

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of	)	
	)	
PETITION OF CARL E. OLSEN	)	On Remand From the
FOR THE ETHIOPIAN ZION	)	United States Court
COPTIC CHURCH FOR AN	)	of Appeals for the
EXEMPTION FROM THE	)	District of Columbia
CONTROLLED SUBSTANCES ACT	)	Circuit No. 86-1442
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**FINAL ORDER**

This order is issued pursuant to an Order from the United States Court of Appeals for the District of Columbia Circuit which remanded the matter of a petition from Carl Eric Olsen on behalf of the Ethiopian Zion Coptic Church to the Drug Enforcement Administration (DEA) in order to construct a complete record for review.

On April 22, 1986, the Administrator of DEA denied Mr. Olsen's request for an exemption from the Controlled Substances Act for use of marijuana for religious purposes by the Ethiopian Zion Coptic Church. Mr. Olsen petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the Administrator's denial. The Court remanded the matter to the DEA for further findings and a more complete record for review. Pursuant to the Court's Order, agency counsel requested Mr. Olsen and the law firm of Hogan & Hartson, appointed amicus curiae by the Court, to present any documents, evidence or arguments which they wished the Administrator to consider in rendering a final decision.

Hogan & Hartson submitted a Memorandum of Law with attachments. Counsel for DEA has also provided the Administrator with a Memorandum of Law and attached documents. The Administrator has considered the evidence before him, and hereby renders a final decision.

In his petition for exemption to use of marijuana for religious purposes, Mr. Olsen requests an exemption similar to that granted to the Native American Church for use of peyote in bona fide religious ceremonies. This exemption is found in Title 21, Code of Federal Regulations, Section 1307.31. Mr. Olsen cites Constitutional principles relating to the Free Exercise Clause of the First Amendment and Equal Protection as the basis for his request. He also outlines the history of the Ethiopian Zion Coptic Church and its use of marijuana as a sacrament. For the reasons that follow, Mr. Olsen's request is denied.

The Administrator finds that he does not have the authority to grant the exemption requested by Mr. Olsen. The Administrator's authority to conduct rulemaking and to make waivers to regulatory and statutory provisions of the Controlled Substances Act is specifically circumscribed by that Act. The Controlled Substances Act contemplates legitimate manufacturing, distribution and use of controlled substances for medical, scientific and research purposes.

The Controlled Substances Act provides that all persons who desire to manufacture, distribute or dispense controlled substances must obtain a registration to do so. The Attorney General is authorized to waive the requirement of registration if he finds that it is in the public interest. The terms manufacture, distribute and dispense are defined in the Controlled Substances Act and contemplate activity involving medical and scientific use of controlled substances. Neither manufacturing, distribution or dispensing contemplates the possession of controlled substances for other than legitimate medical or research purposes.

The Administrator does not have inherent authority to make exemptions to the statute. In granting the exemption for the Native American Church, the Director of the Bureau of Narcotics and Dangerous Drugs (BNDD) relied upon the intentions of Congress in the legislative history of the Controlled Substances Act for his authority.

The courts have found that the Administrator has authority to schedule substances under the Controlled Substances Act. This authority was granted to the Attorney General by Congress with specific criteria and procedural requirements for scheduling. The authority was subsequently delegated to the Administrator by the Attorney General as provided by the Act. See: 21 U.S.C. §871(a).

The criminal sanctions of the Act are dependent upon a substance being scheduled, and into which schedule it is placed. The criteria for scheduling do not include provisions for religious use. There is no mechanism for an exemption to scheduling for religious purposes. The courts have closely reviewed the Administrator's scheduling of substances, and have recently held that he did not have the authority to temporarily schedule a substance without a specific delegation from the Attorney General. If the courts refuse to expand the Administrator's authority under the Act to permit temporary scheduling which imposes criminal sanctions, it is expected they would refuse to expand the Administrator's authority to waive those same criminal sanctions without specific authorization.

Because of the possibility that the United States Court of Appeals for the District of Columbia may find that the Administrator does have the authority to grant a religious exemption to the provisions of the Controlled Substances Act, the Administrator will also address the issue of whether the Ethiopian Zion Coptic Church should be granted an exemption for the use of marijuana for religious purposes.

In the Memorandum of Law filed on behalf of Mr. Olsen in this matter, Mr. Olsen represents that he has been denied basic procedural due process because no hearing has

been held. Where there is no issue of fact to be decided, and no statutory requirement for a hearing, a hearing is not necessary. For purposes of this decision, the Administrator accepts that the Ethiopian Zion Coptic Church is a bona fide religion whose sacrament is marijuana. The Administrator also accepts Mr. Olsen's representations of the method and manner of use of marijuana by members of the church. The acceptance of these facts means there are no facts in dispute, and, therefore, no necessity for a hearing.

The Administrator finds that the federal courts that have interpreted the Free Exercise Clause of the First Amendment to the Constitution have held that an individual's religious practices may be curtailed by government statute or requirement if the government can show that its action serves a compelling state interest. See: Bowen v. Roy, 476 U.S. 693 (1986); United States v. Lee, 455 U.S. 252 (1982). The government must make a reasonable effort to accommodate the religious practice, but it is not always possible to make such accommodation, nor is it Constitutionally required. The lower courts have found, in cases where religious practices were raised as a defense to criminal drug charges, that the government has a compelling state interest in the regulation of controlled substances and that accommodation is not usually possible.

The cases addressing the religious use of marijuana are consistent in finding that the Free Exercise Clause does not require the government to permit religious use of controlled substances. Beginning with Leary v. United States, 383 F.2d 851 (5th Cir. 1971), rev'd on other grounds, 395 U.S. 6 (1969), the federal appellate courts have found that the government has a compelling interest in controlling marijuana use. See: United States v. Spears, 443 F.2d 895 (5th Cir. 1971), cert. denied, 404 U.S. 1020 (1972); United States v. Middleton, 690 F.2d 820 (11th Cir. 1982), cert. denied, 460 U.S. 1051 (1983); United States v. Rush, 738 F.2d 497 (1st Cir. 1984), cert. denied, 471 U.S. 1120 (1985) and Olsen v. State of Iowa, 808 F.2d 652 (8th Cir. 1986). It should be noted that the Petitioner in this matter, Mr. Olsen, was an appellant in both the Rush and Olsen cases, in which he raised his religious use of marijuana in defense of criminal charges involving possession and trafficking in marijuana. The Middleton case involved a defendant who was a member of the Ethiopian Zion Coptic Church.

While Mr. Olsen maintains that these cases are not relevant to the Administrator's decision because they involve the defense of a criminal charge, the Administrator finds that they are indeed relevant in that the courts discuss the very Constitutional issues which must be

addressed in this matter. In addition to finding that the members of these religions had no Free Exercise guarantee to use controlled substances for religious purposes, the courts also found that as a matter of equal protection, these individuals' religions were not entitled to the same exemption as that given by DEA to the Native American Church for use of peyote for bona fide religious purposes. In finding that members of the Ethiopian Zion Coptic Church are not entitled to the same exemption as the Native American Church, the courts have made a distinction between the practices of the Native American Church and other churches, and the court in Rush stated, "we think the Ethiopian Zion Coptic Church cannot be deemed similarly situated to the Native American Church for equal protection purposes." United States v. Rush, 738 F.2d 497, 513 (1st Cir. 1984), cert. denied, 471 U.S. 1120 (1985). The Administrator finds that there is indeed a distinction between the practices of the Native American Church and the Ethiopian Zion Coptic Church. Mr. Olsen has stated that the Ethiopian Zion Coptic Church advocates the continuous use of marijuana or "ganja", while the Native American Church's use of peyote is isolated to specific ceremonial occasions.

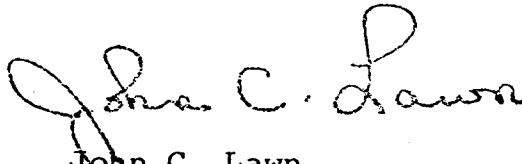
In addition, the Administrator finds that while peyote and marijuana are both Schedule I controlled

substances with a defined high potential for abuse, the actual abuse and availability of marijuana in the United States is many times more pervasive in American society than that of peyote. The statistics of DEA confirm this conclusion. The amount of peyote seized and analyzed by the DEA between 1980 and 1987 was 19.4 pounds. The amount of marijuana seized and analyzed by the DEA between 1980 and 1987 was 15,302,468.7 pounds. This overwhelming difference explains why an accommodation can be made for a religious organization which uses peyote in circumscribed ceremonies, and not for a religion which espouses continual use of marijuana. The Administrator also notes that Mr. Olsen's conviction in United States v. Rush involved the illegal importation of 20 tons of marijuana. Mr. Olsen and the other 19 defendants all claimed to be members of the Ethiopian Zion Coptic Church and raised the religious use of marijuana as a defense to criminal charges. If Mr. Olsen's assertions that the Ethiopian Zion Coptic Church in the United States has never had, "more than between 100 and 200 members in this country," (Petitioner's Memorandum at page 11), 20 tons of marijuana would be an outrageous quantity to supply their religious needs.

Mr. Olsen submits that his church will submit to a reasonable accommodation to their use of marijuana, limiting its ingestion to specific days and specific time

periods. Given the large amounts of marijuana available in this country, and the difficulty the DEA would have in trying to monitor compliance with such a requirement, the Administrator finds that accommodation is impractical. The public interest dictates that the exemption granted for religious use of peyote to the Native American Church should not be expanded to include marijuana for the Ethiopian Zion Coptic Church, or any other religion.

Based upon the record in this proceeding, the legal precedents, and for the reasons outlined, the Petition by Carl Eric Olsen submitted on behalf of the Ethiopian Zion Coptic Church for an exemption to the Controlled Substances Act to use marijuana for religious purposes, is hereby denied.

  
John C. Lawn  
Administrator

Dated: JUL 26 1988