KENNETH and FLORENCE HELGESON,	:	Order Affirming Decisions
Appellants	:	
	:	
GENE and NANCY HELGESON,	:	
Appellants	:	
	:	
LEON J. HELGESON,	:	Docket Nos. IBIA 95-115-A
Appellant	:	IBIA 95-116-A
	:	IBIA 95-117-A
v.	:	
	:	
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 25, 1996

These are appeals from three April 7, 1995, decisions of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), each denying an application for a U.S. direct loan in the amount of $168,065. For the reasons discussed below, the Board affirms all three decisions.

Each decision stated:

> Your direct loan application for $168,065 has been carefully reviewed at the agency, Area, and Central Office levels.
>
> Your loan request was for a livestock purchase, first year's operating expense, and a third of the cost of a loan buy-out for your mother.
>
> The proposed loan is identical to the applications submitted by your brothers. Each proposal is dependent on the other for success.
>
> The plan, as presented, would require the absence of any adverse conditions for a considerable period of time; reliance on constant annual operating cost borrowing; and on the maintenance of additional annual debt service on the $103,000 real estate debt owed to Farmers Home Administration by your mother.
>
> Your U.S. Direct loan application for $168,065 is not approved because of undue risk and the lack of a reasonable prospect of repayment.

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The record shows that Dora Helgeson, the mother of appellants Kenneth, Gene, and Leon J. Helgeson, owns 1,444 acres of trust land on the Fort Belknap Reservation. This land was mortgaged in 1980, together with 240 acres of trust land belonging to Kenneth Helgeson. The Federal Land Bank holds the first mortgage, and the Farmers Home Administration holds a second mortgage. The first mortgage has been in default for several years. Dora Helgeson has continued to make interest payments on the second mortgage.

Appellants have made several attempts to come up with a plan and the funds necessary to save the family land and cattle business. With the assistance of BIA credit staff and others, appellants applied for loans and grants under various BIA and non-BIA programs. These efforts all proved unsuccessful, as did appellants' applications for the U.S. direct loans at issue here.

On appeal to the Board, appellants dispute the Area Director's conclusion that there is no reasonable prospect of repayment. Further, they contend that BIA has a trust duty toward them in this case because trust land is in jeopardy; that BIA should have considered them for assistance under other BIA programs rather than deny their loan applications outright; and that BIA was required to offer appellants management and technical assistance.

25 U.S.C. § 1463 (1994) provides: "Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment." As the Area Director stated in his decisions, his judgment in this case was that there was no reasonable prospect of repayment.

The Board has often discussed the principles guiding its review of BIA decisions concerning loan requests. See, e.g., Moore v. Portland Area Director, 25 IBIA 243, 244-45 (1994), in which the Board summarized these principles:

> (1) BIA's decision to approve or deny a loan is discretionary; (2) the Board will not substitute its judgment for BIA's; (3) the Board's role in such cases is to ensure that BIA gave consideration to all legal prerequisites to the exercise of discretion; (4) an appellant bears the burden of proving that BIA's discretion was not properly exercised; and (5) where there is no procedural error, and the decision and/or administrative record show how BIA reached its conclusions, the BIA decision will be affirmed.

Appellants clearly disagree with the Area Director's judgment concerning their ability to repay the loans. They do not show, however, that the Area Director committed any legal error. The Board finds that the Area Director's judgment is amply supported by the record in this case, including the analyses in the Agency and Area credit memoranda and the advice given in a March 15, 1995, memorandum from the Director of the Office of Economic Development in BIA's Central Office. Therefore, the Board will not disturb that judgment.

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The Board agrees with appellants that BIA has a trust duty toward the land involved in this case. That trust duty, however, does not mandate the approval of the loans requested by appellants. Nor does it alter the requirement in 25 U.S.C. § 1463 that loans be approved only when, in the judgment of the Secretary, there is a reasonable prospect of repayment.

It is apparent from the record that, contrary to appellants' contention, BIA did consider appellants for assistance under other BIA programs. In fact, the record shows that BIA employees went to unusual lengths to support appellants' efforts to obtain financial assistance. The Board finds that IBIA did not err in this regard.

With respect to management and technical assistance, 25 C.F.R. 101.7 provides:

> Prior to and concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner will assure * * * that competent management and technical assistance is available to the loan applicant for preparation of the application and/or administration of funds loaned consistent with the nature of the enterprise proposed to be or in fact funded by the loan.

It is clear that BIA staff and others provided appellants with considerable technical assistance in the preparation of their loan applications. However, the fact that technical assistance is provided to a loan applicant does not guarantee that the application will be approved. Nor, contrary to what appellants appear to be suggesting, is BIA required to guarantee an applicant's success in business through an offer of post-award management and technical assistance. The Board finds no error in BIA's provision of technical assistance to appellants.

The burden was on appellants to show error in the Area Director's decisions. They have not done so here. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. 4.1, the Area Director's April 7, 1995, decisions are affirmed.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge

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