No. 25-2213

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDIE MALONEY,
Plaintiff/Appellant,

v.

OFFICE OF NAVAJO AND HOPI RELOCATION,
Defendant/Appellee.

On appeal from the United States District Court for the District of Arizona
No. 3:23-cv-08632 (Hon. Susan M. Brnovich)

APPELLEE'S ANSWERING BRIEF

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INTRODUCTION

The Navajo-Hopi Land Settlement Act of 1974 ("Settlement Act") authorized the judicial partition of disputed land in Arizona between the Navajo Nation and the Hopi Tribe. Congress created the Office of Navajo and Hopi Indian Relocation ("ONHIR") to pay to those Navajo or Hopi Indians required to move the reasonable cost of a replacement dwelling. To qualify for relocation benefits, an applicant must prove that he resided on land that was later partitioned to the other Tribe on December 22, 1974, and on the date the applicant became head of household. The burden of proving residence is on the applicant.

Plaintiff-Appellant Eddie Maloney, a member of the Navajo Nation, applied to ONHIR for relocation benefits in 2009. Based on his written application, the agency concluded that he had not established residency on Hopi Partitioned Lands on December 22, 1974, and denied his application. Mr. Maloney appealed this decision to an independent hearing officer, who heard testimony and reviewed evidence submitted by the parties. The hearing officer affirmed ONHIR's decision, concluding that the weight of evidence supported his residency on Navajo, not Hopi Partitioned Lands. That evidence included Plaintiff's listing as a resident of Navajo lands on a 1974–75 government-prepared roster of residents, his own statement on his application that his residence was in Cow Springs, on Navajo land; and the listing of the Cow Springs address on the only document Plaintiff provided in support of

his claim. The hearing officer explained in detail why the testimony about Plaintiff's contacts with a homesite on Hopi Partitioned Lands was not fully credible or sufficient to meet his burden of proof.

Plaintiff challenged ONHIR's decision in the district court. The district court granted summary judgment to ONHIR, holding that the agency's decision "was supported by substantial evidence and not arbitrary and capricious." ER-14. The district court's decision was correct and should be affirmed.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiff's claims arise under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701, et seq., and the Settlement Act, 25 U.S.C. §§ 640d et seq. *See* Dist. Ct. Dkt. 1 at ¶ 2. The district court issued a final order granting summary judgment to ONHIR on January 30, 2025. ER-7–15. A separate final judgment was entered the same day. ER-6. Plaintiff timely filed his notice of appeal on March 30, 2025. ER-4–5; *see* 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Was ONHIR's decision that Plaintiff failed to meet his burden of establishing that, as of December 22, 1974, he was a legal resident of the Hopi Partitioned Lands arbitrary, capricious, or unsupported by substantial evidence in the record?

PERTINENT STATUTES AND REGULATIONS

All pertinent statutes and regulations are set forth in the Addendum to the Opening Brief except for the following, which are contained in the Addendum to this brief: (1) 25 C.F.R. § 700.97, (2) 25 C.F.R. § 700.147 (correcting numbering), and (3) 49 Fed. Reg. 22,277 (May 29, 1984).

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

1. The Settlement Act and Enumeration

In 1974, Congress enacted the Settlement Act, which authorized the judicial partitioning of 1.8 million acres of land held in trust by the United States for joint use by the Navajo Nation and the Hopi Tribe, known as the "Joint Use Area." Pub. L. No. 93-531, 88 Stat. 1712 (1974) (formerly codified, as amended, at 25 U.S.C. §§ 640d–640d-31 (2015)).[1] Under the Act, Congress appointed a federal mediator to facilitate settlement between the two Tribes, and if no settlement was reached, to submit a report with recommendations to the District Court for the District of Arizona. 25 U.S.C. §§ 640d(a), 640d-3.

[1] The Office of the Law Revision Counsel of the U.S. House of Representatives subsequently omitted these provisions from the U.S. Code because they have "special and not general application." https://go.usa.gov/xpGut. For the Court's convenience, this brief cites the former codification.

To prepare the report, the mediator was required to consider where members of each Tribe lived in the Joint Use Area, "so as to include the higher density population areas of each [T]ribe within the portion of the lands partitioned" to each Tribe. *Id.* § 640d-5(b). To this end, the Bureau of Indian Affairs ("BIA") surveyed the Joint Use Area's population, starting by taking aerial photographs to identify residences and other structures. ER-64 (hearing officer's decision, citing the mediator's report); *see Fuson v. ONHIR*, 134 F.4th 1010, 1014 (9th Cir. 2025).

From December 1974 through mid-summer 1975, the BIA visited each structure identified in the aerial photographs, conducting ground surveys and personal interviews. ER-64. If residents were present, BIA staff "collect[ed] information as to who resided there and regarding other properties owned by the head of household." *Id.* They also questioned residents about the identities of their neighbors. ER-65. If no one was present at a structure, "surveyors would return on multiple occasions in an effort to ensure no one was missed." *Bahe v. ONHIR*, No. CV-17-08016-PCT-DLR, 2017 WL 6618872, at *4 n.1 (D. Ariz. Dec. 28, 2017). The final data set collected by the surveyors constitutes the BIA Enumeration. *Id.*; ER-64. The mediator found that the BIA Enumeration was "as accurate and complete as can reasonably be expected." *Id.* (quoting mediator's report).

2. Partition and Relocation Benefits

In 1977, the U.S. District Court for the District of Arizona partitioned the land, allocating approximately 900,000 acres (the "HPL") to the Hopi Tribe and approximately 900,000 acres (the "NPL") to the Navajo Nation. *Clinton v. Babbitt*, 180 F.3d 1081, 1084 (9th Cir. 1999). This Court approved the partition in *Sekaquaptewa v. MacDonald*, 626 F.2d 113 (9th Cir. 1980).

The Settlement Act, as amended, sought to induce members of each Tribe who resided on lands partitioned to the other Tribe to move off those lands, and it authorized payments to cover major relocation costs of displaced households. 25 U.S.C. §§ 640d-11, 640d-12, 640d-13, 640d-14. The Act created ONHIR to, among other things, make decisions on applications for relocation benefits sought by Navajo and Hopi members who were located on lands allocated to the other Tribe. *See id.* §§ 640d-11, 640d-14(b); *Bedoni v. Navajo-Hopi Indian Relocation Comm'n*, 878 F.2d 1119, 1121–22 (9th Cir. 1989).

The Settlement Act directed ONHIR "to relocate . . . all households and members thereof and their personal property . . . from any lands partitioned to the tribe of which they are not members," 25 U.S.C. § 640d-13(a), and to pay the cost of a "replacement dwelling" to "each head of a household whose household is required to relocate," *id.* § 640d-14(b)(2). *See* 25 C.F.R. § 700.1(a). To be eligible for relocation benefits, an applicant must satisfy two requirements: (1) the applicant

must prove that, on December 22, 1974 (the date of the statute's enactment), he or she was a legal resident of land partitioned to the Tribe of which the applicant was not a member; and (2) the applicant must prove that he or she was "head of household" by the date that the applicant moved from land partitioned to the other Tribe (or by July 7, 1986, if that date is earlier). *Id.* §§ 700.69(c), 700.147(a), (e).

"The burden of proving residence and head of household status is on the applicant." *Id.* § 700.147(b). An applicant's "residence" is established "by proving that the head of household and/or his/her immediate family were legal residents." *Id.* § 700.97. The preamble to ONHIR's regulations explains that "residence" "is meant to be given its legal meaning," which "requires an examination of a person's intent to reside combined with manifestations of that intent." Commission Operations and Relocation Procedures, 49 Fed. Reg. 22,277, 22,277 (May 29, 1984); *accord Charles v. ONHIR*, 774 F. App'x 389, 390 (9th Cir. 2019) (confirming that the preamble contains the "correct standard").

The regulatory preamble sets out a non-exclusive list of factors that ONHIR examines in assessing an applicant's "manifestations of intent to maintain legal residence in the partitioned lands." 49 Fed. Reg. at 22,278. These factors include employment records, mailing address records, banking records, driver's license records, home ownership or rental off the disputed area, livestock ownership and grazing permits, field investigations, marital records, birth records, the BIA

Enumeration, and "other relevant data." *Id.*; *Barton v. ONHIR*, 125 F.4th 978, 982–83 (9th Cir. 2025); *see also Begay v. ONHIR*, 305 F. Supp. 3d 1040, 1049 (D. Ariz. 2018) ("[T]he BIA enumeration alone cannot establish residence, but it may be used as *prima facie* evidence of residency that Plaintiff then has the burden of disproving."), *aff'd*, 770 F. App'x 801 (9th Cir. 2019).

B. Factual Background

1. Plaintiff's Application

Mr. Maloney was born in April 1948 and is an enrolled member of the Navajo Nation. ER-23, ER-65. He applied for relocation benefits on September 14, 2009. ER-28. On his application, Plaintiff stated that: (1) on December 22, 1974, he was living in the Navajo Nation, specifically in the Shonto Chapter; (2) the residence was located on the HPL; and (3) the residence was in Cow Springs, Arizona (which is located on the NPL). ER-25, ER-38. He explained that he was away from his residence on December 22, 1974, because he was living on the campus of Shonto Boarding School, where he was employed. ER-26. Plaintiff stated that he had not applied for relocation benefits earlier because he "was not too familiar with the benefits." ER-25. Plaintiff's application also noted that his first child was born in April 1972 and listed his parents as Grey and Nora Maloney. ER-26–27. He responded "no" to the question whether he had "moved from the HPL." ER-27.

In April 2014, ONHIR sent Plaintiff a letter requesting a copy of his social security earnings statement, marriage license, and first child's birth certificate. SER-4. Three months later, Plaintiff called ONHIR, confirming that he received the letter, but he did not submit the requested documents. SER-6. ONHIR staff again requested these documents, as well as the location of Plaintiff's HPL homesite on December 22 of 1973 and 1974. SER-8. Two months later, ONHIR staff spoke with Plaintiff by phone and noted his statements that: (1) in 1973 and 1974, Plaintiff and his family had a home on the HPL at Black Mesa with his grandparents, John and Daisy Maize, and (2) their neighbor on the HPL was Yanapa Tooley.[2] SER-10. Plaintiff did not provide any of the requested documents or other documentary evidence supporting his claim to relocation benefits.

ONHIR denied Plaintiff's application on October 2, 2014. ER-29–30. The agency's letter stated that the BIA Enumeration listed Plaintiff, his wife, and his children as residents of the NPL. ER-29. The letter also explained that Plaintiff's parents and siblings were enumerated on the NPL alone, that their NPL sites included numerous dwellings, and that Plaintiff's parents did not apply for relocation benefits. *Id.* Plaintiff appealed ONHIR's decision. SER 12–13; *see* SER-15 (ONHIR's acceptance of appeal).

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[2] Tooley's name appears as "Yanapa Tooley," "Janapah Tully," and "Yanapie Tully" in the record. *See, e.g.*, ER-19, ER-72, ER-76.

2. Plaintiff's Administrative Appeal Hearing

A hearing was held before ONHIR's independent hearing officer on August 18, 2017. ER-31. The parties stipulated that Plaintiff became head of household upon the birth of his first child in April 1972. ER-32. Plaintiff's counsel provided one document—a 2013 death certificate for that child. *Id.*; *see* SER-20. That document listed only a Cow Springs (NPL) address and contained no evidence of Plaintiff's residency on the HPL. *Id.*; ER-41. Three witnesses testified: (1) Plaintiff, (2) Darrell Woody, the grandson of Yanapa Tooley and a neighbor of the Maize family on Black Mesa, and (3) Joseph Shelton of ONHIR. *See* ER-31–60.

a. Plaintiff's Testimony

Plaintiff testified that in 1973, 1974, and 1975, he and his wife were working and living at the BIA's Shonto Boarding School on the NPL, roughly 16 miles from Cow Springs. ER-35–37. From August to May, Plaintiff was a bus driver for the school; during the summers, he was furloughed. *Id.* During summer furloughs, Plaintiff lived in his parents' hogan on the NPL, next door to their Cow Springs house. ER-41, ER-43.

Much of Plaintiff's testimony described the traditional use area of his extended family. ER-33, ER-36, ER-41; *see* ER-65. Specifically, he testified that some of his family members lived in Cow Springs during the summer but grazed sheep from October to the end of May "up on top" of Black Mesa, an area on the

HPL about 12 to 15 miles away.[3] ER-36, ER-43–46. Some of those family members, including Plaintiff's grandparents, John and Daisy Maize,[4] were enumerated on both the NPL and HPL and received relocation benefits. ER-36–37, ER-58.

Plaintiff testified that he would spend time on weekends at Black Mesa during the winter, helping his mother with the family livestock and other tasks. ER-37–38. They would stay with his grandparents. ER-43. Plaintiff also recalled the visit by the BIA enumeration staff, testifying that they questioned him about his family but that he did not remember them asking "about the location where I'm living, but they just ask down below where we spent the summers." ER-38-39; ER-46-47. He was specifically asked about whether he recalled the visit being on February 13, 1975, "sometime in the winter," and he agreed that it was "sometime around there, I don't remember it exactly." ER-47. Plaintiff and his mother were enumerated on the NPL, in Cow Springs.[5] *See* ER-29. Plaintiff did not explain why he was found on the NPL in February when he had testified that during the winter months, he lived on Black

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[3] Those relatives included John and Daisy Maize, Alfred Maize, Yanapa Tooley, Eddie and Ruby Watson, and Lloyd Slim. ER-34, ER-37. Of these, Plaintiff testified to the Maizes, Tooley, and the Watsons receiving relocation benefits, although ONHIR testified that Alfred Maize was not enumerated on the HPL. ER-37, ER-58.

[4] "Maize" is sometimes spelled "Maze" in the record, including in the hearing transcript. *See, e.g.*, ER-48, ER-58; *see also* ER-66.

[5] Plaintiff stated that his mother had been offered relocation benefits but had declined because she was suspicious of the government. ER-36–37. ONHIR does not have a relocation benefit application on file for either of Plaintiff's parents. ER-58–59.

Mesa. The hearing officer gave Plaintiff an opportunity to explain his enumeration on the NPL. ER-46–47. Plaintiff responded that when he spoke to enumerators, he "just kind of mentioned" that he was living with the Maizes on the HPL even though "they didn't exactly ask [him] that question." ER-47.

On cross-examination, ONHIR's counsel turned to the one piece of documentary evidence Plaintiff had provided: his son's death certificate. ER-32, ER-41. ONHIR's counsel asked Plaintiff about the address listed on the death certificate. ER-41. Plaintiff responded that the address was "where [his] mom and dad used to live . . . during the summers," understood to mean Cow Springs on the NPL. *Id.* The death certificate did not reference any location on the HPL. *See* SER-20.

Plaintiff did not testify about whether he kept any personal belongings at the HPL site or owned any improvements or homesite leases. Plaintiff testified that he "didn't have a permanent home of [his] own" and "just used to live with [his parents] and then . . . was residing in Shonto Boarding School Campus during those years." ER-41. Plaintiff did not introduce any health, school, military, employment, mailing, banking, or other public records tying him to any HPL site.

b. Darrell Woody's Testimony

Woody testified that in 1973, 1974, and 1975, he lived with his grandmother, Yanapa Tooley. ER-50–53. At the time, Woody was about 10 to 12 years old. ER-

52. Woody testified that he spent his summers in Cow Springs and winters on Black Mesa. *Id.*

Woody testified that he knew Plaintiff's family and that Plaintiff "was living up by the HPL." ER-48. He said that he would see Plaintiff and his family in Black Mesa in the winter and in Cow Springs in the summer. ER-51–52. He did not say more about the length of time or frequency of Plaintiff's presence on the HPL. Woody also testified that he attended Shonto Boarding School, and that on winter weekends, Plaintiff would check him out from his dorm and drive him home to the HPL. ER-52–53.

On cross-examination, although Woody first stated that Plaintiff would check him out from his dorm "every time," he later testified that his grandmother also did so. ER-54–55.

c. Joseph Shelton's Testimony

Joseph Shelton testified for ONHIR. ER-56–59. Shelton confirmed that Plaintiff, his wife, and his two children were enumerated on the NPL but not the HPL. ER-58. Shelton stated that the Maizes and Tooley were enumerated on both the NPL and HPL. ER-57–58. He testified that Plaintiff's parents did not have a relocation benefit application on file with ONHIR. ER-58–59.

3. Independent Hearing Officer's Decision

On March 20, 2018, the hearing officer issued a written decision upholding the denial of Plaintiff's application. ER-61–74. The hearing officer determined that Plaintiff was not entitled to relocation benefits because he failed to establish by a preponderance of the evidence that he was a resident of the HPL on December 22, 1974. ER-71.

The hearing officer made credibility findings for each of the testifying witnesses. He found that Plaintiff was "a credible witness" as to his testimony about "his employment, . . . his residence at Cow Springs, and . . . visitation with his relatives who lived on Black Mesa." ER-68. The hearing officer determined that Darrell Woody's testimony about seeing Plaintiff at Black Mesa and Cow Springs was "too indefinite" to support Plaintiff's claim that he resided on the HPL. *Id.* He found Woody's testimony not credible "as to any specific time period or year, especially as Mr. Woody was only nine to eleven years old at the time he recalls 'seeing' [Plaintiff] at Black Mesa." *Id.* As to Shelton, the hearing officer found that his testimony "about applicant's enumeration on [the] NPL, . . . that applicant's parents did not apply for relocation benefits, and . . . about various residence locations for applicant's relatives on both sides of the partition line" was credible. *Id.* The hearing officer then observed that the BIA Enumeration is considered prima facie evidence of residency and must be considered as part of the decision. ER-69.

In the decision narrative, the hearing officer noted that: (1) the BIA Enumeration showed that Plaintiff resided at Cow Springs, on the NPL; (2) the BIA enumerators interviewed him there in February 1975; and (3) Plaintiff testified about his strong connections to Cow Springs. ER-72. The hearing officer acknowledged Plaintiff's contention that he was living on Black Mesa, which was a traditional use area for his family during the winter. *Id.* But he found that "[b]eyond applicant's testimony and the support of Darrell Woody… there is no evidence that applicant was a resident there." *Id.* Specifically, the hearing officer noted that Plaintiff "self-identified to the BIA enumerators as a Cow Springs resident in February 1975 (the time of year he would have been at Black Mesa were he really living there and using it as a winter camp)." *Id.* Nor was there any evidence that any of the individuals enumerated on Black Mesa—including Plaintiff's relatives who he purportedly stayed with—identified him as a resident there. *Id.* Nor did Plaintiff himself tell enumerators that he "really or also lived at Black Mesa." ER-72–73. And Plaintiff's application for relocation benefits stated that he was living in Cow Springs in December 1974. ER-73.

In his decision, the hearing officer identified two aspects of Plaintiff's testimony that were not credible. First, the hearing officer found Plaintiff's claims that he mentioned living on the HPL to the enumerator not credible. ER-72–73. The hearing officer reasoned that although "the residents of the very hogan in which

applicant claimed to stay" on the HPL—John and Daisy Maize—were enumerated on both sides, Plaintiff himself was only enumerated on the NPL. ER-73.

Second, the hearing officer noted that Plaintiff's application for relocation benefits included the statement that he did not apply for relocation benefits earlier because he was "not familiar with the benefits." *Id.* But if Plaintiff was truly "unaware of and unfamiliar with the relocation process" from the 1970s through July 7, 1986, "his claim about contacts with relatives in the Black Mesa area are highly suspect." *Id.* The hearing officer emphasized that Plaintiff himself testified that his relatives—including his grandparents, with whom he claimed to live—received relocation benefits. *Id.*

The hearing officer acknowledged Plaintiff's argument that the BIA Enumeration contains inaccuracies. *Id.* But he concluded that it is "*prima facie* evidence of residency and gives rise to a presumption that the enumerated individual actually resided where enumerated." *Id.* The hearing officer found that Plaintiff's enumeration on the NPL (ER-74), self-identification to enumerators "as a Cow Springs resident in February 1975 (the time of year he would have been at Black Mesa were he really living there and using it as a winter camp)," (ER-72), and identification of Cow Springs as his residence in his benefits application (ER-74) "reinforces the accuracy of the BIA's determination that applicant was a legal resident in Cow Springs as of the date of passage of the Act." ER-74. And Plaintiff

did not present evidence that would allow the hearing officer to "disturb the findings of the BIA Enumeration, which found applicant at his Cow Springs NPL home." *Id.*

On June 20, 2018, ONHIR's executive director affirmed the hearing officer's determination. ER-78.

C. Proceedings Below

On December 22, 2023, Plaintiff filed a complaint in district court seeking review of ONHIR's determination that he was ineligible for relocation benefits. ER-111; Dist. Ct. Dkt. 1. On January 30, 2025, the district court denied Plaintiff's motion for summary judgment and granted ONHIR's cross-motion for summary judgment. ER-7–15.

First, the district court held that the hearing officer "properly recognized that the enumeration acts both as prima facie evidence of the applicant's residence as well as a mechanism for creating a presumption of residency." ER-11. The district court therefore determined that the hearing officer "did not err by concluding the BIA enumeration was prima facie evidence of Maloney's residence" and "did not err in considering Maloney's family members' statements as a factor in determining residency." ER-12.

Second, the district court held that the hearing officer "properly considered and discounted [Woody's] testimony in determining Maloney's residency." ER-13. In particular, the district court emphasized that Woody did not quantify Plaintiff's

visits to the HPL nor testify that Plaintiff stayed on the HPL "such that his presence was 'substantial, regularly occurring, or of sufficient duration.'" *Id.* (citing *Yazzie v. ONHIR*, No. CV-23-08510-PCT-JAT, 2024 WL 3345192, at *4 (D. Ariz. July 8, 2024)). The court also considered the hearing officer's finding that Woody was only 9 to 11 years old during the relevant period. *Id.*

Third, the district court found that "[t]he evidence . . . supports the [hearing officer's] finding that [Plaintiff] resided on the NPL." ER-14. In particular, the court noted that while the hearing officer determined that Plaintiff was a credible witness as related to his testimony about his employment, residence at Cow Springs, and visitation with his relatives at Black Mesa, it was reasonable for the hearing officer to determine that his "testimony regarding unfamiliarity with relocation benefits was suspect." *Id.*

SUMMARY OF ARGUMENT

The district court correctly rejected Plaintiff's APA challenge and upheld the hearing officer's decision. Substantial evidence supports the hearing officer's determination that Plaintiff is not entitled to relocation benefits because he failed to prove he was a resident of the HPL on December 22, 1974.

First, the hearing officer cited specific, cogent reasons for partially discrediting Plaintiff's testimony about living on the HPL and discrediting Woody's testimony about seeing Plaintiff on the HPL. As to Plaintiff's testimony, the hearing

officer found that Plaintiff's statement that he mentioned his HPL residency to enumerators was contradicted by his grandparents' and other relatives' enumeration on both the NPL and HPL, when Plaintiff, who purportedly lived with his grandparents, was enumerated only on the NPL. Other evidence in the decision, like Plaintiff's unexplained presence on the NPL during his winter 1975 enumeration interview and the lack of evidence that any of his HPL-enumerated relatives identified him as an HPL resident, further support this finding. And Plaintiff's statement on his application that he was unfamiliar with relocation benefits eroded his credibility as to his testimony about his HPL contacts, as it was "highly suspect" that he would be unfamiliar with the benefits while the very people he allegedly lived with received those benefits. The hearing officer also reasonably found that Woody's vague and indefinite testimony about "seeing" Plaintiff on Black Mesa in 1973 to 1975, combined with his young age, rendered that testimony not credible and insufficient to support residency. As the hearing officer was in the best position to assess the credibility of the witnesses, this Court should defer to the hearing officer's reasonable, well-supported credibility determinations.

Second, the hearing officer's decision is supported by substantial evidence. Plaintiff's strong connections to Cow Springs, his responses on his relocation benefits application, and his enumeration only on the NPL supported the hearing officer's finding. Plaintiff, who bears the burden of proving residence, did not

provide any documentary evidence that he lived on the HPL; his application and the only other document provided, his son's death certificate, list his Cow Springs address. Plaintiff was afforded opportunities to provide credible and relevant evidence to prove his eligibility for benefits, and he failed to do so. The hearing officer's decision was therefore reasonable.

Third, contrary to Plaintiff's arguments, the hearing officer reasonably relied on the BIA Enumeration as prima facie evidence that Plaintiff resided on the NPL in Cow Springs, not on the HPL. This was in accord with ONHIR policy and this Court's decisions. The hearing officer did not exclusively rely on the Enumeration; instead, he properly considered the Enumeration along with several other pieces of evidence in the record. Plaintiff's arguments to the contrary hold no weight.

Finally, if the Court finds any error in the hearing officer's decision, it should remand to the agency to reevaluate the evidence in the first instance.

STANDARD OF REVIEW

This Court reviews a district court's grant of summary judgment de novo. *Bedoni*, 878 F.2d at 1122. However, ONHIR's decision that Plaintiff did not meet his burden of proving residency is reviewed under the APA for whether it is "arbitrary, capricious, an abuse of discretion," "not in accordance with law," "without observance of procedure required by law," or "unsupported by substantial

evidence." 5 U.S.C. § 706(2)(A), (D), (E); *see also* 25 U.S.C. § 640d-14(g); *Bedoni*, 878 F.2d at 1122.

The scope of review under the APA is narrow, and the Court may not "substitute its judgment for that of the agency," so long as the agency "examine[s] the relevant data and articulate[s] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983) (internal quotations omitted); *see Hopi Tribe v. Navajo Tribe*, 46 F.3d 908, 914 (9th Cir. 1995). Agency action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfr. Ass'n*, 463 U.S. at 43.

An agency's factual findings—including credibility determinations—are reviewed for whether they are supported by substantial evidence. *Alaska Dep't of Health & Soc. Servs. v. Ctrs. for Medicare & Medicaid Servs.*, 424 F.3d 931, 937 (9th Cir. 2005); *de Leon-Barrios v. INS*, 116 F.3d 391, 393 (9th Cir. 1997). Substantial evidence means only "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence." *Nat'l Fam. Farm Coal. v. U.S. Env't*

Prot. Agency, 960 F.3d 1120, 1132–33 (9th Cir. 2020) (internal quotations omitted); *see also Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) ("[W]hatever the meaning of 'substantial' in other contexts, the threshold for such evidentiary sufficiency is not high.").

To reject an agency's factual findings, a court "must find that the evidence not only *supports*" a contrary finding "but *compels* it." *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992) (emphasis in original); *accord Thomas v. CalPortland Co.*, 993 F.3d 1204, 1208 (9th Cir. 2021) (describing substantial evidence review as an "extremely deferential standard"). The substantial evidence standard is even more deferential than the "clearly erroneous" standard for appellate review of a trial court's findings of fact. *Dickinson v. Zurko*, 527 U.S. 150, 162–64 (1999).

ARGUMENT

I. ONHIR's determination that Plaintiff did not reside on the HPL was reasonable and amply supported by record evidence.

Under ONHIR's regulations, Mr. Maloney bore the burden of proving that he was a legal resident of the HPL on December 22, 1974. *See* 25 C.F.R. § 700.147(b); *Charles*, 774 F. App'x at 390. He failed to meet that burden. To determine residency, ONHIR examines an applicant's "intent to reside combined with manifestations of that intent." 49 Fed. Reg. 22,277; *see Charles*, 774 F. App'x at 390. Here, the hearing officer examined the relevant, credible evidence in the record and reasonably determined that Plaintiff failed to prove residency on the HPL on December 22,

1974. Instead, the record supported that Plaintiff resided in Cow Springs, on the NPL. The hearing officer's determination should be upheld.

A. The hearing officer's credibility determinations were reasonable and supported by substantial evidence.

The hearing officer's decision included specific, cogent, and well-supported reasons for his adverse credibility findings. Plaintiff offers no persuasive reason to disturb those findings. A hearing officer's credibility findings are typically "granted substantial deference." *Manygoats v. ONHIR*, No. 24-3274, 2025 WL 1121634, at *1 (9th Cir. Apr. 16, 2025) (quoting *De Valle v. INS*, 901 F.2d 787, 792 (9th Cir. 1990)). This Court sustains a hearing officer's adverse credibility finding where the officer provides "a specific, cogent reason" for rejecting the testimony. *De Valle*, 901 F.2d at 792 (internal quotations omitted); *Benally v. U.S. ONHIR*, No. 23-3978, 2024 WL 4971965, at *1 (9th Cir. Dec. 4, 2024). Permissible reasons include citing evidence that makes a witness's testimony implausible. *See, e.g.*, *Laughter v. ONHIR*, No. CV-16-08196-PCT-DLR, 2017 WL 2806841, at *4 (D. Ariz. June 29, 2017) (holding that ONHIR reasonably relied on contradictory documentary evidence to find witnesses lacked credibility).

The independent hearing officer may set forth his credibility reasoning "either in the formal credibility determination or in the body of the decision." *Begay v. ONHIR*, No. CV-20-08102-PCT-SMB, 2021 WL 4247919, at *4 (D. Ariz. Sep. 17, 2021), *aff'd*, No. 21-16937, 2022 WL 17038707 (9th Cir. Nov. 17, 2022). In

Manygoats v. ONHIR, the district court found that "[a]lthough the [hearing officer] did not explain his credibility determinations in the section titled 'Credibility Findings,' [he] sufficiently explains his decision to discredit Plaintiff and [another witness's] testimony in the body of the decision." No. CV-22-08028-PCT-DLR, 2024 WL 1209947, at *4 (D. Ariz. Mar. 21, 2024). This Court affirmed, finding that substantial evidence supported those credibility determinations. *Manygoats*, 2025 WL 1121634, at *1.

Here, the hearing officer set forth explicit credibility reasoning for each testifying witness, including identifying inconsistencies like Plaintiff's presence at his Cow Springs, NPL home during his winter enumeration interview—the time of year he asserted he lived on the HPL. Given the substantial deference owed to the factfinder who observed the live testimony and considered the proffered documentary evidence, this Court should uphold the credibility determinations as reasonable.

1. The hearing officer reasonably discredited parts of Plaintiff's testimony in his decision.

Plaintiff argues that the hearing officer improperly discredited parts of his testimony after finding him a "credible witness." Opening Br. 10. But while the hearing officer characterized Plaintiff as a "credible witness" in the formal credibility determination, that characterization was limited to Plaintiff's testimony "about his employment, . . . about his residence at Cow Springs, and . . . about

visitation with his relatives who lived on Black Mesa." ER-68. In the body of the decision, the hearing officer identified two statements inconsistent with the record that called into question Plaintiff's credibility regarding residency on the HPL: (1) Plaintiff's testimony that he mentioned living at the HPL to the enumerator; and (2) his application answer that he was "unfamiliar" with relocation benefits.[6] ER-72–73.

First, the hearing officer was reasonably skeptical that Plaintiff mentioned living on the HPL to enumerators. In support, the hearing officer pointed to the undisputed evidence that Plaintiff's grandparents were enumerated on both sides of the partition, but Plaintiff was only enumerated on the Navajo side. *See* ER-73. The hearing officer noted that this was true even though his grandparents owned the "HPL hogan [in which] applicant claimed to stay." *Id.* And Plaintiff's statement itself was vague; when asked whether he told the enumerator about the Black Mesa site, Plaintiff stated that he "just kind of mentioned it." ER-47. Beyond this, the record demonstrates that Plaintiff did not submit any evidence that his relatives on Black Mesa identified him as a resident, even though residents were asked by BIA

[6] Contrary to Plaintiff's argument, Opening Br. 20, the hearing officer did not cite the inconsistencies in testimony about whether Plaintiff's mother was offered relocation benefits as a basis for the adverse credibility determination.

staff about neighbors and other members of their household.[7] *See* ER-65; ER-72. Plaintiff also provided no explanation for the circumstances of the interview itself—which occurred at his Cow Springs, NPL residence during the wintertime despite Plaintiff's testimony that he resided on the HPL at that time of year. *See supra* pp.10–11; ER-72. Therefore, the hearing officer's determination that Plaintiff did not mention an HPL residence to enumerators was reasonable and amply supported by record evidence.

Second, the hearing officer reasonably found that Plaintiff's statement on his application that he was unfamiliar with relocation benefits conflicted with his testimony about his presence on the HPL. *See* ER-73. Common sense advises that if Plaintiff were truly living with his grandparents, he would have had some awareness of the relocation process that they were going through. *See id.* And if he were living in Black Mesa as he claimed, with several neighbors and relatives close by who received benefits, he would have had even more exposure to the process. Therefore, considering Plaintiff's application statement, the hearing officer reasonably found

[7] Plaintiff argues that this lack of evidence is speculative "as no records exist of anything that transpired between enumerators and the people they encountered in conducting their survey." Opening Br. 28. But the hearing officer's point was only that (1) it was the general practice of enumerators to ask about relatives and neighbors, see ER-64–65; and (2) Plaintiff failed to present any evidence, through testimony or otherwise, that any of his relatives told the BIA that he lived on the HPL.

Plaintiff's testimony about alleged contacts with relatives on Black Mesa "highly suspect."

Plaintiff also argues that the hearing officer discounted Plaintiff's testimony that Black Mesa was part of his family's traditional use area in the residency decision because it was not mentioned in the hearing officer's analysis. Opening Br. 10. But the hearing officer did take this into account, acknowledging that Black Mesa was a "traditional use area for his family" but focusing on the inquiry at issue: whether *Plaintiff* was "really living on Black Mesa." ER-72. And just because Black Mesa was a traditional use area for his extended family does not mean that Plaintiff can avoid his burden to prove that he personally resided on the HPL.[8]

2. The hearing officer reasonably dismissed Woody's testimony.

Additionally, Plaintiff contends that the hearing officer improperly dismissed Woody's testimony. Opening Br. 20–23. But the hearing officer reasonably found that Woody's testimony about "seeing" Plaintiff on Black Mesa was not sufficient to support Plaintiff's assertion of HPL residency. Although this Court has recently determined that age alone may not be enough to determine that testimony is not

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[8] Plaintiff also argues that the hearing officer misconstrued Plaintiff's testimony when he stated that Plaintiff "regularly returned" to Cow Springs from his employment or that Plaintiff "sometimes went to Black Mesa to visit family members." Opening Br. 16. But these findings of the hearing officer were reasonable given his well-supported credibility determinations and the other record evidence that Plaintiff was a resident of only the NPL.

credible, see *Fuson*, 134 F.4th at 1016–17, the hearing officer did not consider Woody's age alone, but also the vagueness of his testimony. ER-68.

This Court has found that a person's "vague recollection of events" can constitute a "specific and cogent" reason for a finding that he is not credible. *Kuifeng Cheng v. Holder*, 515 F. App'x 700, 702 (9th Cir. 2013). Here, Woody did not describe the nature, length, or frequency of *any* of his alleged sightings of Plaintiff on the HPL. Nor did he state whether Plaintiff remained on the HPL after dropping him off from school. Plaintiff argues that Woody's testimony "was definite and specific as to the period of time he saw Maloney at the Black Mesa HPL homesite." Opening Br. 21. But Woody's description provides a range of potential inferences—including that other than when Plaintiff dropped him off, he could have spotted Plaintiff as infrequently as once per winter on the HPL. Woody's vague testimony "is unhelpful in determining the central question of Plaintiff's appeal"—whether he was an HPL resident on December 22, 1974. *Begay v. ONHIR*, No. CV-24-08085-PCT-JAT, 2025 WL 2720188, *5 (D. Ariz. Sep. 24, 2025) (finding that witness's testimony that she saw applicant on the weekends in the 1970s "d[id] not shed light on the frequency of Plaintiff's visits" and therefore was a basis for an adverse credibility finding). And Woody's testimony is also inconsistent with Plaintiff's presence on the NPL on February 13, 1975. Given the foregoing, the hearing officer reasonably determined that Woody's testimony was "not credible . . . as to any

specific time period or year" and "too indefinite to support" Plaintiff's claim that he resided on the HPL. ER-68. Therefore, the hearing officer did not err in discounting this portion of Woody's testimony.

Even if the hearing officer had found these statements credible, such vague testimony would still be insufficient to carry Plaintiff's burden of establishing his eligibility for benefits. Neither witness testified about Plaintiff's intent to reside on or return to live on the HPL, while substantial evidence in the record indicated Plaintiff's strong ties to Cow Springs. *See infra* pp.28–29. Where there is "ambiguous and conflicting evidence" as to an applicant's residency, "ONHIR [i]s entitled to resolve these ambiguities and conflicts against" the applicant. *Daw v. ONHIR*, No. 20-17261, 2021 WL 4938121, at *2 (9th Cir. Oct. 22, 2021). The hearing officer's decision should be upheld.

B. The hearing officer's residency determination was supported by substantial evidence.

Substantial evidence supports the hearing officer's determination that Plaintiff was not a resident of the HPL on December 22, 1974. The hearing officer found that other than Plaintiff's and Woody's testimony, "there is no evidence that applicant was a resident" of Black Mesa. ER-72. In contrast, evidence that Plaintiff did *not* reside on the HPL included the following:

- Plaintiff's self-identification to enumerators as a Cow Springs resident and presence on the NPL during his wintertime (February 1975) interview, *id.*;

- Plaintiff's relatives' enumeration on both the NPL and HPL and receipt of relocation benefits (particularly with respect to John and Daisy Maize, who he claimed to live with), in contrast to Plaintiff's enumeration only on the NPL, ER-73–74;
- The lack of evidence that anyone found by enumerators on the HPL—including John and Daisy Maize, Yanapa Tooley, Eddie and Ruby Watson, and Lloyd Slim—identified Plaintiff as an HPL resident, ER-72;
- Plaintiff's statement on his application that his residence as of December 22, 1974, was Cow Springs, ER-74;
- The fact that Plaintiff's child's death certificate listed only a Cow Springs address, SER-20; and
- The lack of any other evidence that Plaintiff lived on the HPL. ER-74.

Plaintiff bore the burden to prove his residency on the HPL. Given the lack of credible evidence presented that Plaintiff resided on the HPL and several pieces of evidence that he resided only on the NPL, it was reasonable for the hearing officer to conclude that Plaintiff did not meet his burden. Under the highly deferential substantial evidence standard, a "reasonable mind" could accept the foregoing evidence as adequate to support the hearing officer's decision, "even if it is possible to draw two inconsistent conclusions from the evidence." *Nat'l Fam. Farm Coal.*, 960 F.3d at 1132–33 (internal quotations omitted). Plaintiff's arguments fall well

short of showing that "the evidence not only *supports*" a contrary finding "but *compels* it." *Elias-Zacarias*, 502 U.S. at 481 n.1 (emphasis in original); *see also Webb v. ONHIR*, No. 22-16417, 2024 WL 1756092 (9th Cir. Apr. 24, 2024) ("Because the record evidence supports the [hearing officer's] credibility determinations, and no other record evidence supports Manygoats' claims . . . , substantial evidence supports the [hearing officer's] denial of relocation benefits.").

Here, the hearing officer reasonably concluded that Plaintiff was not eligible for relocation benefits because he resided solely on the NPL in Cow Springs. This Court should affirm.

C. The hearing officer's reliance on the BIA Enumeration as evidence of residency was reasonable.

Plaintiff argues that the hearing officer's decision is not supported by substantial evidence because he treated the BIA Enumeration as determinative of residency. Opening Br. 23–24. But the hearing officer properly considered the BIA Enumeration—which listed Plaintiff as a resident of Cow Springs, on the NPL—to be relevant and prima facie evidence of residency. *See* ER-69, ER-72–74. Plaintiff's arguments to the contrary hold no weight.

1. The hearing officer properly considered the BIA Enumeration as prima facie evidence of residency.

The preamble to ONHIR's regulations explicitly includes the BIA's roster of residents in the Joint Use Area as one source that "will be examined" by the agency

to establish residency as of December 22, 1974. 49 Fed. Reg. at 22,278. And as this Court and the district court have repeatedly affirmed, a hearing officer's consideration of the Enumeration as prima facie evidence of residency is reasonable. In *Begay v. ONHIR*, this Court upheld ONHIR's decision to deny relocation benefits, finding that "ONHIR drew reasonable inferences from the Joint Use Area Roster [i.e., the BIA Enumeration], which, along with other evidence, substantiated the residency determination." 770 F. App'x at 802. In doing so, the Court affirmed the district court's decision, which found that "precedent does establish that the BIA enumeration alone cannot establish residence, but it may be used as *prima facie* evidence of residency that Plaintiff then has the burden of disproving." *Begay*, 305 F. Supp. 3d at 1049; *see Begay*, 770 F. App'x at 802.

More recently, in *Manygoats v. ONHIR*, the district court rejected the argument that the hearing officer erred by relying on the BIA Enumeration as prima facie evidence of residency. 2024 WL 1209947 at *4–5. This Court affirmed the decision, noting in part that the plaintiff "was not on the Bureau of Indian Affairs enumeration whereas his relatives were." *Manygoats*, 2025 WL 1121634, at *1.

ONHIR does not dispute that the BIA Enumeration did not capture every resident of the Joint Use Area in 1974 and 1975. That is why the Enumeration is not *determinative* of residency, and the hearing officer did not treat it as such. But Plaintiff cites no precedent asserting that the hearing officer should disregard the

BIA Enumeration in its entirety. *Cf. Mike* ex rel. *Mike v. ONHIR*, No. CV-06-0866-PCT-EHC, 2008 WL 54920, at *5–7 (D. Ariz. Jan. 2, 2008) (finding that the independent hearing officer erred where he "ignore[d]" the Enumeration and its presumption of residency). Here, the hearing officer reasonably considered the BIA Enumeration, weighed it with other evidence, see *supra* pp.28–29, and determined that Plaintiff failed to prove residency on the HPL.

2. Plaintiff's arguments to the contrary hold no weight.

Plaintiff argues that the hearing officer improperly relied on the BIA Enumeration, contending that: (1) the hearing officer relied solely on the Enumeration in his decision; (2) the hearing officer's decision is inconsistent with prior decisions providing benefits despite an applicant's lack of enumeration; and (3) "[t]here is not much an applicant can offer to counter the Enumeration other than testimony." Opening Br. 23–24. Each of these arguments fails.

First, Plaintiff argues that the hearing officer impermissibly "treat[ed] the Enumeration as determinative" of Plaintiff's residency. Opening Br. 23. That is not true. While the hearing officer treated the Enumeration as a starting point, he considered whether other credible record evidence demonstrated that the Enumeration was inaccurate as to where Plaintiff resided. *See* ER-72–74; *supra* pp.28–29 (listing the evidence considered). Like in *Begay*, the hearing officer "did not base his findings exclusively on the BIA enumeration, but permissively took the

BIA enumeration into account as evidence." 305 F. Supp. 3d at 1049. And although Plaintiff attacks the reliability of the Enumeration, he cites and quotes a district court decision acknowledging that the hearing officer's task is to "meaningfully consider whether Plaintiffs had met their burden in *disproving the Enumeration*." Opening Br. 25–26 (quoting *Ray v. ONHIR*, No. CV-22-08101-PCT-SPL, 2023 WL 4761789 (D. Ariz. July 26, 2023) (emphasis added)). Further, Plaintiff's reliance on *Fuson v. ONHIR* is misplaced; there, the hearing officer "relied almost exclusively on the BIA enumeration roster" in his decision. 134 F.4th at 1018. Here, the hearing officer appropriately considered the BIA Enumeration by weighing it with other credible evidence.

Second, Plaintiff claims that the decision here is inconsistent with three extra-record decisions by the hearing officer, in which he held that applicants were eligible for benefits despite not being enumerated on the HPL. Opening Br. 24; *see* ER 79–83 ("*Harry Isaac*"), ER-84–91 ("*Minnie Woodie*"), ER-92–98 ("*Edison Bahe*"). Judicial review in an APA case must be based upon the "full administrative record that was before the [agency]" when it made its decision. *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). "Considering evidence outside this record is inappropriate . . . because it inevitably leads the reviewing court to substitute its judgment for that of the agency." *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 499 F.3d 1108, 1117 (9th

Cir. 2007) (internal quotations omitted). Parties that challenge the completeness of a record must file a motion and meet this Court's standard for supplementation of the record. *See Fence Creek Cattle Co. v. U.S. Forest Serv.*, 602 F.3d 1125, 1131 (9th Cir. 2010).

Here, Plaintiff has not met his "heavy burden to show that the additional materials sought are necessary," and ONHIR renews its objection to the consideration of these decisions.[9] *Id. Isaac* and *Woodie* were not part of the certified administrative record, and Plaintiff has not established that they were considered by the hearing officer. And although Plaintiff cited *Bahe* in his request for reconsideration, he did not attach the decision to the request, and it is unlikely that the hearing officer considered it. *See* SER-23. This Court has previously rejected applicants' inclusion of other hearing officer decisions, where, like here, they were not before the hearing officer when he made his decision. *See, e.g.*, *Manygoats*, 2025 WL 1121634, at *2. In any event, these decisions do not aid Plaintiff. In each one, the hearing officer found that the Enumeration alone cannot determine residency and that credible evidence rebutted the presumption established by the Enumeration. Here, the hearing officer found that several pieces of credible evidence *supported*

[9] The district court did not mention the decisions in its order but made no ruling on the objection.

Plaintiff's residency on the NPL, where he was enumerated, and no credible evidence existed to rebut the Enumeration. ER-72–74.

Third, Plaintiff contends that "[t]here is not much an applicant can offer to counter the Enumeration other than testimony." Opening Br. 23. This is not true; ONHIR regulations specify several kinds of documentary evidence that Plaintiff could have offered to counter the BIA Enumeration. *See* 49 Fed. Reg. at 22,278. But Plaintiff introduced no documentary evidence that he personally owned any improvements, livestock, or homesite leases; nor did he introduce public health records, school records, military records, employment records, mailing address records, banking records, driver's license records, home ownership or rental records, or "other relevant data" manifesting his intent to remain or reside at Black Mesa.

In fact, both documents Plaintiff provided to ONHIR—his application and his child's death certificate—listed his Cow Springs address on the NPL. *See* ER-25; SER-20. And applicants can overcome their non-inclusion in the Enumeration through submission of sufficient *credible* testimonial evidence, but that was not presented here. *See supra* pp.22–28. Plaintiff's witnesses' vague, inconsistent, and insufficient testimony did not support a finding that the presumption of residency established in the Enumeration was overcome. *See* ER-72–74.

The hearing officer's decision to rely on the Enumeration, along with other credible evidence, to deny Plaintiff's application for benefits was not arbitrary or capricious.

II. If the Court concludes that the record does not support ONHIR's decision, remand, rather than reversal, is appropriate.

The hearing officer's determination was reasonable and supported by substantial evidence for the reasons stated above. That said, if this Court finds any error, it should remand to the agency to address any errors in the first instance.[10]

Plaintiff requests that the Court "direct the Agency to certify him for Relocation Benefits." Opening Br. 30. But if "the record before the agency does not support the agency action" or "the agency has not considered all relevant factors," "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985); *accord Smith v. Berryhill*, 587 U.S. 471, 488 (2019); *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 603 (9th Cir. 2014) (lacking substantial evidence for agency's decision, a court "should not compensate for the agency's dereliction by undertaking its own inquiry into the merits, but should

[10] Pursuant to a Memorandum of Understanding between ONHIR and the Department of the Interior, the Secretary of the Interior is now exercising the delegated authority of the ONHIR Executive Director.

remand to the agency for further proceedings" (internal quotation marks and citations omitted)).

This Court should affirm the district court's judgment. But if the Court concludes that ONHIR erred, it should follow the general rule and remand for further agency proceedings. *See, e.g.*, *George v. ONHIR*, 825 F. App'x 419, 421 (9th Cir. 2020) (remanding for ONHIR to consider specific evidence but "express[ing] no view as to the proper outcome").

CONCLUSION

For all these reasons, this Court should affirm the district court's judgment.

Respectfully submitted,

/s/ *Maia D. Foster*

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December 10, 2025
90-2-4-17908

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This brief contains 8,563 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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Signature s/Maia D. Foster

Date December 10, 2025

ADDENDUM

INDEX TO ADDENDUM

Code of Federal Regulations
Title 25. Indians
Chapter IV. The Office of Navajo and Hopi Indian Relocation
Part 700. Commission Operations and Relocation Procedures (Refs & Annos)
Subpart A. General Policies and Instructions
Definitions

25 C.F.R. § 700.97

§ 700.97 Residence.

Currentness

(a) Residence is established by proving that the head of household and/or his/her immediate family were legal residents as of December 22, 1974, of the lands partitioned to the Tribe of which they are not members.

Credits
[49 FR 22278, May 29, 1984]

SOURCE: 47 FR 2092, Jan. 14, 1982; 51 FR 22934, June 24, 1986; 52 FR 21951, June 10, 1987; 56 FR 13398, April 2, 1991, unless otherwise noted.

AUTHORITY: Pub.L. 99–590; Pub.L. 93–531, 88 Stat. 1712 as amended by Pub.L. 96–305, 94 Stat. 929, Pub.L. 100–666, 102 Stat. 3929 (25 U.S.C. 640d).

Current through December 5, 2025, 90 FR 56065. Some sections may be more current. See credits for details.

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Code of Federal Regulations
Title 25. Indians
Chapter IV. The Office of Navajo and Hopi Indian Relocation
Part 700. Commission Operations and Relocation Procedures (Refs & Annos)
Subpart C. General Relocation Requirements

25 C.F.R. § 700.147

§ 700.147 Eligibility.

Currentness

(a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on December 22, 1974, of an area partitioned to the Tribe of which they were not members.

(b) The burden of proving residence and head of household status is on the applicant.

(c) Eligibility for benefits is further restricted by 25 U.S.C. 640d–13(c) and 14(c).

(d) Individuals are not entitled to receive separate benefits if it is determined that they are members of a household which has received benefits.

(e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.

Credits
[49 FR 22278, May 29, 1984; 51 FR 19170, May 28, 1986]

SOURCE: 47 FR 2092, Jan. 14, 1982; 51 FR 22934, June 24, 1986; 52 FR 21951, June 10, 1987; 56 FR 13398, April 2, 1991, unless otherwise noted.

AUTHORITY: Pub.L. 99–590; Pub.L. 93–531, 88 Stat. 1712 as amended by Pub.L. 96–305, 94 Stat. 929, Pub.L. 100–666, 102 Stat. 3929 (25 U.S.C. 640d).

Notes of Decisions (22)

Current through December 5, 2025, 90 FR 56065. Some sections may be more current. See credits for details.

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Dated: May 21, 1984.

Warren A. Lasko,

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[FR Doc. 84-14104 Filed 5-25-84; 8:45 am]

BILLING CODE 4210-32-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commission Operations and Relocation Procedures; Eligibility

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Final rule.

SUMMARY: This notice adopts final rules regarding eligibility standards for receipt of benefits under Pub. L. 93-531, the Navajo and Hopi Indian Relocation Act. This action is necessary to clarify the current rules and to resolve ambiguities that have arisen in determinations of eligibility for benefits.

EFFECTIVE DATE: June 28, 1984

ADDRESS: Comments may be sent to the Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ 86002.

FOR FURTHER INFORMATION CONTACT: Paul M. Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ 86002. Telephone No. (602) 779-2721.

The principal author of this final rulemaking is E. Susan Crystal, Attorney at Law, of the Navajo and Hopi Indian Relocation Commission.

SUPPLEMENTARY INFORMATION: The following is a section-by-section analysis of comment received.

Section 700.69—Head of Household.

Comment was received from the Navajo Tribe on § 700.69(a)(1) which defines a household. The Navajo Tribe recommended that the section specify that as a result of a court imposed construction freeze on the Former Joint Use Area, two or more households may be living together at a specific location. This comment was incorporated into the definition of household to clarify that separate households living at a specific location may be eligible separately for benefits.

Comment regarding § 700.69(a)(2) which defines a single person head of household was received from the Navajo-Hopi Legal Services Program recommending that the proposed definition be broadened to include all reasonable circumstances under which a single individual may be recognized as an independent household for purposes of these regulations. A portion of this comment proposed by the Navajo-Hopi Legal Services Program was incorporated into the definition. The final rule specified that these circumstances must exist while the individual continues to reside on land partitioned to the Tribe of which they are not a member.

Comment was received from the Navajo Tribe that § 700.69(b) which defines head of household be redrafted so that the household designates the individual who acts on behalf of the household members. The Commission makes such designation only in the event the household fails to do so. This clarification is consistent with Commission practice and has been incorporated into the final regulation.

Section 700.97—Residence.

The final rule reiterates the language of the proposed rule, limiting determination of residence to a specific point in time, December 22, 1974, the date of passage of Pub. L. 93-531.

The term "residence" in the final rule is meant to be given its legal meaning combined which requires an examination of a person's intent to reside combined with manifestations of that intent. An individual who was, on December 22, 1974, away from the land partitioned to the Tribe of which he/she is not a member may still be able to prove legal residence.

Comment was received from the Navajo Tribe that elimination of the term "substantial and recurring contacts" and the adoption of the term "legal residence" makes interpretation of the residence requirements less clear to the Commission administrative staff who must use the regulations. The factors which will be examined by the Commission in assessing an applicants' manifestations of intent to maintain legal residence in the partitioned lands as of December 22, 1974, include the following: Ownership of livestock, Ownership of improvements, Grazing Permits, Livestock sales receipts, Homesite leases, Public health records, Medical and Hospital records, including those of Medicinemen, Trading Post records, School records, Military records, Employment records, Mailing Address records, Banking records, Drivers license records, Voting records—tribal and county, Home ownership or rental off the disputed area, BIA Census Data, Information obtained by Certification Field Investigation, Social Security Administration records, Marital records, Court records, Records of Birth, Joint Use Area Roster, any other relevant data. It is the Commission's view that the concept of legal residence reflects the intent of Congress that those who were, in 1974, residents of land partitioned to a tribe of which they were not members, be eligible for benefits.

The proposed regulations provided that current occupancy was a criteria of residency. Comment received from the Navajo-Hopi Legal Services Program pointed out the inconsistency between this provision and the determination of legal residence as of December 22, 1974. Once legal residence is proven, current occupancy (which is a fluctuating condition) is not required for eligibility. The criteria of current occupancy has been eliminated from the final rule.

Comment was received from the Hopi Tribe concerning the restrictive language of Pub. L. 97-394, the Interior Appropriations Bill for FY 1983. The comment was not incorporated.

Section 700.147—Eligibility.

Section 700.147 (a) of the proposed rule states that in order to be eligible for benefits provided for under Pub. L. 93-531, the head of household and/or immediate family must have been residents on December 22, 1974 of an area partitioned to the Tribe of which they are not members. Regarding this section, comment was received from the Navajo Tribe objecting to this revision of existing regulations which allow benefits to be paid to individuals who moved from the Former Joint Use Area between December 22, 1974 and August 30, 1978, even though the land from which they moved was subsequently partitioned to the Tribe of which they were members. The Commission disagrees that benefits should be paid to said individuals. Pub. L. 93-531 was enacted to provide relocation assistance to individuals displaced from lands awarded to the Tribe of which they are not members. The Commission recognizes that until the final partition line was drawn, individuals living on the Former Joint Use Area were uncertain of the future disposition of their traditional use lands and some individuals may have moved voluntarily in order to establish a more secure homestead. However, Congress authorized the Commission to assist individuals specifically displaced by the Settlement Act.

Section 700.147(b) of the final rule states that the burden of proving residence and head of household status is on the applicant. No comment was received on this provision.

Section 700.147(c) of the final rule provides that eligibility for benefits is further restricted by 25 U.S.C. 640d-13(c) and 14(c). This citation is repeated from current regulations. No comment was received on this section.

Section 700.147(d) of the final rule states that individuals who are determined to be members of a household which has received benefits are not separately entitled to benefits. This section has been added to clarify any confusion on the part of clients that they may be separately entitled to benefits even though they have been included in the benefits package provided to the household of which they are members. Commission procedures specifically identify the members of the household who participate in the benefits award. A household member who believes he/she may be separately eligible may apply independently and receive a determination based upon eligibility criteria applicable to the particular case.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of interests, Freedom of Information, Grant program-Indians, Indian-claims, Privacy, Real property acquisition, Relocation assistance.

Authority: Pub. L. 93-531, 88 Stat. 1712 as amended by Public Law 96-305, 94 Stat. 929 (25 U.S.C. 640d).

PART 700—[AMENDED]

Accordingly, 25 CFR, Subpart A, §§ 700.69, 700.97 and Subpart C, § 700.147 are revised to read as follows:

§ 700.69 Head of household.

(a) *Household.* A household is:

(1) A group of two or more persons living together at a specific location who form a unit of permanent and domestic character.

(2) A single person who at the time his/her residence on land partitioned to the Tribe of which he/she is not a member actually maintained and supported him/herself or was legally married and is now legally divorced.

(b) *Head of household.* The head of household is that individual who speaks on behalf of the members of the household and who is designated by the household members to act as such.

(c) In order to qualify as a Head of Household, the individual must have been a Head of Household as of the time he/she moved from the land partitioned to a tribe of which they were not a member.

§ 700.97 Residence.

(a) Residence is established by proving that the head of household and/or his/her immediate family were legal residents as of 12/22/74 of the lands partitioned to the Tribe of which they are not members.

§ 700.147 Eligibility.

(a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on 12/22/74 of an area partitioned to the Tribe of which they were not members.

(b) The burden of proving residence and head of household status is on the applicant.

(c) Eligibility for benefits is further restricted by 25 U.S.C. Sections 640d-13(c) and 14(c).

(d) Individuals are not entitled to receive separate benefits if it is determined that they are members of a household which has received benefits.

Ralph A. Watkins, Jr,

Chairman Navajo and Hopi Indian Relocation Commission.

[FR Doc. 84-14218 Filed 5-25-84; 8:45 am]

BILLING CODE 7560-01-M