

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

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MAY 18 2010 FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 10-1100

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAY 18 2010
CLERK

Wayne Hague)

Petitioner)

v.)

Drug Enforcement Administration)

Respondent)

PETITION FOR REVIEW

Pursuant to section 507 of the Controlled Substances Act, 21 U.S.C. §877, and Rule 15 of the Federal Rules of Appellate Procedure, Wayne Hague hereby petitions the Court for review of the unreasonable withholding and delay of a decision by Respondent Drug Enforcement Administration (“DEA”) on the application by Petitioner Hague, filed on February 15, 2007, for a registration (license) , pursuant to 21 U.S.C. 823, to cultivate industrial hemp in North Dakota pursuant to licenses already issued by the North Dakota Commissioner of Agriculture under North Dakota state law; and for review of the refusal of Respondent DEA to issue such registration.

1. Under North Dakota law, a farmer may obtain a license from the state Commissioner of Agriculture to cultivate industrial hemp, which is defined by state statute as *cannabis sativa L.* having no more than three-tenths of one percent of tetrahydrocannabinol, the psychoactive ingredient in marijuana. N.D. Cent. Code §§4-41-01—4-41-03 (2009). Industrial hemp is not useable as or interchangeable with drug marijuana. Petitioner Hague obtained a license from the State of North Dakota permitting him to cultivate industrial hemp.

2. Under federal law, the Controlled Substances Act (“CSA”), the importation, possession, sale and use of hemp stalk, fiber, seed and oil are lawful, 21 U.S.C. 802(16). However, since the hemp plant is of the same species as the marijuana plant, *Cannabis sativa L.*, the plant itself is a controlled substance under the CSA.

3. On February 15, 2007, Petitioner Hague filed with DEA an application, pursuant to the CSA, 21 U.S.C. §823, to be registered as a bulk manufacturer of marijuana, in order to allow him to cultivate industrial hemp under his North Dakota state license.

4. Pursuant to DEA regulations, 21 C.F.R. §1301.33(a), on June 1, 2007, DEA published notice of the application and solicited comments and

objections. 72 *Fed. Reg.* 30632 (June 1, 2007). No objections were received; one favorable comment was received.

5. In June, 2007, Mr. Hague and David Monson, another North Dakota farmer who had a state license and had applied for a federal registration, brought suit in the United States District Court for North Dakota against the DEA seeking a declaration that, even without a federal registration, they could not be criminally prosecuted for cultivating industrial hemp under their state-issued licenses. The District Court granted summary judgment for the DEA. *Monson v. Drug Enforcement Adm'n*, 522 F. Supp. 2d 1188 (D.N.D. 2007). On appeal, the Court of Appeals for the Eighth Circuit affirmed, holding, *inter alia*, that the farmers had standing and that their claims were ripe for review notwithstanding the pendency of their registration applications because, among other things, DEA had made clear its position that the agency would treat the application as one to grow marijuana and therefore exhaustion of the administrative remedy (the licensing process) would therefore be futile. The Court of Appeals further held, however, on the merits that the CSA does regulate and (absent a DEA registration) does prohibit, the proposed cultivation of industrial hemp. *Monson v. Drug Enforcement Adm'n*, 589 F.3d 952 (8th Cir. 2009).

6. The DEA requested additional information from Mr. Hague regarding his application, on several occasions. Mr. Hague has fully answered all of DEA's questions and there is no pending request by DEA for any additional information needed to process the registration application.

7. This Court has jurisdiction of this Petition under the Controlled Substances Act, 21 U.S.C. §877, and under the All Writs Act, 28 U.S.C. §1651(a)(2010), which jointly confer jurisdiction non this Court to compel agency action unreasonably withheld or delayed if such action once forthcoming would be reviewable in this Court. The denial of a registration to Mr. Hague by DEA, once forthcoming, would be reviewable in this Court under section under 21 U.S.C. §877.

8. Review of DEA's unreasonable withholding of the issuance of a registration is further sought under the Administrative Procedure Act, 5 U.S.C. §706 (2010).

9. The CSA, 21 U.S.C. §823 requires DEA to grant a registration if the agency finds that registration is consistent with the public interest taking into consideration six specified factors. Based on those factors, Mr. Hague is entitled to issuance of a registration:

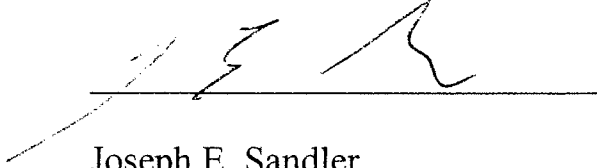
- (i) Because no part of the hemp plant will leave Mr. Hague's farm other than those parts distribution and use of which are already

lawful under the CSA, there is no risk of diversion of any controlled substance (§823(a)(1));

- (ii) Mr. Hague's proposed cultivation is consistent with state law as he has been granted a license by the State of North Dakota permitting the cultivation for which he seeks a federal registration (§823(a)(2));
- (iii) The proposed cultivation will promote technical advances in the cultivation of industrial hemp (§823(a)(3));
- (iv) Mr. Hague has no record of ever violating any federal or state law relating to controlled substances (§823(a)(4))
- (v) Mr. Hague's application, showing that no part of the hemp plant will leave Mr. Hague's farm other than those parts distribution and use of which are already lawful under the CSA, demonstrates the existence of effective control against diversion (§823(a)(5)); and
- (vi) Other considerations of public health and safety are consistent with granting the registration (§823(a)(6)).

10. For those reasons, DEA's denial of the registration for which Mr. Hague has applied would be arbitrary, capricious and contrary to law, under the CSA and the Administrative Procedure Act, 5 U.S.C. §S702, 706.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Sandler', is written over a solid horizontal line.

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