

Respondent's application. 65 FR 50,567 (August 3, 2000). However, by error, and the agency subsequently rescinded the prior final order by order dated November 21, 2000. 65 FR 75958 (2000). The matter was then docketed before Administrative Law Judge Mary Ellen Bittner (Judge Bittner).

On October 23, 2000, the Government filed a Motion for Summary Disposition, reiterating the allegations contained in the Order to Show Cause and further alleging, in part, that the manufacture of marijuana for human consumption is a purpose not in conformity with the Controlled Substance Act. The Government further argued that DEA rejected a previous petition to reschedule marijuana when it found that the drug has no currently accepted medical use. Marijuana Scheduling Petition; Denial of Petition; Remand, 59 FR 10,499, 10,507 (1992). The Government added that because the Respondent's previous DEA application for registration as a marijuana manufacturer was denied, the Respondent is now precluded from re-litigating the matter in its renewed effort to obtain a similar registration under the doctrine of res judicata. Robert A. Leslie, M.D., 64 FR 25,908 (1999); Robert M. Golden, M.D., 63 FR 38,669 (1998).

On November 1, and December 1, 2000, the Respondent filed its Response to Motion for Summary Disposition and Further Response to Motion for Summary Disposition respectively. In its submissions, the Respondent argued in essence that it “* * * intended to cultivate medical marijuana as a cooperative farm of * * * patients qualifying under the terms of the Compassionate Use Act of 1996 (the Compassionate Use Act).” As noted in a previous DEA final order, effective November 6, 1996, voters in California adopted the Compassionate Use Act, which provides that persons may grow or possess marijuana “upon the written or oral recommendation or approval of a physician.” Cal. Health & Safety Code section 11362.5 Marion “Molly” Fry, M.D., 67 FR 78015, 78017 (2002). The Respondent further argued in relevant part that California's marijuana law should be given deference by the Federal Government, and the Government's motion for summary disposition rejected, since there remained a fundamental question for resolution by the instant proceedings: whether Respondent's application should be denied despite its engaging in activities that are now sanctioned under California state law (*i.e.*, cultivation of marijuana for human consumption).

On April 17, 2001, Judge Bittner issued her Opinion and Recommended Decision, granting the Government's Motion for Summary Disposition and recommending that Respondent's application for DEA registration be denied. Neither party filed exceptions to Judge Bittner's recommended ruling, and on June 12, 2001, the record was transmitted to the Deputy Administrator for his final decision. 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 Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge, and finds as follows:

On January 21, 1997, the Respondent submitted a prior application to DEA as a manufacturer of marijuana for human consumption. The Respondent proposed to rent space on its property to individuals qualifying under California State law as medical marijuana patients, who would then cultivate marijuana for personal consumption, leaving the mature stalks for Respondent to process into paper. On April 17, 1998, DEA issued an Order to Show Cause seeking to deny the application on grounds that the Respondent was not authorized by the State of California to cultivate marijuana. The Respondent filed a timely request for hearing, and the matter was docketed before Judge Bittner as Church of the Living Tree, DEA Docket No. 98-26 (Church of the Living Tree 1). On May 21, 1998, the Government filed a motion summary disposition, alleging *inter alia*, that California law did not permit cultivation or harvesting of marijuana, and as a result of Respondent's lack of state authorization to manufacture marijuana for non-human consumption, DEA could not grant its application for registration as a matter of law.

In response to the Government's motion, and with arguments similar in scope to its present request for registration, the Respondent asserted in relevant part that the purpose of its application as a bulk manufacturer of medical marijuana was decidedly “for Human Consumption” and in compliance with California law. On July 31, 1998, Judge Bittner issued a recommended decision, in which she granted the Government's motion for summary disposition and recommended that the Respondent's application be denied.

In his final order published as Church of the Living Tree, 63 FR 69,674 (1998), the then-Deputy Administrator found that from a reading of the Respondent's

marijuana manufacturing proposal, “* * * it is clear that Respondent will be renting space on its property to others, but [Respondent] will not be the one manufacturing marijuana. Therefore * * * 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.” 21 U.S.C. 822(a) and 823(a). The then-Deputy Administrator added, “* * * 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.”

As noted above, on June 18, 1998, the Respondent submitted its most recent application for DEA registration as a manufacturer of marijuana in the category of bulk synthesizer-extractor. In support of the application, the Respondent asserted that its intentions are to cultivate medical marijuana as a cooperative farm of California patients qualifying under the terms of the Compassionate Use Act of 1996. The Respondent further contends that Art.I, sec. 8 and the Tenth Amendment to the United States Constitution provides the right to States to regulate their internal affairs. Therefore Respondent argues, since the proposes uses for its registration complies with California law, Respondent's pending application should be granted.

In the April 17, 2001, Opinion and Recommended Decision, Judge Bittner found that while Respondent seeks registration as a bulk synthesizer-extractor of marijuana, and although the Respondent is apparently willing to modify its application to the “non-human consumption” category, the Respondent's application cannot be granted under either category. The Deputy Administrator concurs with this finding. DEA concluded in Church of the Living Tree I that if Respondent rents out space to medical marijuana patients to cultivate marijuana, Respondent will be the entity doing the cultivation and therefore cannot be registered as a bulk synthesizer-extractor of marijuana. With respect to its instant application, the Respondent has not indicated that it seeks registration for purposes of growing marijuana for non-human consumption. In any event, there remains a lack of evidence before the Deputy Administrator that California law provides for the cultivation of marijuana for non-human consumption.

The Respondent has once again submitted an application for registration