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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: SFR 214F 1874 Office: SAN FRANCISCO, CALIFORNIA Date: SEP 10 2003

IN RE: Petitioner: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

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, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-17 reflects that the petitioner in this matter, [redacted] is a private institution that grants Associates degrees in Catholic Humanities. The school declares an enrollment of fifteen students with ten instructors. The petitioner seeks approval for attendance by F-1 nonimmigrant students. There is no indication in the record that the school has ever been approved for attendance by nonimmigrant students in the past.

The district director denied the petition, finding that the petitioner had failed to establish that it is a bona fide institution or that it is engaged in the instruction of courses listed on the I-17 petition. The district director further found that the petitioner had failed to establish that it is an established institution of learning as the petitioner had not been engaged in instruction for at least two years. Finally, the district director determined that the petitioner had failed to establish that an F-1 student could maintain a full course of study with the programs offered by the petitioner.

On appeal, counsel for the petitioner submits a brief with no additional documentation.[1]

In order to establish eligibility for approval for attendance by nonimmigrant students under section 101(a)(15)(F)(i) of the Act, a petitioner must satisfy several eligibility requirements.

According to 8 C.F.R. §214.3(e), there are four eligibility requirements.

> To be eligible for approval, the petitioner 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.

In order to establish each of these requirements, the regulations require supporting documentation to be submitted depending upon the type of school seeking approval (e.g.; public vs. private schools, language schools, etc.).

The first issue in this proceeding is whether the petitioner has established eligibility for approval under 8 C.F.R. §214.3(c) which provides, in pertinent part:

> If the petitioner is an institution of higher education and is not [a public

[1] Although the appeal was not actually filed within the thirty-day time period, we have accepted the appeal as timely. Counsel for the petitioner has provided evidence that the failure to make delivery in a timely fashion was beyond counsel's or the petitioner's control.

> school or a school accredited by a nationally recognized accrediting body], it must submit evidence that it confers upon its graduates recognized bachelor, master, doctor, professional, or divinity degrees, or if it does not confer such degrees, that its credits *have been and are* accepted unconditionally by at least three such institutions of higher learning (emphasis added).

In his decision, the district director noted that the petitioner was not accredited by a nationally recognized accrediting agency and, therefore, determined that the petitioner did not confer "recognized" degrees. The district director then determined that the way for the petitioner to demonstrate that its credits have been and are accepted unconditionally, was to:

> [Submit] letters from at least three accredited institutions attesting that *graduates* from the petitioning institution have been and are accepted unconditionally. Such letters must state the name of the petitioning school, the name of its graduates, date of enrollment, and the new program(s) into which the graduate(s) has (have) been accepted (emphasis added).

The record of proceeding contains three letters from institutions stating that they will accept the credits of the petitioning school. The district director determined that these letters were not sufficient as the institutions did not actually enroll any graduates of the petitioning school.

On appeal, counsel argues that the letters meet the requirements of the regulation. Counsel focuses on the fact that the district director required the institutions to have accepted the petitioning school's graduates, rather than its credits. Counsel argues:

> There is simply no lawful requirement and no good reason why an institution's written agreement to accept the credits of another institution towards its degree programs is not sufficient to meet the demands of 214.3(c).

We find that the district director's assertion that three institutions must show acceptance of the petitioning school's *graduates* has no basis in the regulation. However, while we do not concur with the requirements imposed by the district director, we are also not persuaded by counsel's argument. Counsel asserts that the petitioning school must only "obtain recognition of its credits", whereas the regulation clearly requires evidence that the petitioner's credits have been, and are, unconditionally accepted by at least three other institutions of higher learning. Counsel's argument, that a mere agreement between the petitioning school, and three other institutions, to accept credits at some point in the future only establishes that the petitioning school's credits *will* be accepted. The petitioner has failed to establish that the petitioning school's credits *have been* and *are* accepted by at least three other institutions of higher learning as is required by the regulation. Therefore, while we do not agree with the reasoning used by the district director in making his determination, we do agree with his ultimate determination that the petitioner has failed to satisfy the above regulatory requirement. We further find that on appeal the petitioner has failed to overcome this ground for denial.

The second issue in this proceeding is whether the petitioner is an established institution of learning. The district director determined that the petitioner was not an established institution of learning as it had not been in operation, with state approval, for the two years immediately prior to the filing of the I-17 petition.

On appeal, counsel for the petitioner argues that the district director's determination was in error as no regulation exists mandating that a school be in operation with approval for two years prior to filing the I-17 petition. Counsel's argument is persuasive. The regulation merely states that the petitioner must show that it is an established institution of learning. The statute and regulations are silent as to what constitutes an "established institution of learning." The district director based his decision based the guidance of one internal memorandum,[2] which indicates that an established institution of learning is one that has been in operation for two years with state approval. However, 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. Such an interpretation would constitute impermissible rulemaking. The memorandum's author intended to give guidance and illustration of what would constitute an established institution of learning. In the instant case, the petitioner has shown that it is operational; it has faculty on staff instructing students. Furthermore, the petitioner provided the Service with a copy of state approval to operate. We find, therefore, that the petitioner has met his burden of proof in establishing that it is an "established institution of learning."

The remaining issue in this proceeding is whether the petitioner offers sufficient class hours for an F-1 student to maintain a full course of study.

8 CFR 214.2(f)(6) states, in pertinent part:

> A *full course of study* . . . means –
>
> * * *
>
> (B) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time....

In his decision, the district director noted that the petitioner's failure to submit a schedule of classes resulted in the district director's inability to determine whether the petitioner "courses of study allow F-1 nonimmigrant students to meet their minimum class hours to maintain status." Based upon the absence of the class schedules the district director found that the petitioner's courses did not satisfy the regulatory requirement.

On appeal, counsel for the petitioner argues that the petitioner did submit "a list of classes offered and

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

the semesters when offered" and that the Bureau should have made a request for the specific number of hours for each class prior to denying the petition. No additional documentation to establish the specific number of hours for each course was submitted on appeal.

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. Counsel's correctly argues that if evidence is missing, the Bureau should afford the petitioner an opportunity to submit such evidence prior to denial. In this instance, however, the fact that the petitioner failed to establish that its courses would enable an F-1 nonimmigrant to maintain status, was only one of several reasons for denial. Therefore, we do not find that the director's failure to request the additional information prior to denial constitutes a significant error or that it unduly prejudiced the outcome of the director's decision as the district director would still have denied the petition regardless of the issue discussed above.

Beyond the decision of the district director is that fact that the record does not contain the supporting documentation required by 8 C.F.R. §214.3(b) to accompany a petition for approval of a school. Specifically, as the petitioner is not a public school and has not been accredited, requires that either a catalogue or a written statement be submitted a catalogue be submitted with each petition. 8 CFR §214.3(b) states, in pertinent part:

> 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...finances (including a certified copy of the accountant's last statement of school's net worth, income, and expenses).

The record contains a "proforma chart of accounts and budget estimates" as well as what the petitioner refers to as a "financial statement." The financial statement offered by the petitioner "certifies that there is no board majority of persons with employment, family, ownership or personal interest in Campion College of San Francisco. However, neither the "financial statement" nor the "proforma chart of accounts and budget estimates" satisfy the regulation, which 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*. As the matter will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.