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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

APR 30 2001

File: [redacted] Office: New York, New York Date:

IN RE: Petitioner: [redacted]

Petition: Petition for Approval of School for Attendance by Nonimmigrant Students Under Section 101(a)(15)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(F)(i)

IN BEHALF OF PETITIONER: Self-Represented

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Students (Form I-17) was denied by the District Director, New York, New York, who certified his decision to the Associate Commissioner, Examinations, for review. The decision of the director will be affirmed.

The petitioner is a private institution which provides post-baccalaureate training which may lead to a certificate in psychoanalysis or psychotherapy. Pursuant to section 101(a)(15)(F) of the Immigration and Nationality Act (the Act), the petitioner seeks approval as a school for attendance by nonimmigrant alien students. The director denied the petition "for the reasons outlined in the Intent to Deny." In the previously issued intent to deny, the director noted that the petitioner failed to establish that it is licensed, approved, or otherwise accredited. The director also noted that the petitioner did not establish that it possesses adequate facilities, personnel, and finances to conduct the instruction. Finally, the director stated that the petitioner failed to show that the students are eligible under section 101(a)(15)(F) of the Act.

No brief or legal memorandum was submitted in support of the petition on certification. Although the record contains materials that have been prepared by an attorney, the file does not contain a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative. Accordingly, the petitioner will be treated as self-represented.

8 CFR 214.3(a)(2)(i) states:

> *F-1 classification*. The following schools may be approved for attendance by nonimmigrant students under section 101(a)(15)(F)(i) of the Act:
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> (A) A college or university, i.e., an institution of higher learning which awards recognized bachelor's, master's doctor's or professional degrees.
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> (B) A community college or junior college which provides instruction in the liberal arts or in the professions and which awards recognized associate degrees.
>
> (C) A seminary.
>
> (D) A conservatory.
>
> (E) An academic high school.
>
> (F) An elementary school.

> (G) An institution which provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines.

The primary issue in this matter is whether the petitioner has been certified by an appropriate licensing, approving, or accrediting official.

8 CFR 214.3(b) states that a petitioning school "shall submit a certification by the appropriate licensing, approving, or accrediting official who shall certify that he or she is authorized to do so to the effect that it is licensed, approved, or accredited. . . . A charter shall not be considered a license, approval, or accreditation."

In the initial petition, the school stated that it operated under a charter from the Board of Regents of the State of New York. In support of this claim, the petitioner submitted a copy of the school's Absolute Charter, issued by the New York Board of Regents on March 31, 1978.

Regarding the school's accreditation, the petitioner stated that it was approved by the Board of Regents of State of New York and the "Society of Modern Psychoanalysts." Other than the school's charter, the petitioner did not submit any evidence to establish that the New York Board of Regents had granted the school accreditation or that the Board was empowered to act as an accrediting association or agency. As noted by the director, "[a] charter shall not be considered a license, approval, or accreditation." 8 CFR 214.3(b).

Regarding the claim that the school is accredited by the Society of Modern Psychoanalysts, the petitioner submitted a letter which states that the school "is a founding member of The Society of Modern Psychoanalysts (SMP), and as such, has received accreditation status." The letter continues to state that, "[t]o be accredited [by the Society of Modern Psychoanalysts], an institute must be chartered or provisionally chartered or otherwise meet the requirements of the state in which it operates and include in its training program a psychoanalytical track utilizing the principles and theories developed by Hyman Spotnitz and his colleagues." It is noted that the Society of Modern Psychoanalysts shares the same address as the petitioning school. The petitioner did not submit any evidence to establish that the Society of Modern Psychoanalysts is recognized as an accrediting agency by the United States Department of Education.

The term "accreditation" is defined at 34 CFR 602.3 as "the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's

standards and requirements." An "accrediting agency" is defined by the regulations as "a legal entity . . . that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both."

The Secretary of the United States Department of Education recognizes accrediting agencies to ensure that these agencies are reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit, for the purposes of the Higher Education Act of 1965, as amended, or for other Federal purposes. 34 CFR 602.1. The Secretary of Education lists an agency as a nationally recognized accrediting agency if the agency meets the Department of Education's recognition criteria, as listed at subpart B of title 34, Code of Federal Regulations, part 602.

Thus, within the context of 8 CFR 214.3 and the Service's school approval process, which is clearly a Federal program, the term "accredited" means accreditation by an agency recognized by the United States Secretary of Education. The petition contains no evidence that the Society of Modern Psychoanalysts is so recognized.

Black's Law Dictionary defines "approve" as "[t]o give formal sanction to; to confirm authoritatively." 98 (7th ed. 1999). The use of this term in the regulations at 8 CFR 214.3 is based on the acknowledgement that certain states "license" educational institutions and others "approve" them. Either way, the issue is whether the institutions have the legal authority to operate as an educational institution. There is no evidence in the record that the Society of Modern Psychoanalysts has the authority to officially give formal sanction to educational institutions for the purposes of operating in the United States.

As the petitioner has not established that it has received certification from the appropriate licensing, approving, or accrediting official, this petition may not be approved.

In his decision, the director also raised additional issues by reference to the notice of intent to deny. First, the director stated in the notice that the petitioner failed to show that the students are eligible under section 101(a)(15)(F) of the Act. Through this reference and by noting that the Act contains separate provisions for trainees and exchange visitors, the director appears to be questioning whether classification as nonimmigrant students under section 101(a)(15)(F)(i) of the Act is appropriate for the potential students of the petitioning school. The eligibility of the school's potential students is dependent in part on the designation of the petitioning school under section 101(a)(15)(F)(i) of the Act, which has been denied in the current

petition. As the decision of the director to deny the petitioner will be affirmed on the above mentioned grounds, this issue need not be addressed further.

Finally, the director stated in the notice of intent to deny that the petitioner had not established that it possesses adequate facilities, personnel, and finances to conduct the claimed instruction. Based on a review of the brief submitted by the petitioner in response to the notice, it appears that the petitioner submitted photographs of the school's facilities and copies of financial statements for the years 1996 to 2000. However, the director did not forward these documents to the Associate Commissioner with the record of proceeding. As the decision of the director will be affirmed on the above mentioned grounds, this issue need not be addressed in this proceeding. However, should the petitioner file a motion to reopen or reconsider the matter on the basis of the school's accreditation, the director shall forward the entirety of the evidence submitted for review by the Associate Commissioner.

The petitioner must establish eligibility for the requested designation. Matter of College of the Scriptures, 11 I&N Dec. 154 (Reg. Comm. 1965). The petitioner has not sustained that burden. Accordingly, the decision of the director will be affirmed.

ORDER: The decision of the director dated January 12, 2001 is affirmed. The petition is denied.