

**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 RESPONDENT'S MOTIONS TO OPEN RECORD AND SUBMIT LATE  
EVIDENCE

On June 6, 1990, Respondent, through counsel, submitted two motions to open the record of hearing in this matter and receive additional evidence. The proposed evidence consists of four color photographs labelled Exhibits R-2a, b, c, and d, two color photographs labelled Exhibits R-3a and b, and affidavits of Lee Moyle, Marta Moyle, Angel Deltoro, and Gustav Rosenheim, labelled Exhibits R-4, 5, 6, and 7, respectively.

On June 19, 1990, Complainant, through counsel, requested additional time to respond to these motions, as he had not yet received the motions or viewed the proposed evidence. Prior to ruling on Complainant's request, I received Complainant's motion in opposition to Respondent's motions. I will grant Complainant's request for additional time for the reasons stated, and consider the motion in opposition pertaining to this matter.

Although Complainant argues against my re-opening the record to receive the proposed evidence, I find that Respondent has satisfied the requirements in 28 C.F.R. sections 47 and 48, and I will open the record to receive Exhibits R-2a, b, c, and d, R-3a and b, and R-4, 5, 6, and 7.

Respondent's evidence is responsive in nature to the late evidence submitted by Complainant and accepted by me. I find good cause to excuse Respondent's failure to request re-opening of the record within 20 days after the close of the hearing, as Respondent's evidence would not have been anticipated had it not been for Complainant's late submission of evidence. I will also point out that Complainant submitted a supplement to its reply brief on June 11, 1990, which I will consider, although the date for filing

briefs is also past. I am not persuaded by Complainant's timeless argument.

It is within my discretionary powers to open the record after the hearing. Fairness also dictates my receiving Respondent's late evidence. I have heard from Complainant on the issue of the credibility of Complainant's witness, Agent Baker. I want to have everything on this issue before me prior to issuing my ruling in this matter. For that reason also, I grant Respondent's motions.

Complainant's argument that Respondent ``waived its earlier opportunity'' by not presenting this evidence in its opposition to Complainant's motion to submit late evidence is misplaced. I do not believe Respondent was obligated to respond to Complainant's motion in that manner, and that Respondent's counsel was advising his client to respond according to his tactical plan.

Having ruled on the submission of Respondent's evidence, I now find that the issue affecting Complainant's witness' credibility has been exhausted. I will not open the record for any new evidence, nor will I accept any additional evidence in this case. The record is considered closed, pending my decision.

**IT IS SO ORDERED:** This 26th day of June, 1990.

E. MILTON FROSBURG  
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