

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE SECRETARY OF AGRICULTURE**

In re: ) AWA Docket No. D-05-0002  
)  
Suncoast Primate Sanctuary )  
Foundation, Inc., a Florida corporation )  
)

**Ruling Denying Petitioner's Request for Attorney Fees**

In this ruling, I am denying Petitioner's request for attorney fees even though Petitioner has substantially prevailed in its Petition appealing Respondent's denial of an exhibitor's license. My ruling is necessitated by the nature of the initial proceeding, since attorney's fees and other costs under the Equal Access to Justice Act are precluded for license denial proceedings.

This was the first case conducted under regulations that give an aggrieved person the opportunity to challenge a license denial with a hearing before an administrative law judge. Petitioner requested a hearing after its application for an exhibitor's license was denied on August 17, 2004. After a hearing on November 15, 2005, I issued a decision sustaining APHIS's original determination, but remanded the matter for a more full and complete investigation. After APHIS utterly refused to comply with my remand order, I granted Petitioner's Motion for Order to Issue Exhibitor's License on October 27, 2006. The Judicial Officer vacated my decision on January 8, 2008, effectively ordering the same relief, without time constraints, that I did in my initial decision.

The Equal Access to Justice Act, 5 U.S.C. § 504 et seq. makes attorney fees and other costs available to a party who has prevailed against the United States in an “adversary adjudication” if the position of the agency was not “substantially justified.” However, I do not have to make a determination as to whether the APHIS’s position in this matter was substantially justified, because the statute unequivocally bars the award of attorney’s fees and other costs in this type of case. Fees and costs may not be awarded here because the statutory definition of “adversary adjudication . . . excludes an adjudication for the purpose . . . of granting or renewing a license.” 5 U.S.C. § 504(b) (C). This case was initiated by Petitioner’s Request for Hearing where it stated that that it was seeking a reversal of APHIS’s denying it a license or a determination that it did not require a license.

Petitioner has advanced several reasons for treating this proceeding as other than a statutorily barred licensing proceeding. Unfortunately for Petitioner, every aspect of this matter has been in the nature of an attempt to overturn a license denial, and no after-the-fact recharacterization can change that.

Accordingly, Petitioner’s Application for Costs and Attorney Fees is denied.<sup>1</sup>

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**MARC R. HILLSON**  
Chief Administrative Law Judge

December 3, 2008

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<sup>1</sup> Because I conclude that this was an appeal of APHIS’s decision to deny a license to Petitioner, I make no findings as to the validity of the requested reimbursement rate, the individual items included in the attorney fees request, or whether the government’s position was “substantially justified.”

