

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1240

September Term, 2018

DEA-83FR155

Filed On: March 28, 2019

Bharanidharan Padmanabhan, MD, PhD,

Petitioner

v.

Drug Enforcement Administration,

Respondent

**PETITION FOR REVIEW FROM AN ORDER OF THE DRUG ENFORCEMENT
ADMINISTRATION**

BEFORE: Rogers, Griffith, and Katsas, Circuit Judges

JUDGMENT

This petition for review of an order of the Drug Enforcement Administration was considered on the briefs and appendices filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing, the motion for leave to file a supplemental appendix, the lodged supplemental appendix, the motions for judicial notice, and petitioner's requests for a published opinion and for a certification from the Assistant Attorney General, it is

ORDERED that the motion for leave to file a supplemental appendix be granted. The Clerk is directed to file the lodged supplemental appendix. It is

FURTHER ORDERED that the motions for judicial notice be denied. Petitioner has not shown that the information referred to in his motions for judicial notice is relevant to the disposition of this petition. See Larson v. Dep't of State, 565 F.3d 857, 870 (D.C. Cir. 2009). It is

FURTHER ORDERED that the requests for a published opinion and for certification be denied. It is

FURTHER ORDERED AND ADJUDGED that the petition for review be denied. Petitioner has not shown that the Drug Enforcement Administration's ("DEA") revocation of his federal authority to dispense controlled substances pursuant to the Controlled Substances Act, 21 U.S.C. § 824, was arbitrary, capricious, or manifestly contrary to the

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statute. See Wedgewood Vill. Pharm. v. DEA, 509 F.3d 541, 549 (D.C. Cir. 2007). The DEA acted within its authority when it revoked petitioner's Certificate of Registration based on the suspension of petitioner's license to practice medicine in Massachusetts and the voiding of his authorization to dispense controlled substances in Massachusetts. See 21 U.S.C. § 824(a)(3).

Although petitioner argues that the suspension of his license to practice medicine in Massachusetts was contrary to law, he does not dispute that his license is currently under indefinite suspension. Moreover, petitioner has failed to show that the DEA erred in concluding that petitioner's Massachusetts Controlled Substance Registration was voided by operation of 105 Code Mass. Regs. § 700.120, which states that such registration "is void if the registrant's underlying professional licensure on which the registration is based is suspended or revoked." And although petitioner argues that 105 Code Mass. Regs. § 700.120 conflicts with the Massachusetts Controlled Substances Act, the regulation and the statute are not inherently inconsistent, and a Massachusetts agency's regulations "are not to be declared void unless their provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate." Noe v. Sex Offender Registry Bd., 102 N.E.3d 409, 421 (Mass. 2018). Petitioner further argues in his reply brief that 105 Code Mass. Regs. § 700.120 violates the Constitution, but "absent extraordinary circumstances . . . we do not entertain an argument raised for the first time in a reply brief." United States v. Whren, 111 F.3d 956, 958 (D.C. Cir. 1997).

The DEA did not violate the Tenth Amendment by declining to review the underlying suspension of petitioner's medical license by the Massachusetts Board of Registration in Medicine. See, e.g., Murphy v. NCAA, 138 S. Ct. 1461, 1476 (2018). Furthermore, petitioner has not shown that his Certificate of Registration was revoked without due process, that the DEA proceedings constituted a taking under the Fifth Amendment, or that the DEA otherwise violated his Constitutional rights. Petitioner has also not shown any bias on the part of the DEA administrative law judge. See Waterbury Hotel Mgmt., LLC v. NLRB, 314 F.3d 645, 651 (D.C. Cir. 2003) (adverse rulings alone do not demonstrate bias).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1240

September Term, 2018

DEA-83FR155

Filed On: May 29, 2019

Bharanidharan Padmanabhan, MD, PhD,

Petitioner

v.

Drug Enforcement Administration,

Respondent

BEFORE: Garland, Chief Judge, and Henderson, Rogers, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, Katsas, and Rao, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

September 10, 2019

Bharanidharan Padmanabhan
30 Gardner Road
Brookline, MA 02445

RE: Bharanidharan Padmanabhan v. DEA

Dear Mr. Padmanabhan:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked August 20, 2019 and received August 23, 2019. The application is returned for the following reason(s):

The lower court opinion must be appended. Rule 13.5.

The order denying rehearing must be appended. Rule 13.5.

It is impossible to determine the timeliness of your application for an extension of time without the lower court opinions.

A copy of the corrected application must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:

Redmond K. Barnes
(202) 479-3022

Enclosures