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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

File: LOS 214F 01727 Office: LOS ANGELES, CALIFORNIA Date: AUG 13 2003

IN RE: Petitioner: [redacted]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for

Robert P. Wiemann, 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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to him for entry of a new decision.

The Form I-17 reflects that the petitioner in this matter, [redacted] is a private school established in 1997. The school offers vocational and technical education as well as English language training. The school declares an enrollment of approximately 20 students per year, with 8 teachers. As indicated on the petitioner's SEVIS Form I-17, the petitioner seeks initial approval for attendance by both F-1 and M-1 nonimmigrant students. The petitioner, however, was previously approved for attendance by M-1 vocational students on April 30, 1999. As the petitioner has already received M-1 approval, we will discuss the petitioner's eligibility for F-1 approval only.

After an on-site inspection by a Bureau contractor, the district director denied the petition, finding that the petitioner failed to submit sufficient evidence regarding the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teaching staff, salaries of the teachers, and the amount and character of supervisory and consultative services. The director also found that the petitioner failed to submit sufficient documentation regarding the finances of the petitioner's programs. Further, the director indicated that the petitioner failed to submit evidence of accreditation and certification establishing that the petitioner is licensed, approved, or accredited. Finally, the director found that the petitioner had failed to establish that its English language programs are bona fide, that it is engaged in instruction in English language and that it possesses the necessary facilities and personnel to conduct instruction. Finally, the director noted more than three violations of 8 C.F.R. § 214.3(j) in the petitioner's catalogue.

Pursuant to 8 C.F.R. § 103.2(b)(8), where there is no evidence of ineligibility, and initial evidence or eligibility information is missing, or the Bureau finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Bureau shall request the missing initial evidence, and may request additional evidence. The Bureau made no request for additional evidence in this case prior to the denial.

On appeal, the petitioner submits additional documentation. We note, however, that much of the documentation submitted on appeal corresponds to the warning letter issued by the district director to highlight deficiencies related to the petitioner's M-1 approval status and the petitioner's response to the California Bureau for Private Postsecondary and Vocational Education (BPPVE), but does not specifically address the issues raised in the district director's denial.

8 CFR 214.3(b) states, in pertinent part:

> Any other 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. In lieu of such certification a school which offers courses

> recognized by a State-approving agency as appropriate for study for veterans under the provisions of 38 U.S.C. 3675 and 3676 may submit a statement of recognition signed by the appropriate official of the State approving agency who shall certify that he or she is authorized to do so...
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> * * * *
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> A school catalogue, if one is issued, shall be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement containing information concerning the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teach staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees . . . .

The record contains evidence that the BPPVE approved the petitioner to offer courses and/or programs in Professional Golf Management, English As A Second Language, Levels 1 through 6, and TOEFL. In his decision, the director states this "registration" with the State of California does not meet the requirement that the petitioner demonstrate that it is licensed, approved, or accredited. The director does not provide any further explanation for not accepting registration by BPPVE as evidence that satisfies §214.3(b). We can find no reason why we should not accept a state's registration and/or approval of a school's programs and courses as fulfilling the above regulation. Therefore, we find that the petitioner has submitted evidence of certification by the appropriate licensing or approving official.

As the petitioner is a private school and has not shown evidence that it is accredited by a nationally recognized accrediting body, the petitioner was required to submit a catalogue with the information stated in the above cited regulation. The initial submission contained a copy of the petitioner's catalogue that discussed the petitioner's facility, course offerings, teachers, The director noted that the petitioner's catalogue was not current and that the petitioner's financial statements did not have beginning or end dates, or a cash flow statement. For the remaining requirements, the district director failed to address the petitioner's deficiencies with specific detail such that the petitioner could respond on appeal in any meaningful way. The district director's denial simply states that the petitioner "did not submit sufficient evidence."

Size of school's physical plant/Nature of facilities for study and training.

On appeal, the petitioner provides the Bureau with an architectural layout of the school premises showing six classrooms and one computer lab that range from 400 to 1025 square feet. The record of proceeding contains notes taken by a contractor that verifies this information. The district director did not specifically address his reasons for finding that the facility was deficient. Given the evidence submitted on appeal and the contractor's notes based on the on-site visit, we find that the size of the petitioning school and its facilities are adequate for study and training.

Educational, vocational and professional qualifications of the teaching staff/Salaries.
The district director noted that the petitioner provided evidence of only one instructor for the English language courses. On appeal, the petitioner submits evidence of resumes and BPPVE's approval for

four instructors, including Kenneth Kiemm, the director of the petitioning school. The petitioner also submits numerous other resumes of instructors but does not submit evidence that BBPVE has approved them. While the petition indicates a total of eight instructors, the business tax certificate from the City of Anaheim, submitted on appeal, shows that there are only four employees at the petitioner's location. The petitioner should be given an opportunity to provide information related to its exact number of employees, and their resumes and salaries, as well to address the discrepancies noted in the petition and other evidence contained in the record.

Attendance and grading policies/The amount and character of supervisory and consultative services available to students.
The 2003-2004 academic catalogue submitted by the petitioner on appeal contains evidence of the attendance and grading policies. The catalogue also states that academic, career planning and counseling are available to the students. However, we note that the catalogue contains the wording "proposed to be published." Therefore, on remand the petitioner should be requested to provide evidence of the actual publication of the catalogue or other evidence to corroborate the attendance, grading policies, and supervisory and consultative services available to students.

School finances.
The petitioner initially provided the Bureau with balance sheets for the years 1997 and 1999. On appeal, the petitioner provided no evidence in response to the district director's concern regarding the insufficient evidence provided regarding the school's finances. The petitioner has failed to overcome the district director's objection. The regulation clearly requires that the petitioner provide the Bureau with a *certified copy of an accountant's last statement of the school's net worth, income, and expenses.* Furthermore, the statements contained in the record are not certified by an accountant. On remand, the district director should request a certified copy of an accountant's last statement of the school's net worth, income and expenses as required by 8 C.F.R. § 214.3 (b).

In addition to the evidence that must be submitted in accordance with 8 C.F.R. 214.3(b), 8 C.F.R. 214.3(c) requires the following additional evidence to be submitted:

> If the petitioner is a vocational, business, or language school, or American institution of research recognized as such by the Attorney General, it must submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character (emphasis added).

The district director did not specifically address the reasons for determining that the evidence submitted to show petitioner's courses of study fulfill the requirements for the attainment of an educational, professional, or vocational objective was deficient. The record contains three letters from employers submitted on appeal. We can only assume, without any explanation for these letters from the petitioner, that these letters were submitted to establish that the petitioner's graduates were hired by these employers. However, the petitioner has failed to establish that any of the people mentioned in the letters were former graduates of the petitioning school. We note that while the letter from [redacted] indicates that it hired [redacted] on March 3, 1987, the petitioner was not established until 1997. Moreover, the fact that graduates of the petitioner's M-1 approved courses are hired by employers does

not establish that the petitioner's language program is not considered avocational or recreational in nature. On remand, the district director should request evidence to reflect that the petitioner's language program meets the above-cited regulation.

8 C.F.R. § 214.3(e)(1) provides that the evidence with respect to the petitioning school must establish that:

(i) It is a bona fide school;

(ii) It is an established institution of learning or other recognized place of study;

(iii) It possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and

(iv) It is, in fact, engaged in instruction in those courses.

After determining that the petitioner's phone numbers and website addresses were not functional, the district director found that the petitioner failed to establish the above requirements. The director also noted that a representative of [redacted] disavowed any relationship with the petitioning school.

The statute and regulations are silent as to what constitutes an "established institution of learning." According to an internal memorandum,[1] an established institution of learning is one that has been in operation for two years with state approval. The memorandum does not preclude the Service from determining that an unaccredited institution is established if it has been in operation for less than two years, because the more narrow construction would constitute impermissible rulemaking. The memorandum's author undoubtedly intended to give guidance and illustration of what would constitute an established institution of learning.

On appeal, the petitioner asserts that it was forced to change its name due to a corporate trademark infringement. The petitioner also submits a letter from [redacted] to establish that although [redacted] is a separate business from the petitioner, the petitioner's students use [redacted] as part of their training. The petitioner has also shown that it is operational and does have some faculty on staff instructing students. The contractor's notes from the on-site visit indicate that she observed two separate classes on the day that the review took place and noted five students in attendance at a language training class and 4 students in attendance at a golf management training class. Furthermore, the petitioner provided the Service with a copy of course approval from the BPPVE.

Therefore, while we find that the petitioner has established that it is a bona fide school, that it is an established institution of learning, and that it is engaged in instruction of courses, the petitioner has not shown that it possesses the necessary personnel, and finances to conduct instruction in recognized courses. The petitioner also has not provided any explanation related to the disconnected phone numbers or inoperable website.

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[1] James A. Puleo, Acting Executive Associate Commissioner, Office of Operations, Memorandum dated January 14, 1994.

The remaining issue to be addressed is the director's finding regarding violations of 8 C.F.R. § 214.3(j). While the director noted "three or more violations," he did not specify the material in the petitioner's catalogue that was in violation. On remand, the director should notify the petitioner of the specific material that is in violation of the regulations and allow the petitioner to address the district director's concerns and show that the current version of the catalogue has been amended. Further, while the district director states that the petitioner has indicated that it is approved for F-1 status, the district director does not show where this statement was made. On remand, the director should address this specific allegation and allow the petitioner the opportunity to respond and/or take corrective measures.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. However, this case shall be remanded to the district director to issue a request for evidence from the petitioning school as outlined above. After receipt and consideration of the additional evidence, the district director shall enter a new decision.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for action consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.