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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 Ave, 3rd Floor
Washington, D.C. 20536

[redacted]

JUL 24 2003

File: LOS 214F 01941 Office: LOS ANGELES, CALIFORNIA 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

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.

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 on appeal. The appeal will be rejected.

The Form I-17 reflects that the petitioner in this matter, [redacted] is a private school established in 1999. The school offers English language training. The school declares an enrollment of approximately 20 students per year, with 2 teachers and four non-teaching employees. The petitioner seeks initial approval for attendance by F-1 nonimmigrant students.

The director denied the petition on January 22, 2003, finding that the petitioner failed to provide the Bureau with evidence regarding the size of its physical plant, natures 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 available to students and trainees. Additionally, the director found that letters offered as evidence that the petitioner's courses fulfilled the requirements for the attainment of a professional or vocational objective were fraudulent.

The certified mail receipt contained in the record shows that the denial was received, and signed for by the petitioner, on January 24, 2003. The petitioner was allowed 30 days to file an appeal, plus three additional days for mailing, pursuant to regulations at 8 C.F.R. § 103.3(a)(2) and 8 C.F.R. § 103.5a(b).

8 C.F.R. § 103.3(a)(2)(i) states:

> *Filing appeal.* The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by Sec. 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. § 103.3(a)(2)(v)(B) states:

> Untimely appeal.
>
> (1) *Rejection without refund of filing fee.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.
>
> (2) *Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) of this part or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The Form I-290B, Notice of Appeal, was not filed until April 30, 2003, and as such, is considered as untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2), or a motion to

reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Bureau policy. Review of the record indicates that the untimely appeal does not meet either of these requirements.

On appeal, the petitioner submits two certified financial statements, W-2 statements for its employees, and a letter from the [redacted] CEO of the school.

The letter from Mr. [redacted] expresses his belief that the Bureau is penalizing the school and treating it unfairly because it is a "small size school." We note that the regulations apply equally to all schools seeking approval to enroll nonimmigrant students, regardless of size. In response to the director's determination that the employment letters submitted in support of the petition were fraudulent, Mr. [redacted] asserts that the school was not required to submit such letters as they are not required for schools seeking approval under section 101(a)(15)(F) of the Act. Mr. [redacted] concludes by stating "there is no logical reason [sic] to submit fraudulent documents which were not required for the F-1 approval."

We take this opportunity to clarify for the petitioner, that, in addition to the evidence that must be submitted in accordance with 8 C.F.R. 214.3(b)[1], 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).

Letters from employers who have accepted the petitioning school's students for employment are considered by the Bureau as evidence that the school is not avocational or recreational in nature. Regardless of whether the petitioner believes that it was required to submit employer letters, such letters were submitted into the record, and were found to be fraudulent.

Mr. [redacted] states that he contacted the employers who wrote the original employment letters. Mr. [redacted] further state that the employers verified that the Bureau had called to affirm the statements made in the letters, but stated they "usually would not release employment information over the phone." Finally, Mr. [redacted] states that the employers agreed to certify that the contents of their respective letters were true.

We are not persuaded by the petitioner's statements on appeal. A review of the director's denial shows that not one of the employers indicated a policy of not releasing employment information over the phone. Instead, as described by the director, in detail, each person contacted specifically stated that the person in question did not work for the employer. Moreover, the evidence submitted with the petitioner's appeal does not include any certification from the employers to attest to the truthfulness of the respective letters, as indicated by Mr. [redacted]

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[1] In his decision, the director cited the language of 8 C.F.R. § 214.3(b).

Furthermore, the petitioner has failed to provide any new facts pertaining to eligibility for approval, any clear reason for reconsideration, or any precedent decision to establish that the decision was based on an incorrect application of law or Bureau policy. Finally, the petitioner has not addressed any of the director's specific findings set forth in the notice of denial.

As the appeal was untimely filed and does not meet the requirements of a motion to reopen or reconsider, the appeal will be rejected.

ORDER: The appeal is rejected.