

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of ) Appeal No. 01-0013  
)  
THOMAS J. CHEEMUK, SR., ) DECISION  
Appellant )  
) July 22, 2004  
)  
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STATEMENT OF THE CASE

The Restricted Access Management (RAM) issued an Initial Administrative Determination (IAD) that denied Mr. Cheemuk's application for a crab license under the North Pacific Groundfish and Crab License Limitation Program (LLP). The IAD denied the application because it was filed nearly 1½ years after the LLP application deadline of December 17, 1999. Mr. Cheemuk was given 60 days to appeal the IAD.

On the deadline date for filing a timely appeal (September 4, 2001), we received a letter from Mr. Cheemuk that stated he needed more time to appeal the IAD because he had been in and out of the hospital. We accepted the letter as a timely appeal.

We did not hear back from Mr. Cheemuk, so on June 26, 2002, I telephoned to find out whether he still wished to pursue his appeal. When he said he did, I told him that to be considered an "eligible applicant" he would first need to explain why he did not file his LLP application by the filing deadline, and that he would also need to produce evidence of sufficient qualifying fishing history.

After the telephone call, I sent Mr. Cheemuk a request for evidence that asked him to explain the late filing of his LLP application, and to produce, if available, evidence that would support his explanation. I also asked him to produce state fish tickets that would verify his fishing history, and to produce any records from the State of Alaska that would show he made at least one harvest of Norton Sound Blue or Red King Crab with his commercial fishing permit during 1993 or 1994. I gave Mr. Cheemuk until August 14, 2002, to respond to the request for evidence, but he never responded. The deadline for evidence has expired, and the record on appeal is closed.

Mr. Cheemuk has filed a timely appeal of the IAD. Mr. Cheemuk can file an appeal because his interests are directly and adversely affected by the IAD. [50 C.F.R. § 679.43(b)] An oral hearing is not necessary in this case because the record on appeal contains sufficient information on which to reach a final decision. [50 C.F.R. § 679.42(m)(4)]

## ISSUE

Is Mr. Cheemuk an “eligible applicant” for an LLP crab license?

## ANALYSIS

To be considered an “eligible applicant” for an LLP crab license, Mr. Cheemuk must have filed a timely LLP application to RAM by December 17, 1999.<sup>1</sup> Mr. Cheemuk did not submit an LLP application to NMFS by the application deadline of December 17, 1999. Therefore, he did not file a timely application for an LLP crab license.

Mr. Cheemuk claims that NMFS did not send him an LLP application form, as required by the LLP regulations. The LLP regulations require NMFS to send an LLP application form to a person identified in the NMFS official LLP record as an “eligible applicant.”<sup>2</sup> To be identified in the NMFS official LLP record as an “eligible applicant” for an LLP crab license,<sup>3</sup> the applicant must have

- (1) owned a qualified vessel on June 17, 1995, that made the minimum number of documented harvests of crab for an LLP crab license;<sup>4</sup>
- (2) owned the crab fishing history of an LLP qualified vessel; or
- (3) made at least one harvest of red or blue king crab on a State of Alaska commercial fishing permit for the Norton Sound king crab summer fishery in 1993 or 1994.

The NMFS official LLP record does not show that Mr. Cheemuk owned a qualified vessel on June 17, 1995, that made the requisite documented harvests to qualify him for an LLP crab license; nor does it show that Mr. Cheemuk owned the fishing history of an LLP qualifying vessel; nor that he made at least one documented harvest of Norton Sound blue or red king crab on a State of Alaska commercial fishing permit in 1993 or 1994. Therefore, I find that Mr.

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<sup>1</sup>The LLP application period was between September 13, 1999, and December 17, 1999. *See* 64 Fed. Reg. 49,104 (September 10, 1999).

<sup>2</sup>50 C.F.R. § 679.4(k)(6).

<sup>3</sup>*See* definition of “eligible applicant” in 50 C.F.R. § 679.2.

<sup>4</sup>*See* 50 C.F.R. § 679.4(k)(5)(i) and 50 C.F.R. § 679.(k)(5)(ii) for the number of documented harvests of crab required to obtain an LLP crab license, based on ownership of an LLP qualified vessel. Normally, the applicant’s vessel would have had to have made at least one documented harvest of LLP crab during the general qualifying period (generally between January 1, 1988, and June 27, 1992); and at least one documented harvest of LLP crab during the endorsement qualifying period (which is anywhere between January 1, 1992, and December 31, 1994, depending on the area of harvest).

Cheemuk is not identified in the NMFS official LLP record as an eligible applicant for an LLP crab license. As a result, I conclude that NMFS was not required to send an unsolicited LLP application form to Mr. Cheemuk before the December 17, 1999, application deadline.

This Office has ruled that an LLP application filed after the application deadline can be considered timely under the doctrine of “equitable tolling.”<sup>5</sup> To obtain relief under this doctrine, an applicant must show three things: (1) extraordinary circumstances beyond the applicant’s control prevented the applicant from filing in a timely manner; (2) the applicant was diligent in submitting an application after learning of the filing deadline (and after the disability to filing was removed); and (3) implementation of the IFQ program would have been harmed or frustrated if the application had been processed by RAM when it was submitted .<sup>6</sup>

Mr. Cheemuk does not claim, nor does the record on appeal show, that an “extraordinary circumstance” prevented him from submitting an LLP application to RAM by the application deadline. Therefore, the application Mr. Cheemuk submitted for an LLP crab license cannot be considered timely filed under the doctrine of equitable tolling.

Mr. Cheemuk claims that a storm prevented him from making the requisite harvests to qualify for an LLP crab license.<sup>7</sup> Even if that were true, Mr. Cheemuk could not be considered an “eligible applicant” for an LLP crab license because he did not submit a timely application for an LLP crab license.

Mr. Cheemuk was given every opportunity to explain why he did not file an LLP crab license by the application deadline, but he failed to do so. I conclude that Mr. Cheemuk is not an “eligible applicant” for purposes of qualifying for an LLP crab license.

#### FINDINGS OF FACT

1. Mr. Cheemuk is not identified in the NMFS official LLP record as an eligible applicant for an LLP crab license.
2. Mr. Cheemuk did not submit an LLP application to RAM by the application deadline of December 17, 1999.
3. An “extraordinary circumstance” did not prevent Mr. Cheemuk from submitting his application by the application deadline.

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<sup>5</sup>John B. Lee III, Appeal No. 00-0003, December 5, 2002, at 10-12.

<sup>6</sup>*See, e.g.,* John T. Coyne, Appeal No. 94-0012, May 24, 1996; Marvin C. Kinberg, Appeal No. 95-0035, August 1, 1997; and Christopher O. Moore, Appeal No. 95-0044, September 5, 1997.

<sup>7</sup>Mr. Cheemuk’s letter to RAM, May 24, 2001.

## CONCLUSIONS OF LAW

1. Mr. Cheemuk did not file a timely application for an LLP crab license.
2. RAM was not required to send Mr. Cheemuk an application form before the LLP application deadline.
3. Mr. Cheemuk's application cannot be considered timely filed under the doctrine of "equitable tolling."
4. Mr. Cheemuk is not an "eligible applicant" for purposes of qualifying for an LLP crab license.

## DISPOSITION

The IAD that is subject of this Appeal is **AFFIRMED**. This Decision takes effect August 23, 2004, unless by that date the Regional Administrator orders review of the Decision.

The Appellant or RAM may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska time, on the tenth day after this Decision, August 2, 2004. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement in support of the motion.

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Randall J. Moen  
Appeals Officer