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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No 98–26]

Church of the Living Tree; Denial of Application

On April 7, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Church of the Living Tree (Respondent) of Leggett, California, notifying it of an opportunity to show cause as to why DEA should not deny its application for registration as a manufacturer (non-human consumption) of marijuana, under 21 U.S.C. 823(a), for reason that it is not authorized by the State of California to manufacture marijuana.

By letter dated April 14, 1998, Respondent filed a request for a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. In its request for a hearing, Respondent indicated that it intends to rent space to medical marijuana patients to cultivate marijuana for their own use and that ''[a]fter the patients have harvested their plants and removed the medical portions, the remaining stalk material will be a legal commodity which we will use for making paper.''

On April 24, 1998, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on May 21, 1998. On June 18, 1998, Respondent filed its response to the Government's motion. On July 31, 1998, Judge Bittner issued her Opinion and Recommended Decision, granting the Government's Motion for Summary Disposition and recommending that Respondent's application for registration as a manufacturer of marijuana for non-human consumption be denied. Neither party filed exceptions to Judge Bittner's Opinion and Recommended Decision and on August 31, 1998, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator. The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Government included with its Motion for Summary Disposition a copy of Respondent's application dated January 21, 1997, for registration as a manufacturer of marijuana for non-human consumption and its attachments which indicated that Respondent intended to cultivate hemp for use in making paper. Also accompanying the motion was a letter from Respondent dated January 20, 1998, to among others, a DEA investigator in San Francisco, California. This letter outlined Respondent's proposal to rent space to medical marijuana patients who would grow marijuana on Respondent's property for their own use pursuant to California's Compassionate Use Act and then Respondent would use the mature stalks of the plant to manufacture paper.

In its motion, the Government argued that California does not permit the cultivation of marijuana for non-human consumption, citing California Health and Safety Code § 11358 which provides that, ''every person who plants, cultivates, harvests, dries or processes marijuana shall be punished by imprisonment in state prison.'' The Government contends that there is no provision under California law, including the Compassionate Use Act (California Health and Safety Code § 11362.5, which allows for the cultivation of marijuana for medical use in limited circumstances), which permits the cultivation of marijuana for non-human consumption. The Government pointed out that while 21 U.S.C. 823(a) does not include an express requirement of state authorization, DEA has previously held that it ''would be pointless to grant a Federal registration when Respondent lacked state authority.'' *Michael Schumacher*, 60 FR 13,171 (1995). Also, 21 CFR 1307.02 provides that DEA will not authorize ''any person to do any act which such person is not authorized or permitted to do under * * * the law of the State in which he/she desires to do such act. * * *''

The Government further argued that California's Compassionate Use Act does not provide Respondent with the required state authorization. Respondent proposes to rent space to medical marijuana patients who will grow marijuana on Respondent's property for their own medical use and Respondent would then use the mature stalks of the plants, which pursuant to 21 U.S.C. 802(16) are not considered a controlled substance. But the Government argued that ''if Respondent's registration is granted, as requested in Respondent's application, the registered location would only be authorized to manufacture marijuana for non-human consumption and any activity related to the manufacture of marijuana for human consumption would be outside of Respondent's authorization from DEA and in violation of Federal law.''

The Government argued that since Respondent is not authorized by California to grow marijuana for non-human consumption and because state authorization is a necessary prerequisite to DEA registration, there is no question of fact presented which would necessitate an evidentiary hearing. Therefore, the Government requested that Respondent's application be denied without a hearing.

In its response to the Government's motion, Respondent noted that the basis for the Government's motion that ''this matter be summarily dismissed rests upon the assumption that we are applying for Registration to cultivate cannabis for non-human consumption, and that is not allowed under California law.'' Respondent argued that:

> [a]fter five years of applying for Registration to cultivate industrial fiber hemp for research * * * it is clear that we are now taking a whole new tack. Following the only legal course available to us to cultivate cannabis within the State of California, we are now applying for registration as a Bulk Manufacturer of Medical Marijuana for California patients who qualify under the Compassionate Use Act of 1996. This purpose is decidedly ''for Human Consumption'', and fully complies with California law. This intention is quite clearly and unequivocally expressed in our letter of January 20, 1998.

In her Opinion and Recommended Decision, Judge Bittner found that pursuant to 21 CFR 1301.16(a), ''[a]n application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.'' (emphasis added). Judge Bittner found that since there is no evidence that Respondent received permission to amend its application, the application before her is for registration as a manufacturer of marijuana for non-human consumption.

Judge Bittner agreed with the Government that state authorization to manufacture marijuana is required

before DEA can issue Respondent a registration, and since California law does not allow the cultivation of marijuana for non-human consumption, DEA cannot grant Respondent's application. Therefore, Judge Bittner found that summary disposition is proper. It is well-suited that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not required. *Philip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.,* 44 F.2d 432 (9th Cir. 1971). As a result, Judge Bittner granted the Government's Motion for Summary Disposition and recommended that Respondent's application for registration to manufacture marijuana for non-human consumption be denied.

The Deputy Administrator agrees with Judge Bittner that if Respondent's application is for registration to manufacture marijuana for non-human consumption, then it would have to be denied because California does not allow the cultivation of marijuana for non-human consumption. However, the Deputy Administrator disagrees with Judge Bittner that the application that is the subject of these proceedings is seeking registration as a manufacturer of marijuana for non-human consumption. Judge Bittner found that pursuant to 21 CFR 1301.16(a), Respondent needed permission to amend its application if it is seeking registration for other than non-human consumption. Judge Bittner concluded that since there was no evidence that Respondent received permission to amend its application, the pending application is for registration to manufacture marijuana for non-human consumption.

The Deputy Administrator finds that 21 CFR 1301.16(a) also provides that ''[a]n application may be amended or withdrawn without permission of the Administrator at any time before the date on which the applicant receives an order to show cause. * * *'' Respondent's January 20, 1998 letter to the DEA investigator in San Francisco advised DEA that Respondent was seeking registration to allow it to rent space to medical marijuana patients to cultivate marijuana for their own use and then Respondent would use the mature stalks to make paper. The Order to Show Cause proposing to deny Respondent's application was not issued until April 7, 1998. While Respondent's January 20, 1998 letter did not specifically state that it was amending its application, that was clearly Respondent's intent. Therefore, since Respondent sent this letter to DEA prior to the April 7, 1998 issuance of the Order to Show Cause, Respondent did not need permission to amend its application for registration.

Nonetheless, the Deputy Administrator finds that Respondent's application for registration must be denied. Respondent currently proposes to rent space on its property to medical marijuana patients who would be the ones manufacturing the marijuana. The medical marijuana patients would agree that after harvesting the marijuana, they would leave the mature stalk, which is not considered a controlled substance, for Respondent to process into paper. However, 21 U.S.C. 822(a) states that ''[e]very person who manufactures or distributes any controlled substance * * *, or who proposes to engage in the manufacture or distribution of any controlled substance * * *, shall obtain annually a registration. * * *'' In addition, 21 U.S.C. 823(a) provides for the registration of applicants to manufacture Schedule I and II controlled substances. Under its current proposal, it is clear that Respondent will be renting space on its property to others, but it will not be the one manufacturing marijuana. Therefore, the Deputy Administrator concludes that since Respondent will not be manufacturing marijuana nor is it proposing to manufacture marijuana, its application to be a manufacturer of marijuana must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application dated January 21, 1997, submitted by the Church of the Living Tree, for registration as a manufacturer of marijuana, be, and it hereby is, denied. This order is effective January 16, 1999.

Dated: December 8, 1998.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 98–33357 Filed 12–16–98; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Agency Record Keeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

December 14, 1998.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by December 23, 1998. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Todd Owen ({202} 219–5096, x.143). Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316).

The Office of Management and Budget is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, Including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of response.

Agency: Employment and Training Administration.

Title: Planning Guidance and Instructions For Submission of the Strategic Five-Year State Plan For Title I of the Workforce Investment Act of 1998 (Workforce Investment Systems) and the Wagner-Peyser Act.

OMB Number: 1205–0NEW.

Frequency: One time—5 Year Strategic Plan Required.