

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-40745  
Summary Calendar

---

LYNN L. PEARSON, M.D.,

Petitioner,

versus

DRUG ENFORCEMENT ADMINISTRATION,

Respondent.

---

Petition for Review of an Order of the  
Deputy Administrator of the Drug Enforcement Administration  
(DEA# 92-68)

---

(February 24, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Lynn L. Pearson, M.D., seeks review of the denial by the Drug Enforcement Administration of his application for registration to dispense controlled substances. Because the facts of this case are set forth adequately in the order denying registration, published at 59 Fed. Reg. 33984, we will not repeat them here. Having considered the arguments presented in the briefs and having

---

\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

reviewed the record, we are convinced that the deputy administrator did not abuse his discretion. Accordingly, the petition for review is denied.

I

Pursuant to authority delegated to him by the Attorney General through the Administrator of the DEA, the deputy administrator of the DEA "shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. § 823(f). Although the language is mandatory, federal registration is not automatic simply because an applicant is registered by a state; registration may be denied "if [the deputy administrator] determines that the issuance of such registration would be inconsistent with the public interest." Id. As the statutory language suggests, we accord deference to the deputy administrator's exercise of discretion: we will not disturb his decision "unless it is unwarranted in law or without justification in fact." Noell v. Bensinger, 586 F.2d 554, 558 (5th Cir. 1978). In this case, therefore, unless the deputy administrator's decision is based on an error of law or lacks support in the evidence, his decision will be sustained.

II

The deputy administrator found that Dr. Pearson's past crimes outweighed his evidence of good character and rehabilitation, and that Dr. Pearson had not demonstrated sufficient appreciation for

the responsibilities of a DEA registrant. As a consequence, the deputy administrator determined that registering Dr. Pearson would be inconsistent with the public interest.

Dr. Pearson does not contend that the deputy administrator's decision is "unwarranted in law." Indeed, the order denying Dr. Pearson's registration carefully describes the applicable law and applies the relevant factors to Dr. Pearson's case. Dr. Pearson simply disagrees with the deputy administrator's decision. He contends that he presented substantial evidence to support his application, but the deputy administrator ignored his evidence and "echoed the government's exceptions to the ALJ's findings and recommendation" when he denied Dr. Pearson's application. In so doing, Dr. Pearson contends, the deputy administrator abused its discretion.

Dr. Pearson's argument, we think, fails to address the central issue: whether the deputy administrator's decision is supported by substantial evidence. The question before us is not whether substantial evidence supports Dr. Pearson's application: to obtain relief on appeal, Dr. Pearson must show that the deputy administrator's decision lacked a substantial basis in the evidence or, put another way, is "without justification in fact." Id. He has not made such a showing.<sup>1</sup> Under these circumstances, we are

---

<sup>1</sup>Our conclusion that the deputy administrator's findings are supported by the evidence is buttressed by the fact that Dr. Pearson did not take exception to the ALJ's conclusion, later adopted by the deputy administrator, that Dr. Pearson has not

convinced, the deputy administrator did not abuse his discretion.

III

Having considered the briefs and the record, we hold that the deputy administrator did not abuse his discretion when he determined that it would be inconsistent with the public interest to register Dr. Pearson. The petition for review is therefore

D E N I E D.

---

demonstrated a full appreciation of the responsibilities of a DEA registrant.