

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant v. Lee Moyle, Owner, d.b.a. Moyle Mink Farm, Respondent; 8 U.S.C. 1324a Proceeding; Case No. 89100286.

ORDER GRANTING COMPLAINANT'S MOTION TO RE-OPEN THE CLOSED RECORD AND
TO CONSIDER PROPOSED LATE EVIDENCE

On March 12, 1990, Complainant, through its attorney of record, submitted a Motion for Leave to Submit Late Evidence and Statement of Attorney. The proposed evidence consists of two exhibits, the first of which is seven pages, each containing a black and white photograph. This exhibit has been marked C-33(a)-(g). The second proposed exhibit is a statement of Scott J. Baker, Border Patrol Agent, which describes, and provides a foundation for the admission of the photographs. This has been marked C-34.

On April 4, 1990, the Respondent, through his attorney of record, Gustav A. Rosenheim, submitted a Motion in Opposition to Motion to Submit Late Evidence by the Complainant, as well as Memorandum in said opposition.

On April 10, 1990, the Complainant, through its attorney of record, Robin L. Henrie, submitted a Response to Respondent's Motion in Opposition and Statement of Attorney.

On April 28, 1990, Respondent, through Attorney Rosenheim, submitted a Motion to Strike Complainant's Response to Respondent's Motion in Opposition and Statement of Attorney.

I have carefully considered all motions presently before me. I will grant Respondent's April 28, 1990, Motion to Strike Complainant's Response. Respondent correctly argues that a reply to a response shall not be filed ``unless the Administrative Law Judge provides otherwise.'' 28 C.F.R. 68.9(c). At no time prior to the filing of its Response on April 10, 1990, did Complainant's attorney request leave to file a reply. I will not ignore the clear dictates of 28 C.F.R. 68.9(b) and accept this reply without such a request.

I will grant Complainant's Motion to re-open the record and receive the late evidence for the following reasons:

Pursuant to 28 C.F.R. 68.48, the Administrative Law Judge has the discretion to re-open the record of a closed hearing and accept late evidence for good cause shown.

I find that the proposed evidence is material and was not reasonably available at the time of the hearing. The Attorney for Complainant would not reasonably have had notice that these photographs would be necessary until well into the hearing and would not have been able to provide them prior to the closing of the record in this case.

I accept Complainant's exhibits C-33 (a)-(g) and C-34 and will append them to the record as previously marked.

IT IS SO ORDERED: This 15th day of May, 1990, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge