

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 07-0174
)
Loreon Vigne, an individual,)
d/b/a Isis Society for Inspirational)
Studies, Inc., a California)
domestic non-profit corporation,)
a/k/a Temple of Isis and Isis)
Oasis Sanctuary,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Acting Administrator], instituted this proceeding by filing an “Order To Show Cause As To Why Animal Welfare Act License 93-C-0611 Should Not Be Terminated” [hereinafter Order to Show Cause] on August 21, 2007. The Acting Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations and Standards]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Acting Administrator alleges that: (1) on or about January 4, 2007, Isis Society for Inspirational Studies, Inc. [hereinafter the Isis Society], a corporation through which Loreon Vigne operates as an exhibitor under the Animal Welfare Act, was found to have violated the Endangered Species Act by selling and offering for sale in commerce an endangered species, namely, ocelots; (2) in or around November 1999 through June 2006, Ms. Vigne made false or fraudulent statements or provided false or fraudulent records to the United States Department of Agriculture and other government agencies; and (3) Ms. Vigne interfered with a federal investigation involving the Endangered Species Act (Order to Show Cause ¶¶ 20-21, 25). The Acting Administrator seeks an order terminating Ms. Vigne's Animal Welfare Act license and disqualifying Ms. Vigne from obtaining an Animal Welfare Act license for 2 years (Order to Show Cause at 8). On September 14, 2007, Ms. Vigne filed "Answers To Allegations And Demonstration Of Cause As To Why Animal Welfare Act License 93-C-0611 Should Not Be Terminated" [hereinafter Answer].

On June 6, 2008, the Acting Administrator filed "Complainant's Motion For Summary Judgment." On June 11, 2008, the Hearing Clerk served Loreon Vigne with Complainant's Motion For Summary Judgment together with a service letter advising Ms. Vigne that any response to the motion must be filed within 20 days after service.¹ Ms. Vigne failed to file a response to Complainant's Motion For Summary Judgment, and

¹Domestic Return Receipt for article number 7007 0710 0001 3858 9073.

on July 7, 2008, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Memorandum Opinion and Order [hereinafter Initial Decision]: (1) finding there are no genuine issues of material fact; (2) granting Complainant's Motion For Summary Judgment; (3) revoking Animal Welfare Act license number 93-C-0611; (4) terminating Animal Welfare Act license number 93-C-0611; and (5) disqualifying Ms. Vigne from obtaining an Animal Welfare Act license for 2 years.

On August 6, 2008, Loreon Vigne appealed the ALJ's Initial Decision to the Judicial Officer, and on September 26, 2008, the Acting Administrator filed "Complainant's Response To Respondent's Appeal Petition." Based upon a careful consideration of the record, I affirm the ALJ's July 7, 2008, Initial Decision, terminating Loreon Vigne's Animal Welfare Act license and disqualifying Loreon Vigne from obtaining an Animal Welfare Act license for 2 years. For the reasons articulated in this Decision and Order, *infra*, I do not adopt the ALJ's order revoking Ms. Vigne's Animal Welfare Act license.

DECISION

Discussion

The Animal Welfare Act provides that the Secretary of Agriculture shall issue licenses to dealers and exhibitors upon application for a license in such form and manner as the Secretary of Agriculture may prescribe (7 U.S.C. § 2133). The power to require and issue licenses under the Animal Welfare Act includes the power to deny a license, to

suspend or revoke a license, to disqualify a person from becoming licensed, and to withdraw a license.² The Regulations and Standards specify certain bases for denying an initial application for an Animal Welfare Act license (9 C.F.R. § 2.11) and further provide that an Animal Welfare Act license, which has been issued, may be terminated for any reason that an initial license application may be denied (9 C.F.R. § 2.12). Section 2.11(a)(6) of the Regulations and Standards provides that an initial application for an Animal Welfare Act license will be denied if the applicant is unfit to be licensed and the Administrator determines that the issuance of the Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act, as follows:

§ 2.11 Denial of initial license application.

(a) A license will not be issued to any applicant who:

....

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11(a)(6).

The purposes of the Animal Welfare Act are set forth in a congressional statement of policy, as follows:

²*In re Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991).

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2131.

The Acting Administrator has determined that allowing Loreon Vigne to hold an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act (Order to Show Cause ¶ 26; Complainant's Mot. for Summary Judgment, Memorandum of Points and Authorities at 9-11). The record supports the conclusions that: (1) Loreon Vigne is unfit to retain her Animal Welfare Act license, and (2) the Acting Administrator's determination that allowing Loreon Vigne to hold an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act, is reasonable.

Findings of Fact

1. Loreon Vigne is an individual whose mailing address is 20889 Geysers Avenue, Geyserville, California 95441 (Answer Letter Head).
2. Loreon Vigne is the founder of the Isis Society, which she first established in 1982 (Answer ¶¶ 1, 3).
3. Loreon Vigne has been the secretary and treasurer of the Isis Society since its inception in 1982 (Answer ¶¶ 1, 4).
4. Loreon Vigne has held the position of high priestess of the Isis Society since 1996 (Answer ¶ 2).
5. At all times material to this proceeding, Loreon Vigne managed, controlled, and directed the business activities of the Isis Society (Answer ¶¶ 2-4, 6, 11).
6. At all times material to this proceeding, Loreon Vigne acted as the organizational leader of the Isis Society (Answer ¶ 11).
7. Loreon Vigne owns the land on which the Isis Society is located. On this land, known as Isis Oasis, Ms. Vigne maintains ocelots, wildlife, a lodge, a theater, and the Temple of Isis. (Answer ¶¶ 12(a)-(c).)
8. Loreon Vigne currently maintains and breeds, and at all times material to this proceeding maintained and bred, ocelots on the premises referred to as Isis Oasis (Answer ¶¶ 9, 11, 12(c), 18).

9. Loreon Vigne has sold ocelots to people in California and throughout the United States (Answer ¶ 12(d)).

10. Loreon Vigne currently holds, and at all times material to this proceeding held, Animal Welfare Act license 93-C-0611. Ms. Vigne submits annual renewal applications for Animal Welfare Act license 93-C-0611 to the United States Department of Agriculture. (Answer ¶¶ 5, 7-8.)

11. On or about August 1, 2006, the Isis Society, a/k/a “Temple of Isis” and “Isis Oasis Sanctuary,” was indicted in the United States District Court for the District of Oregon for knowingly and intentionally conspiring with others to unlawfully sell and offer for sale in interstate commerce an endangered species (ocelots), in violation of the Endangered Species Act, 16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1) (Misdemeanor Information ¶ 1, filed in *United States v. Isis Society for Inspirational Studies, Inc.*, CR-06-313-01-MO (D. Or. Jan. 5, 2007)).

12. Loreon Vigne was given a plea agreement to resolve *United States v. Isis Society for Inspirational Studies, Inc.*, which Ms. Vigne entered into “in her professional capacity as organizational leadership” (Answer ¶¶ 10-11).

13. On or about August 2, 2006, the United States Attorney for the District of Oregon and the Isis Society filed a plea agreement containing the Isis Society’s offer to plead guilty to the indicted offenses, stipulated facts as to the specifics of the unlawful sales of ocelots in interstate commerce during the period August 1999 through November

2004, and the United States Attorney's agreement to recommend a sentence of a fine and probation to the Court. Loreon Vigne signed the Plea Agreement on behalf of the Isis Society. (Plea Agreement filed in *United States v. Isis Society for Inspirational Studies, Inc.*).

14. In the stipulated facts in the Plea Agreement referenced in Finding of Fact number 13, the Isis Society admits that: (a) during the period August 1999 through November 2004, the Isis Society sold at least 10 ocelots to various buyers, some in California and others located throughout the United States; (b) in an effort to conceal the illegal nature of its interstate ocelot sales, employees and agents of the Isis Society conspired with others, including those purchasing ocelots, to mischaracterize the sales as "donations" rather than *quid pro quo* sales; (c) the Isis Society and others agreed to mischaracterize interstate transfers of ocelots to purchasers as "donations" and to mischaracterize payments from the purchasers of ocelots as "contributions" to tax deductible organizations associated with the Isis Society, namely, the Temple of Isis and the Isis Oasis Sanctuary; and (d) the Isis Society, through Loreon Vigne, was not initially forthcoming with, and did not fully cooperate with, United States Fish and Wildlife Service agents regarding the nature of the ocelot transfers at the heart of the investigation which resulted in the filing of the Misdemeanor Information in *United States v. Isis Society for Inspirational Studies, Inc.* (Plea Agreement ¶ IV.7.(d)-(h) filed in *United States v. Isis Society for Inspirational Studies, Inc.*).

15. A letter, dated June 23, 2006, from Loreon Vigne to Assistant United States Attorney Dwight Holton, which sets forth the details of the Isis Society's sales of ocelots between August 1999 and November 2004, is attached to, and incorporated by reference in, the Plea Agreement referenced in Finding of Fact number 13 (Plea Agreement ¶ IV.7.(d) n.2 filed in *United States v. Isis Society for Inspirational Studies, Inc.*).

16. Loreon Vigne agreed with various ocelot recipients to mischaracterize the transfers of ocelots as donations to organizations, including Temple of Isis and Isis Oasis Sanctuary, instead of sales (Letter, dated June 23, 2006, from Loreon Vigne to Assistant United States Attorney Dwight Holton at 1, referenced in Finding of Fact number 15).

17. Loreon Vigne was not initially forthcoming with, and did not fully cooperate with, United States Fish and Wildlife Service agents regarding the nature of the ocelot transfers (Letter, dated June 23, 2006, from Loreon Vigne to Assistant United States Attorney Dwight Holton at 1, referenced in Finding of Fact number 15).

18. The United States agreed to seek no further criminal charges against Loreon Vigne regarding the disclosed sales and offers for sale of ocelots in violation of the Endangered Species Act (Plea Agreement ¶ VII.10.(b) filed in *United States v. Isis Society for Inspirational Studies, Inc.*).

19. The United States stated it did not object to Loreon Vigne's continuing to possess and breed endangered animals at her facilities in Geyserville, California, so long as: (a) the Isis Society and Ms. Vigne remain in full compliance with all applicable state

and federal laws, including, but not limited to, the Endangered Species Act and the Lacey Act; (b) the Isis Society and Ms. Vigne are always absolutely truthful and forthcoming in all dealings with any official involved in the regulation of endangered species; and (c) the Isis Society and Ms. Vigne remain in compliance with the terms of the Plea Agreement (Plea Agreement ¶ VII.11. filed in *United States v. Isis Society for Inspirational Studies, Inc.*).

20. On or about January 4, 2007, before the United States District Court for the District of Oregon, the Isis Society entered its plea of guilty to the violations of the Endangered Species Act, as charged. United States District Court Judge Michael W. Mosman found the Isis Society's guilty plea to be made freely and found that the Isis Society had admitted facts that proved the necessary elements of the crimes to which the Isis Society pled guilty. Based on these findings, United States District Court Judge Michael W. Mosman accepted the Isis Society's guilty plea. (Petition to Enter Plea of Guilty, Certificate of Counsel, and Order Entering Plea filed in *United States v. Isis Society for Inspirational Studies, Inc.*)

21. On or about January 5, 2007, United States District Court Judge Michael W. Mosman adjudicated the Isis Society guilty of conspiracy to violate the Endangered Species Act (18 U.S.C. § 371) and violating the Endangered Species Act (16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1)), and sentenced the Isis Society to pay a \$60,000 fine and to serve a 2-year probationary period. Special conditions of probation require Loreon

Vigne: (a) to notify a designee of the United States Fish and Wildlife Service upon the birth of any endangered species born by any animal owned, controlled, or boarded within the Isis Oasis Sanctuary for a period of 5 years; (b) to remain in full compliance with all state and federal laws, including but not limited to the Endangered Species Act and the Lacey Act; and (c) to be truthful and forthcoming in all dealings with any official involved in regulation of endangered species. (Judgment filed in *United States v. Isis Society for Inspirational Studies, Inc.*)

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Based on the Findings of Fact, I conclude the Acting Administrator's determination that Loreon Vigne's retention of an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act, is reasonable.
3. Based on the Findings of Fact, I conclude Loreon Vigne is unfit to be licensed under the Animal Welfare Act, within the meaning of 9 C.F.R. § 2.11(a)(6).

Loreon Vigne's Appeal Petition

Loreon Vigne raises seven issues in her "Appeal Statement" [hereinafter Appeal Petition]. First, Ms. Vigne asserts 9 C.F.R. § 2.11(a)(6) is "faulty" (Appeal Pet. at 1).

I am uncertain as to the meaning of Ms. Vigne's characterization of 9 C.F.R. § 2.11(a)(6) as "faulty." However, I note the Secretary of Agriculture is authorized to promulgate regulations that the Secretary deems necessary to effectuate the purposes of

the Animal Welfare Act (7 U.S.C. § 2151) and 9 C.F.R. § 2.11(a)(6) is clearly a regulation which the Secretary of Agriculture is authorized by 7 U.S.C. § 2151 to promulgate. Moreover, I find there is a rational connection between 9 C.F.R. § 2.11(a)(6) and its purpose. The purpose of 9 C.F.R. § 2.11(a)(6) is to deny Animal Welfare Act licenses to persons who are not fit to have Animal Welfare Act licenses, and I find 9 C.F.R. § 2.11(a)(6) accomplishes its purpose. Finally, I find 9 C.F.R. § 2.11(a)(6) was promulgated in accordance with the Administrative Procedure Act.³ Therefore, I reject Ms. Vigne's contention that 9 C.F.R. § 2.11(a)(6) is "faulty."

Second, Loreon Vigne asserts 9 C.F.R. § 2.11(a)(6) contains no "statute of limitations" (Appeal Pet. at 1).

While Ms. Vigne is correct that 9 C.F.R. § 2.11(a)(6) does not contain a statute of limitations, she cites no authority for her assertion that 9 C.F.R. § 2.11(a)(6) must contain a statute of limitations and I can find no such authority. The United States Code does contain a general statute of limitations that applies to the commencement of certain actions, as follows:

§ 2462. Time for commencing proceedings

Except as otherwise provided by Act of Congress, an action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture,

³See the following rulemaking documents related to the promulgation of 9 C.F.R. § 2.11(a)(6): (1) the proposed rule, 65 Fed. Reg. 47,908-18 (Aug. 4, 2000), soliciting public comment for 60 days; (2) a notice of reopening and extension of comment period, 65 Fed. Reg. 62,650 (Oct. 19, 2000), to November 20, 2000; and (3) the final rule, 69 Fed. Reg. 42,089-102 (July 14, 2004), which became effective August 13, 2004.

pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. § 2462. However, a “penalty,” as that term is used in 28 U.S.C. § 2462, is a form of punishment imposed by the government for unlawful or proscribed conduct which goes beyond remedying the damage caused to the harmed parties by the respondent’s actions.⁴ The Acting Administrator seeks to terminate Ms. Vigne’s Animal Welfare Act license, not to punish her for her actions, but because Ms. Vigne’s actions reflect on her fitness to be licensed under the Animal Welfare Act.⁵ Thus, I conclude the statute of limitations in 28 U.S.C. § 2462 is not applicable to an action by the Secretary of Agriculture to terminate an existing Animal Welfare Act license pursuant to 9 C.F.R. § 2.12, based upon a licensee’s unfitness to continue to be licensed under the Animal Welfare Act. Termination of an Animal Welfare Act license pursuant to 9 C.F.R. § 2.12 is remedial in nature and thus outside the scope of the statute of limitations in 28 U.S.C. § 2462.

Third, Loreon Vigne asserts the Acting Administrator’s Order to Show Cause did not cite 9 C.F.R. § 2.11(a)(6). Ms. Vigne objects to the addition of 9 C.F.R. § 2.11(a)(6) “by the [ALJ] at a later date with no opportunity . . . to respond.” (Appeal Pet. at 1.)

⁴*Coghlan v. NTSB*, 470 F.3d 1300, 1305 (11th Cir. 2006) (per curiam); *Johnson v. SEC*, 87 F.3d 484, 487-88 (D.C. Cir. 1996).

⁵Complainant’s Mot. for Summary Judgment at 9-11.

The Order to Show Cause is replete with citations to 9 C.F.R. §§ 2.11(a)(6), .12 (Order to Show Cause ¶¶ 19-26 and at 7). Moreover, the record does not show that the ALJ added the citation to 9 C.F.R. § 2.11(a)(6) “at a later date” or that Ms. Vigne was denied the opportunity to respond to any of the Acting Administrator’s filings.

Fourth, Loreon Vigne asserts “[t]here are 2 types of license removal ‘termination’ and ‘revocation’” and “there is some confusion as to which penalty [she is] being subjugated to” (Appeal Pet. at 1).

As an initial matter, the sanction issued in this proceeding is not a penalty, but instead remedial in nature. In each of his filings, the Acting Administrator has consistently sought termination of Ms. Vigne’s Animal Welfare Act license pursuant to 9 C.F.R. § 2.12 and a 2-year disqualification from obtaining an Animal Welfare Act license. The Acting Administrator has not sought revocation of Ms. Vigne’s Animal Welfare Act license pursuant to 7 U.S.C. § 2149. The only reference to revocation of Ms. Vigne’s Animal Welfare Act license is in the ALJ’s July 7, 2008, Initial Decision, in which, without explanation, the ALJ both revoked and terminated Ms. Vigne’s Animal Welfare Act license. Under these circumstances, I do not order revocation of Ms. Vigne’s Animal Welfare Act license. Instead, I only terminate Ms. Vigne’s Animal Welfare Act license and disqualify Ms. Vigne from obtaining an Animal Welfare Act license for 2 years.

Fifth, Loreon Vigne asserts the ALJ erroneously failed to find the State of California does not allow her to possess ocelots unless, in addition to holding a California fish and game permit, she holds an Animal Welfare Act license. Ms. Vigne asserts the termination of her Animal Welfare Act license may result in the State of California removing the ocelots from her facility. (Appeal Pet. at 1-2.)

State of California requirements for possession of ocelots are not relevant to this proceeding which solely concerns Ms. Vigne's fitness to be licensed under the Animal Welfare Act. Moreover, collateral effects of the termination of an Animal Welfare Act license are not relevant to the determination whether a respondent is unfit to be licensed. The adverse impact of Animal Welfare Act license termination on Ms. Vigne's ability to retain possession of and breed ocelots is unfortunate, but it is not relevant to the instant proceeding. Therefore, I reject Ms. Vigne's assertion that the ALJ erroneously failed to find the State of California does not allow her to possess ocelots unless, in addition to holding a California fish and game permit, she holds an Animal Welfare Act license.

Sixth, Loreon Vigne asserts the ALJ erroneously ignored the plea agreement entered in *United States v. Isis Society for Inspirational Studies, Inc.*, CR 06-313-01-MO (D. Or. Jan. 5, 2007), in which the parties agreed that Ms. Vigne's Animal Welfare Act license "to have and exhibit the cats should not be affected" (Appeal Pet. at 2).

I have carefully read the plea agreement filed in *United States v. Isis Society for Inspirational Studies, Inc.* I cannot locate any provision indicating Ms. Vigne's Animal

Welfare Act license should not be affected, as Ms. Vigne asserts. Therefore, I reject Ms. Vigne's assertion that the ALJ erroneously ignored the plea agreement filed in *United States v. Isis Society for Inspirational Studies, Inc.*

Seventh, Loreon Vigne asserts the ALJ erroneously relied on *In re Amarillo Wildlife Refuge, Inc.*, ___ Agric. Dec. ___ (ALJ Decision and Order Mar. 24, 2008) (Appeal Pet. at 2).

The ALJ makes no reference to *In re Amarillo Wildlife Refuge, Inc.*, ___ Agric. Dec. ___ (ALJ Decision and Order Mar. 24, 2008), in the Initial Decision, and I cannot find any indication that the ALJ in any way relied on *In re Amarillo Wildlife Refuge, Inc.* Therefore, I reject Ms. Vigne's assertion that the ALJ erroneously relied on *In re Amarillo Wildlife Refuge, Inc.*

Termination Of License After Hearing

The Regulations and Standards provide that an Animal Welfare Act license may be terminated after a hearing, as follows:

§ 2.12 Termination of a license.

A license may be terminated during the license renewal process or at any time for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

9 C.F.R. § 2.12.

The proposed rulemaking document applicable to the promulgation of 9 C.F.R. § 2.12 emphasizes the need for a hearing in license termination proceedings, as follows:

Termination of a License

We are proposing to add a new § 2.12 to the regulations to prescribe conditions that could result in APHIS terminating a license. Although § 2.5 refers to termination of license, the regulations do not list the circumstances that would result in the termination of a license. New § 2.12 would state that a license may be terminated for any of the same reasons that an initial licence application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice. A hearing would provide an opportunity for the applicant to present his or her case as to why the license should not be terminated.

65 Fed. Reg. 47,908, 47,911 (Aug. 4, 2000).

While no hearing has been conducted in the instant proceeding, section 1.141(a) of the Rules of Practice (7 C.F.R. § 1.141(a)) provides that the failure to request a hearing within the time allowed for filing an answer constitutes a waiver of hearing. Loreon Vigne's answer was required to be filed no later than September 19, 2007. Ms. Vigne failed to request a hearing within the time allowed for filing her answer. Therefore, I conclude that Ms. Vigne waived her right to a hearing.

For the foregoing reasons the following Order is issued.

ORDER

1. Animal Welfare Act license 93-C-0611 is terminated.
2. Loreon Vigne is disqualified for 2 years from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person.

This Order shall become effective on the 60th day after service of this Order on Loreon Vigne.

Done at Washington, DC

November 18, 2008

William G. Jenson
Judicial Officer