

The Court has jurisdiction over this case under Section 641(e) of the Tariff Act of 1930, 19 U.S.C. § 1641(e)(1),^{1,2} and 28 U.S.C. § 1581(g) (granting the Court of International Trade exclusive jurisdiction of any civil action to review the revocation of a customs broker's license by the Secretary of the Department of Homeland Security ("DHS")). In accordance with 19 U.S.C. § 1641(e)(1) and USCIT Rule 56.1(a), the court reviews the decision of the Secretary of DHS on the administrative record, considering any objections raised in that proceeding.

Background

In our earlier decision we upheld, as supported by substantial evidence, the Secretary's findings of violations of Customs rules and regulations "in Charges I, II, IV, V, VI, VIII, IX, and for

¹Citation is to the 2000 edition of the U.S. Code unless otherwise noted.

²19 U.S.C. § 1641(e)(1) provides: In general. A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c), or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B), by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B), after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28, United States Code.

Specifications 1, 4, 6, 7, 9, and 11 of Charge III" of Customs' Notice to Show Cause and Statement of Charges ("Notice"). Id. However, we also found that "Specifications 2, 5, and 8 of Charge III, as well as Charge VII" were not supported by substantial evidence. Id. Accordingly, we remanded this matter to the Secretary to consider the appropriate penalty on the record remaining after our review. Id.

On remand, the Secretary reviewed the record and held that, "judicially sustained Charges I, II, IV, V, VI, VIII, IX, and Specifications 1, 4, 6, 7, 9, and 11 of Charge III, jointly, and, Charges III (Specifications 4, 7, 9, 11), IV, V, VI, VIII, and IX severally or in combination thereof, support revocation of [Boynton's] license."

We now review that remand determination.

Discussion

Customs regulations allow for revocation of a customs broker's license if, "[t]he broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs." 19 C.F.R. § 111.53(c). See also, 19 U.S.C. § 1641(d)(1)(C). However, Customs' policy has generally been to issue progressive penalties and to reserve revocation of a broker's license only for "egregious" violations. An "egregious" violation is a "flagrant act or omission that shows gross irresponsibility beyond that of a nonrepetitive [sic]

clerical mistake or a good-faith oversight." Customs Directive Number 099 3530-007 Section 5(B), available at http://www.cbp.gov/linkhandler/cgov/toolbox/legal/directives/3530-007.ctt/3530_007.doc. Thus, under Customs policy, if Boynton has committed "egregious" violations of Customs rules, then revocation of her license is warranted.

As we found in our earlier opinion, Boynton violated "several Customs rules and regulations, often on multiple occasions." The Secretary has now determined that certain of the violations, enumerated above, jointly and severally suffice to justify revoking Boynton's license. Since nothing in our prior decision requires otherwise, we uphold the Secretary's decision.

Plaintiff claims, however, that the decision of the Secretary was both arbitrary and capricious and violated her right to due process. More specifically, Plaintiff contends that the decision of the Secretary is "arbitrary and capricious" in that the Secretary considered no penalty other than revocation and that due process was denied her because she was not allowed to submit new evidence to the Secretary after our original ruling. Neither claim has merit.

As to the first claim, if the findings of the Secretary are supported by substantial evidence they must be upheld. 19 U.S.C. § 1641(e)(3). We have already held that the charges upon which the Secretary relies in his decision were supported by substantial

evidence. As noted above, revocation may be grounded on a violation of "any provision of any law enforced by customs." 19 C.F.R. § 111.53(c). The Secretary, then, did not act in an "arbitrary and capricious" manner in revoking Boynton's license, but rather acted in accordance with law.

Plaintiff's due process claim is also without merit. Plaintiff seems to believe that the "record" in the case has substantially changed and that this change justifies reopening the record to allow her to submit additional evidence. Both aspects of the claim are incorrect. First, the "record" upon which the Secretary made his remand decision is essentially the same record reviewed by the court in our prior decision with the exception of the charges that we held not to be supported by substantial evidence. It is unclear how this sort of change in the record could prejudice Boynton in any way. Boynton availed herself of her opportunity to seek and obtain judicial review. That review was completed before any penalty was imposed, and the imposed penalty was based on the record found supported by that prior judicial review.

Secondly, reopening of an administrative record is an unusual step, generally taken only in extraordinary circumstances. Farmers Export Co. v. United States, 758 F.2d 733, 737 (D.C. Cir. 1985). In her reply, however, Plaintiff offers no argument at all as to what "extraordinary circumstances" might justify reopening the record.

It is not clear how the only claim she makes--that she has obtained judgments against certain complaining witnesses-- might meet this standard because Plaintiff has provided no clarification or specific claim as to which, if any, of the charges against her might be affected by reopening the record to consider any new evidence. Given this, and given that Plaintiff has not, apparently, before sought to introduce this evidence or reopen the record, we find this claim to be without merit.

Conclusion

The Secretary has reasonably held that Charges I, II, IV, V, VI, VIII, IX, and Specifications 1, 4, 6, 7, 9, and 11 of Charge III, jointly, and, Charges III (Specifications 4, 7, 9, 11), IV, V, VI, VIII, and IX severally or in combination thereof, support revocation of [Boynton's] license. As this decision is supported by substantial evidence, is not arbitrary and capricious, and does not violate Plaintiff's right to due process we uphold the determination revoking Plaintiff's license. Judgment will be entered accordingly.

So ORDERED.

/S/ Donald C. Pogue
Donald C. Pogue, Judge

Dated: Jan. 23, 2008
New York, New York