborhood with non-Indians, with whom they interacted and often married. These Davises viewed their non-Indian in-laws, in-laws' families, and neighbors as part of their community. All attended the same churches and schools, and were buried in the same cemeteries. GTEC names the same Davis family heads as GTEC leaders from 1838 to the present as it had identified for the PF and describes their political activities—as sheriff, running for political office, voting in a district block, and dealing with moonshiners—in the wider community. The Davises were not distinct socially or politically from non-Indian neighbors or in-laws. A much smaller portion of the membership—about 8 percent—trace their Cherokee ancestry only from Pinkney Howell, who resided in the Cherokee Nation before the Removal, but did not remove. Evidence shows that these descendants of Howell participated in neighborhood activities, which included the Davises and non-Indians, and are enrolled in the petitioner.

Criterion 83.7(a) requires that external observers have identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. The petitioner does not present new material in its response to the PF; it simply revisits the materials already in the record. The petitioner argues that these documents "prove that the tribe has been identified in a continuous manner" since 1900. GTEC also contends that since Georgia law prevented its ancestors from forming an Indian community or political organization from 1838 to 1970, it could not have been identified. The petitioner believes

that this legal limitation should be treated as a "mitigating factor" in weighing its evidence under the regulations. This argument is not persuasive, however, since shortly after Removal, "on December 29, 1838, the Georgia legislature granted citizenship to 22 families" of Cherokees in the State. The petitioner's ancestors, the Davises, were one of the 22 families named in this law, which allowed them and their descendants in Georgia to "enjoy all the rights and privileges that appertain and belong to the free citizens of this State." Thus, the prior state laws that hindered, disabled, and harassed the Cherokee government and people, would not apply to those 22 named families that remained in the State. These Cherokees, including the petitioner's ancestors, could now enjoy all the rights of other free citizens of Georgia and no longer had to suffer "all disabilities heretofore imposed upon said persons of the Cherokee tribe of Indians." In addition, as free citizens, the State's Black codes applied previously to Indians, beginning in the early 1800s, no longer applied to these named families. Evidence is insufficient to show that any of those remaining 22 families, formed a group, even informally, following the Removal of the Nation in 1838, which external sources could have identified.

This FD finds insufficient evidence in the record of substantially continuous identifications of GTEC from 1900 to the present. Therefore, the petitioner does not meet the requirements of criterion § 83.7(a). Many of the documents submitted relate to portions of the historical Cherokee Nation's history leading up to and through the Removal era and identify Cherokee individuals on various historical lists. There are few original, contemporary documents relating to the period after 1900 as required by this criterion. Some such records identify individuals as Indian, but few contain contemporary identifications of an Indian entity in Lumpkin County, where most of the petitioner's

ancestors lived, from 1900 to the present. Identifications in the record are from 1977 to 1981, and again from 1996 to 2001, but it is insufficient to satisfy criterion § 83.7(a), which requires identifications "on a substantially continuous basis since 1900," and which has been interpreted as requiring an identification every ten-year period. Further, there is a lack of available evidence identifying the group even after the date it incorporated in 1977. There are many claims of lawsuits and court actions, but very little evidence was actually submitted for the record. Many of the records that may have been intended to address criterion § 83.7(a) appear to be self-identifications generated by present members of the petitioner, "at present" (and not since 1900 to the present), or retrospective accounts, or identifications of individual Indian descendants, and not of a group. None of these identifications are acceptable evidence under this criterion. The petitioner does not meet criterion § 83.7(a) based on evidence and analysis in the PF and this supplemental analysis addressing the evidence in the summary and response. This FD affirms the PF under criterion § 83.7(a).

The PF found that GTEC failed to meet both criteria 83.7 (b) and (c). Criterion 83.7(b) requires that GTEC has been a distinct community from historical times to the present, and criterion 83.7(c) requires that it has maintained autonomous political influence since historical times within that community. The petitioner's comments on the PF contains no new evidence or other analysis—other than its arguments concerning the effects of State laws on their social and political organization—that, when evaluated with evidence for the PF, would change the PF's conclusions on criteria 83.7(b) and (c). GTEC does not have the kinds of evidence listed in § 83.7(b), such as significant rates of in-group or patterned out-marriage rates, significant rates of informal social interaction

within a distinct Indian group comprising its members, persistent group identity, or exclusive settlements, nor did it offer any suitable alternative forms of evidence that it was a distinct community. Furthermore, it does not have evidence to satisfy criterion 83.7(c), such as the group being politically autonomous and able to mobilize significant numbers of members or resources for group purposes, or a membership that considers issues acted upon or actions taken by leaders of governing bodies to be of particular importance to the membership. There is no evidence of leaders or councils allocating group resources, settling disputes, making decisions, or influencing behavior within an Indian group beyond their families.

GTEC contends that Georgia law prohibited its ancestors from forming an Indian community or political organization from the final Removal in 1838 to 1970, which should be treated as a "mitigating factor" in weighing its evidence under the regulations. The PF discusses in detail Georgia's hostility to the Cherokee Nation and the post-removal laws that made GTEC's Indian ancestors free and citizens of the State on a par with White citizens and removed legal barriers to participation in non-Indian society. In sum, as discussed above, these laws did not apply to the petitioner's ancestors who became citizens in 1838, and in any event were repealed in 1970. GTEC lacks evidence that its ancestors attempted to socialize or interact with the 21 other known Indian families in Georgia. There is no evidence that they formed an informal social group, church, historical society or institution that would have served as a base for a political organization of some kind. Even after 1970, when some GTEC members and others claiming Indian descent attempted to establish a formal organization, they were initially unable to identify an existing group of Cherokee to organize. Because the record lacks

evidence that its members and ancestors continuously maintained a distinct Indian community and autonomous political organization for more than 170 years including at present, it cannot meet criteria (b) or (c), even considering § 83.6.

GTEC also claims in its comments that eleven particular spouses of the Davises or Howells are also Cherokee descendants through "families with Indian heritage" other than Davis or Howell, but it submitted no documents showing that these individuals descend from other Indians in the Cherokee Nation before Removal. No additional Indian ancestry was found for any of these spouses. Eight of these spouses descend from the Davises or Howells, and no Indian ancestry was found for the remaining three spouses, as far as the Department could determine based on the evidence in the record. Most of these spouses, including those whom the petitioner claimed had other Indian "blood lines," had ancestors who resided in the small rural community where the Davis descendants lived after 1838. If any of these spouses are living, they are not on GTEC's membership list.

GTEC describes herbal medicine, Indian-style crafts, and traditional cooking, but these activities are not based in a distinct community and often are not different from non-Indians in Georgia. GTEC also claims members maintained a named, collective Indian identity, but evidence after 1838, including oral histories and news articles, quote GTEC's ancestors and members identifying as Cherokee descendants, not as members of an existing Indian entity. GTEC submitted no evidence to show its current activities involve most of its members. The petition describes the annual picnic as a family reunion, which underscores the petitioner as an extended family, not a community. GTEC failed to show it has maintained a distinct community comprising its members and their Indian ancestors at any time after 1838 and thus does not meet criterion (b).

The PF found that the petitioner did not meet Criterion 83.7(c) from 1838 to the present. As described in more detail above in the summary of the PF, criterion (c) requires petitioners to be an autonomous political entity in which members and leaders have continuously maintained a political relationship with each other. The Indian descendants from their rural neighborhood did not form an autonomous political entity, characterized by meaningful political relationships between leaders and followers to make decisions, resolve conflicts, manage resources, cooperate on projects, or function politically in any way. GTEC's comments did not include new documents dating between 1838 and 1925 about the churches, cemeteries, and schools in their neighborhood that would show these institutions were run by a GTEC entity. They did not submit new evidence that demonstrates autonomous political activity within any other institution or Cherokee entity.

The petitioner's comments also do not reverse the PF that found there was insufficient evidence that the petitioner's membership supports GTEC leaders or informs their actions since 1838, nor after 1970, when the State statutes the petitioner claims blocked any political activity by Indians were repealed. In 1976, the Georgia Assembly created a "Georgia Tribe of Eastern Cherokee," but it was an entirely new entity that had never before existed, comprising persons claiming Cherokee descent—often without evidence proving their claims—from throughout Georgia. The legislation did not require applicants to be part of an already existing Indian entity. This State-created group was not the petitioner, although some of its original leaders would later form the petitioner, also named GTEC. As discussed in the PF, leadership in the original group in the 1970s does not show leadership in GTEC. Furthermore, the PF found that since 1980, the petitioner's

named leaders have quarreled and only focused intermittently (including a more than ten-year period of inactivity) on gaining Federal acknowledgment and on combating other groups or individuals claiming to be the State-recognized entity. The evidence available on these activities was insufficient to demonstrate political influence or authority within GTEC. The petitioner did not submit new evidence that would cure deficiencies detailed in the PF. It did not submit evidence that demonstrates the petitioner maintained political influence or authority over its members, which meets criterion (c) at any time after 1838. This FD affirms the conclusions of the PF that the petitioner does not meet the requirements of criterion 83.7(c) for political authority.

Criterion 83.7(d) requires a copy of the group's present governing document, including its membership criteria. The petitioner provided evidence that satisfied the requirements of criterion 83.7(d) for the PF. This FD affirms the conclusions of the PF that the petitioner meets the requirements of Criterion 83.7(d).

Criterion (e) requires that the petitioner's membership consists 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 PF found that GTEC met this criterion. The PF found that about 90 percent (413 of 458) of those persons listed on its current membership list, dated August 10, 2013, descend from the historical Indian Tribe, the Cherokee Nation as it existed before the Cherokee Removal. These members descend through Rachel Martin, a citizen of the historical Cherokee Nation before 1838, and her non-Indian husband Daniel Davis, and a small percentage descend as well or solely from Pinkney Howell, a Cherokee descendant who resided in Lumpkin County after the Removal. However, the petitioner's response did not supplement the record with

evidence for the 10 percent of the current members who did not provide the necessary evidence to demonstrate their own lines of descent as the PF suggested, so the PF calculation that 90 percent (413 of 458) of those persons listed on its membership list, dated August 10, 2013, descend from the historical Cherokee Nation as it existed before the final Removal in 1838 remains unchanged.

The petitioner submitted as part of its response a list of eleven names of spouses of current members or of ancestors. None of these spouses alive in 2013 when the membership list was certified by the governing body appear on it. The petitioner claims that these spouses had possible alternate Cherokee ancestry not connected to the Davises or Howells, but the petitioner did not provide evidence demonstrating generation-by-generation descent to the Cherokee Nation before 1838. The OFA was unable to locate evidence from publically available records to demonstrate under the reasonable likelihood standard that it is more likely than not that there are any new lines of Cherokee descent in the membership based on the ancestry of these eleven individuals. This FD affirms the conclusions of the PF that the petitioner meets 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 federally acknowledged Indian Tribe. The PF found that 13 GTEC members were enrolled in the Cherokee Nation, a federally recognized Tribe in Oklahoma, and no members were enrolled in the Eastern Band of Cherokee Indians, a federally recognized Indian Tribe in North Carolina. Ninety-seven percent (445 of 458) of the GTEC members are not members of any federally acknowledged Indian Tribe. Because the GTEC petitioner is composed principally of

persons who are not members of other federally-recognized Indian Tribes, it therefore meets this criterion.

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. The PF stated that the petitioner met criterion (g), and neither the petitioner nor other party submitted new evidence to change that conclusion. Therefore, the petitioner meets the requirements of criterion 83.7(g).

This **Federal Register** notice under 25 CFR part 83 is the FD to deny Federal acknowledgment to the Georgia Tribe of Eastern Cherokee petitioner. The petitioner does not satisfy all seven of the mandatory criteria in § 83.7, and therefore, the AS-IA declines to acknowledge that the petitioner is an Indian Tribe under § 83.10(m). As provided in § 83.10(h) of the regulations, this FD summarizes the evidence, reasoning, and analyses that form the bases for this decision. In addition to its publication in the **Federal Register**, this notice will be posted on the Department's Indian Affairs website at www.bia.gov.

This FD on GTEC will become a final and effective agency action 90 days after the publication of this notice in the **Federal Register**, unless the petitioner or interested party files a request for reconsideration under the procedures in § 83.11, with the Interior Board of Indian Appeals (IBIA). The IBIA must receive this request no later than 90 days of the publication of this **Federal Register** notice. The final determination will become effective as provided in the regulations 90 days from the Federal Register publication unless a request for reconsideration is filed within that time period.

Dated: December 14, 2017

John Tahsuda,
Principal Deputy Assistant Secretary – Indian Affairs
Exercising the Authority of the Assistant Secretary – Indian Affairs.

[FR Doc. 2017-27764 Filed: 12/22/2017 8:45 am; Publication Date: 12/26/2017]