NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 95-0074
	)	
	)	
BRADLEY V. PADON,	)	DECISION
Appellant	)	
_____	)	May 31, 2000

STATEMENT OF THE CASE

Appellant Bradley Padon filed a timely appeal of an Initial Administrative Determination (IAD) issued by the Restricted Access Management Program[1] on March 20, 1995, and an IAD on Reconsideration issued by RAM on December 19, 1995. Both IADs denied Mr. Padon's application for Quota Share (QS) under the Individual Fishing Quota (IFQ) program for Pacific halibut and sablefish. The IAD of March 20, 1995, concluded that Mr. Padon is not qualified for QS because he did not own or lease a vessel during the QS qualifying period (1988, 1989, or 1990). The IAD on Reconsideration also concluded that Mr. Padon is not qualified for QS because he did not prove that he leased the F/V NESTEBY or that his partnership with Mr. Roger Gross owned the F/V UNIMAK. Mr. Padon has adequately shown that his interests are directly and adversely affected by the IADs.

Mr. Padon requests a hearing to determine the existence of the partnership with Mr. Gross. The evidence shows that Mr. Padon would not qualify for QS even if the partnership existed. In light of this, Mr. Padon's request is denied. A hearing is also unnecessary because the record contains sufficient information on which to reach a final decision, and because there are no genuine and substantial issues of adjudicative fact for resolution. 50 C.F.R. § 679.43(g)(2)-(3). We need not consider whether Mr. Padon leased the F/V NESTEBY because we decided the issue in another IFQ decision.[2]

ISSUES

1. Is Mr. Padon entitled to QS based on his dissolved partnership with Mr. Gross?

2. Is it a violation of "due process" or "statutory construction" if Mr. Padon's partnership with Mr. Gross does not qualify him for QS?

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[1]The Restricted Access Management Division was renamed Restricted Access Management Program, effective September 28, 1997. [NOAA Circular 97-09, 19 Sep 97]

[2]*See* Bradley V. Padon, Appeal No. 96-0003, January 16, 1997.

PRINCIPLES OF LAW

1. The IFQ regulations governing the initial allocation of QS provide that only a vessel owner or a lessee can be a "qualified person" for QS. 50 C.F.R. § 679.40(a)(1)-(2).

2. Evidence of vessel ownership is limited, in order of priority, to a U.S. Coast Guard abstract of title, a certificate of registration that is determinative of vessel ownership, and a bill of sale.
50 C.F.R. § 679.40(a)(3)(ii).

3. A former partner of a dissolved partnership who would otherwise qualify as a person may apply for QS in proportion to the partner's interest in the dissolved partnership.
50 C.F.R. § 679.40(a)(2)(B)(iii).

BACKGROUND

Mr. Padon claims on appeal that he is entitled to QS, as a former partner of a dissolved partnership with Mr. Roger Gross, which used Mr. Gross' vessel, the F/V UNIMAK, to land Pacific halibut and sablefish between 1985 and 1988. Mr. Padon further claims that it would be a violation of "due process" and "statutory construction" if his dissolved partnership does not qualify him for QS. Mr. Padon produced several affidavits to prove that his partnership with Mr. Gross existed. RAM's Official Record shows that Mr. Gross owned the F/V UNIMAK during the QS qualifying period. Mr. Padon does not claim, nor does the Official Record show, that the partnership owned or leased the vessel during the QS qualifying period.

DISCUSSION

1. Is Mr. Padon entitled to QS based on his dissolved partnership with Mr. Roger Gross?

In several IFQ decisions,[3] we have ruled that a person cannot qualify for QS as a former partner of a dissolved partnership unless the partnership owned or leased a vessel during the QS qualifying period. RAM's Official Record shows that Mr. Gross owned the F/V UNIMAK during the QS qualifying period. Because RAM's Official Record is the best evidence of ownership in the appeals record of this case, I find that the partnership of Mr. Padon and Mr. Gross did not own or lease the F/V UNIMAK during the QS qualifying period. Therefore, I conclude that Mr. Padon is not entitled to QS based on his dissolved partnership with Mr. Gross.

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[3] *See, e.g.*, Vohs v. Piper, Appeal No. 95-0051, October 28, 1995; Etcher v. Malcolm, Appeal No. 95-0092, April 12, 1996; Ole G. Harder, Appeal No. 97-0001, April 9, 1998.

2. Is it a violation of "due process" or "statutory construction" if Mr. Padon's partnership with Mr. Gross does not qualify him for QS?

Mr. Padon does not explain how it is a violation of "due process" or "statutory construction" to conclude that he cannot qualify for QS as a former partner of a dissolved partnership that did not own or lease a vessel. Therefore, it is impossible for me to address the allegation. Nevertheless, there are some basic administrative rules, which may be instructive.

An administrative agency has the inherent right to reasonably interpret its own duly promulgated regulations. The conclusion in this case that Mr. Padon cannot qualify for QS on the basis of a dissolved partnership that did not own or lease a vessel is consistent with the regulatory language and the policy of the IFQ program to award QS only to vessel owners or lessees. Furthermore, any challenge to the legality or the constitutionality of the IFQ regulations lies within the court system, not within our appeals office. As an Appeals Officer, I am bound to presume the legality of an agency's duly promulgated regulations. The IFQ regulations were duly promulgated through the notice and comment rule making requirements of the Administrative Procedures Act, 5 U.S. C. § 553 (1988), and were upheld by the federal court in Alliance Against IFQs v. Brown, et al,[4] as a permissible exercise of authority by the U.S. Secretary of Commerce. Consequently, I do not have the authority to invalidate the portion of the IFQ regulations which prevent Mr. Padon from qualifying for QS.

FINDING OF FACT

The partnership of Mr. Padon and Mr. Gross did not own or lease the F/V UNIMAK between 1988 and 1990.

CONCLUSION OF LAW

Mr. Padon is not entitled to QS based on his dissolved partnership with Mr. Roger Gross.

DISPOSITION

The IAD and the IAD on Reconsideration which are the subject of this appeal are AFFIRMED. This Decision takes effect on June 30, 2000, unless by that date the Regional Administrator orders review of the Decision.

Any party, including RAM, may submit a Motion for Reconsideration, but it must be received at this

[4]Opinion No. 95-35077, May 22, 1996 (9th Cir. 1996).

office not later than 4:30 p.m., on the tenth day after the date of this Decision, June 12, 2000. A Motion for Reconsideration must be in writing, must allege one or more specific material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement or points and authorities in support of the motion.

Randall J. Moen
Appeals Officer