

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL APPEALS OFFICE

In re Application of

████████████████████

Appellant

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Appeal No. 14-0022

DECISION

STATEMENT OF THE CASE

The National Appeals Office (NAO) is a division within the National Marine Fisheries Service (NMFS), Office of Management and Budget, and is located in NOAA's headquarters in Silver Spring, Maryland. The undersigned is the administrative judge assigned to review and decide this appeal pursuant to federal regulation.¹ The Regional Administrator (RA) of NMFS' Alaska Regional Office may affirm, reverse, modify, or remand this decision.²

This case comes before NAO on a timely appeal filed by ██████████ (Appellant). Appellant challenges an Initial Administrative Determination (IAD) issued by NMFS' Restricted Access Management (RAM) program on January 21, 2014.³ In the IAD, RAM revoked ██████████ units of Pacific halibut Quota Share (QS) that it initially issued to Appellant under the Pacific Halibut and Sablefish Individual Fishing Quota Program (Regulation).⁴

On August 20, 2013, and October 17, 2013, RAM sent Appellant a Pacific Halibut & Sablefish IFQ Program Notice of Opportunity to Submit Evidence (Notice).⁵ In the Notices, RAM informed Appellant it had received information indicating he was not eligible to receive the QS issued to him in 1995.⁶ The Notice issued on October 17, 2013, provided Appellant until January 19, 2014, to supply documentation demonstrating he was a U.S. citizen at the time he applied for QS.⁷ The Notice specified that, pursuant to the Regulation, eligibility for QS requires an applicant hold U.S. citizenship at the time of application; and that Appellant was not such a person.⁸

¹ 50 C.F.R. § 679.43(g)-(n) (2012).

² 50 C.F.R. § 679.43(o) (2012).

³ Application Tab, Initial Administrative Determination, dated January 21, 2014.

⁴ See 50 C.F.R. § 679.40 (2012).

⁵ Application Tab, Pacific Halibut & Sablefish IFQ Program Notice of Opportunity to Submit Evidence, dated August 20, 2013, and October 17, 2013.

⁶ Application Tab, Pacific Halibut & Sablefish IFQ Program Notice of Opportunity to Submit Evidence, dated August 20, 2013, and October 17, 2013.

⁷ Application Tab, Pacific Halibut & Sablefish IFQ Program Notice of Opportunity to Submit Evidence, dated October 17, 2013.

⁸ Application Tab, Pacific Halibut & Sablefish IFQ Program Notice of Opportunity to Submit Evidence, dated October 17, 2013.

On January 21, 2014, RAM issued Appellant an IAD.⁹ In the IAD, RAM found Appellant was ineligible to receive the QS because he was not a United States citizen when he applied for QS in 1994.¹⁰ Based on this finding, RAM revoked the QS it issued to Appellant in 1995.¹¹ RAM notified Appellant of his right to appeal the IAD to NAO.¹²

On March 20, 2014, Appellant timely appealed the IAD.¹³ On April 9, 2014, NAO sent Appellant a certified letter acknowledging receipt of Appellant's appeal and requesting he submit any additional documentation or information by April 30, 2014.¹⁴ On May 13, 2014, the United States Postal Service (USPS) returned the acknowledgement letter as unclaimed.¹⁵ On May 5, 2014, NAO sent Appellant a Notice Scheduling Hearing setting a hearing date for May 23, 2014.¹⁶ However, on May 20, 2014, the USPS returned the Notice Scheduling Hearing as unclaimed.¹⁷ On May 28, 2014, NAO sent Appellant a second Notice Scheduling Hearing setting a new hearing date for June 20, 2014.¹⁸

On June 2, 2014, NAO received correspondence from Appellant indicating he has lived in ██████████ since he was two years old and has been fishing for halibut for 29 years.¹⁹ In support of his claim, Appellant included photocopies of a resident alien identification card issued to him by the U.S. Department of Justice, Immigration and Naturalization Service—the predecessor to the U.S. Department of Homeland Security, Citizenship and Immigration Services (Immigration Service).²⁰ On June 20, 2014, Appellant requested NAO reschedule his hearing.²¹

On July 1, 2014, NAO sent Appellant a Notice Rescheduling Hearing Final Rescheduling resetting Appellant's hearing date to July 25, 2014.²² On July 25, 2014, during his telephonic hearing, Appellant testified that (1) he has lived in ██████████ since he was 2 years old and has had a green card since he was 12 years old; and (2) both his maternal and paternal grandparents were U.S. citizens.²³ NAO allowed Appellant until August 8, 2014, to provide evidence of his U.S. citizenship.²⁴ On August 14, 2014, having received no additional evidence, NAO sent Appellant a final Notice to Submit Evidence providing Appellant another opportunity to submit additional evidence by August 27, 2014.²⁵

On August 26, 2014, ██████████ Appellant's sister, filed additional evidence on Appellant's behalf outlining the ██████████ family's known genealogy.²⁶ Because ██████████ is not a party to the instant appeal, NAO sent Appellant a Notice for Authorization on September 4, 2014, requesting he submit written

⁹ Application Tab, Initial Administrative Determination, dated January 21, 2014.

¹⁰ Application Tab, Initial Administrative Determination, dated January 21, 2014.

¹¹ Application Tab, Initial Administrative Determination, dated January 21, 2014.

¹² Application Tab, Initial Administrative Determination, dated January 21, 2014.

¹³ Pleadings Tab, Notice of Appeal, received March 20, 2014.

¹⁴ Correspondence Tab, Acknowledgement Letter, dated April 9, 2014.

¹⁵ Correspondence Tab, Returned Acknowledgement Letter, received May 13, 2014.

¹⁶ Correspondence Tab, Notice Scheduling Hearing, dated May 5, 2014.

¹⁷ Correspondence Tab, Returned Notice Scheduling Hearing, received May 20, 2014.

¹⁸ Correspondence Tab, Notice Scheduling Hearing, dated May 28, 2014.

¹⁹ Pleadings Tab, Appellant's Letter, received June 2, 2014.

²⁰ Pleadings Tab, Appellant's Letter, received June 2, 2014.

²¹ Correspondence Tab, Notice Rescheduling Hearing Final Rescheduling, dated July 1, 2014.

²² Correspondence Tab, Notice Rescheduling Hearing Final Rescheduling, dated July 1, 2014.

²³ Audio Recording of July 25, 2014, Scheduled Hearing.

²⁴ Audio Recording of July 25, 2014, Scheduled Hearing.

²⁵ Correspondence Tab, Notice to Submit Evidence Final, dated August 14, 2014.

²⁶ Pleadings Tab, Fax from ██████████ received August 16, 2014.

authorization by September 19, 2014, for his sister to submit evidence in support of his appeal.²⁷ On September 17, 2014, Appellant submitted the requested written authorization.²⁸

I have determined that the information in the record is sufficient to render a decision.²⁹ I therefore close the record and render this decision. In reaching my decision, I have carefully reviewed the entire record, including the audio recording of Appellant's telephonic hearing.

ISSUES

At issue in this case is whether RAM properly revoked Appellant's ██████████ units of QS. To resolve that issue, I must answer the following:

Did Appellant establish by a preponderance of the evidence that he was a U.S. citizen at the time he applied for QS under the Regulation?

If the answer to this question is "no," Appellant's QS must be revoked and I must uphold the IAD.

FINDINGS OF FACT

1. In or around 1978, the Immigration Service issued Appellant a resident alien identification card.³⁰
2. On February 28, 1994, Appellant applied for an allocation of QS under the Regulation.³¹
3. In early 1995, RAM issued Appellant ██████████ units of QS.³²

PRINCIPLES OF LAW

To qualify for QS, an applicant must meet the definition of a "qualified person" under the Regulation. The Regulation defines a "qualified person" as someone who:

- (A) [O]wned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year; or
- (B) [L]eased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person who owns a vessel cannot be a qualified person

²⁷ Correspondence Tab, Notice for Authorization, dated September 4, 2014.

²⁸ Pleadings Tab, Authorization Letter, received September 17, 2014.

²⁹ 50 C.F.R. 679.43(g)(2) (2012).

³⁰ Application Tab, Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card, approved ██████████ 1978; Pleadings Tab, Appellant's Letter, received June 2, 2014.

³¹ Application Tab, Request for Application for Quota Share, signed February 25, 1994, and received February 28, 1994.

³² Application Tab, Initial Administrative Determination, dated January 21, 2014.

based on the legal fixed gear landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease.

(C) [I]s a citizen of the United States at the time of application for QS.

(D) [I]s a corporation, partnership, association, or other non-individual entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.³³

According to the Regulation, allocated QS is a harvesting privilege that is neither "an absolute right to the resource [n]or an[] interest subject to the 'takings' provision of . . . the U.S. Constitution."³⁴ Consequently, NMFS may revoke or amend this privilege pursuant to the Magnuson-Stevens Act or other applicable law.³⁵

ANALYSIS

Did Appellant establish by a preponderance of the evidence that he was a U.S. citizen at the time he applied for QS under the Regulation?

Under the Regulation, Appellant must demonstrate he was a U.S. citizen at the time he initially applied for an allocation of QS.³⁶ If Appellant is unable to make this showing, he was ineligible to receive QS under the Regulation and NMFS must revoke the QS issued to him in 1995.³⁷

The record establishes that on February 25, 1994, Appellant initially applied for an allocation of QS under the Regulation.³⁸ However, although NMFS issued Appellant ████████ units of QS,³⁹ the record does not reflect that Appellant was a U.S. Citizen at the time he submitted his application. Consequently, Appellant was not eligible to receive an allocation of QS under the Regulation.

In reaching my decision, I have carefully reviewed the entire record, including Appellant's arguments. Appellant states he has lived in ████████ since he was 2 years old and began fishing at age 10.⁴⁰ As support, Appellant submitted a photocopy of his resident alien card, which he received at age 12.⁴¹ Appellant argues he has been halibut fishing for the past 38 years and would make a good candidate for a grandfather exemption.⁴² In addition, Appellant reports both his maternal and paternal grandparents were U.S. citizens.⁴³ Finally, Appellant avows his maternal grandfather was U.S. veteran of World War II.⁴⁴

Appellant has presented evidence of his historical involvement in halibut fishing. However, the Regulation contains no provision that would allow NMFS to issue Appellant QS based solely on his historical

³³ 50 C.F.R. § 679.40(a)(2)(i)(A)-(C) (2012) (emphasis added).

³⁴ 50 C.F.R. § 679.40(f) (2012).

³⁵ 50 C.F.R. § 679.40(f) (2012).

³⁶ 50 C.F.R. § 679.40(a)(2)(i)(C) (2012).

³⁷ 50 C.F.R. § 679.40(a)(2)(i)(C), (f) (2012).

³⁸ Application Tab, Request for Application for Quota Share, signed February 25, 1994, and received February 28, 1994.

³⁹ Application Tab, Initial Administrative Determination, dated January 21, 2014.

⁴⁰ Pleadings Tab, Appellant's Letter, received June 2, 2014.

⁴¹ Pleadings Tab, Appellant's Letter, received June 2, 2014.

⁴² Pleadings Tab, Appellant's Letter, received June 2, 2014.

⁴³ Audio Recording of July 25, 2014, Scheduled Hearing.

⁴⁴ Audio Recording of July 25, 2014, Scheduled Hearing.

participation in the Pacific halibut fishery. Additionally, Appellant has not established he was a U.S. citizen on the date he filed his initial application for QS. Although the evidence reflects his maternal grandfather, as well as his paternal great grandfather and great grandmother were born in the U.S., this in itself does not establish Appellant's U.S. citizenship. Additionally, the Regulation has no provision that would allow NMFS to issue Appellant QS based on his relative's service in the U.S. military.

In summary, Appellant has not established the IAD issued to him was inconsistent with the Regulation. In reaching my decision in this case, I carefully examined the entire record and considered Appellant's arguments. However, I must uphold the IAD because Appellant has not established he was a U.S. citizen at the time he initially applied for an allocation of QS under the Regulation.

CONCLUSIONS OF LAW

Appellant did not establish he was a U.S. citizen at the time he initially applied for an allocation of QS.

RAM correctly followed its regulations governing the IFQ Program when it permanently revoked Appellant's QS. The IAD is consistent with the Regulation.

ORDER

The IAD dated January 21, 2014, is upheld. This decision takes effect thirty days from the date issued, November 4, 2014, and will become the final agency action for purposes of judicial review, unless a motion for reconsideration is made, or the RA reverses, modifies, or remands this decision pursuant to 50 C.F.R. § 679.43 (k), (o) (2012).

Appellant or RAM may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m. Alaska Standard Time, on the tenth day after the date of this Decision, October 6, 2014. A Motion for Reconsideration must be in writing, must allege one or more specific material matters of fact or law were overlooked or misunderstood by the administrative judge, and must be accompanied by a written statement of points and authorities in support of the motion. A timely Motion for Reconsideration will result in a stay of the effective date of this Decision pending a ruling on the motion or the issuance of a Decision on Reconsideration.

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Steven Goodman
Administrative Judge

Date Issued: September 22, 2014