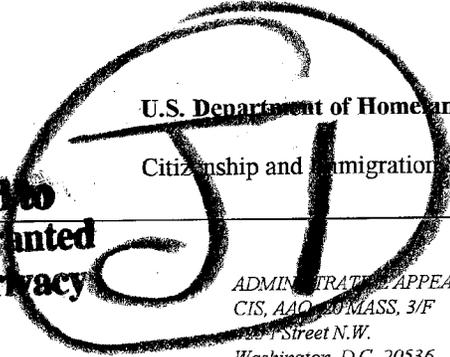


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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAC 20 MASS, 3/F
2501 Street N.W.
Washington, D.C. 20536



File: LOS 214F 1562 Office: LOS ANGELES, CALIFORNIA

Date:

IN RE: Petitioner:



SEP 29 2003

SEP 30 2003

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)

ON BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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 appeal will be dismissed.

The Form I-17 reflects that the petitioner in this matter, [REDACTED] is a private school established in 1981. The school offers master and doctorate level degrees in theology. The school declares an enrollment of approximately 70 students per year, with 19 teachers. As indicated on the petitioner's SEVIS Form I-17, the petitioner seeks continuation of approval for attendance by F-1 nonimmigrant students. The petitioner was originally approved on January 18, 1994, and was subsequently recertified on January 28, 1999, in accordance with 8 C.F.R. §214.3(h)(4). The petition at issue in this case is the Form I-17 petition filed for continued approval and access to the Student and Exchange Visitor Information System (SEVIS) as required by 8 C.F.R. §214.3(h)(1).

After four different visits by a Citizenship and Immigration Services (CIS) officer, as well as an on-site inspection by a CIS contractor, the district director denied the petition, finding that the petitioner was not a bona fide institution. The director also determined that the petitioner had failed to demonstrate that it was accredited and failed to provide evidence that three accredited institutions accept the petitioner's credits as required by 8 C.F.R. §214.3(c).

On appeal, the petitioner submits a brief accompanied by additional documentation.

At the outset we must state that the district director failed to thoroughly and logically proceed through his reasons for finding that the petitioner did not meet the requirements of 8 C.F.R. §214.3(c). However, while we do make such an acknowledgement, we do not find that there was any error on the part of the district director and, as will be discussed below, we concur with the ultimate decision of the district director.

Although not discussed by the district director in his decision, the first determination that we must make is whether the petitioner has satisfied 8 C.F.R. §214.3(b) which requires any school, other than a public school or a private elementary or secondary school, to submit "certification by the appropriate licensing, approving, or accrediting official." We note that the record contains evidence that the California Bureau for Private Postsecondary and Vocational Education (BPPVE) has acknowledged that the petitioner is "lawfully operating as a nonprofit religious corporation" in accordance with the California Education Code. We find such evidence is sufficient to establish that the petitioner has been licensed or approved by the appropriate official.

The next issue is whether the petitioner has satisfied the requirements of 8 C.F.R. §214.3(c) which states, in pertinent part:

If the petitioner is an institution of higher education *and is not within the category described in paragraph (b)(1) or (2) of this section*, [public schools or schools 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).

Counsel argues that the district director erred in determining that the petitioner was required to provide evidence of accreditation and that the regulation is “silent as to mandating that the institution submit evidence of accreditation by a U.S. Department of Education recognized (nationally or regionally) accreditation agency.”

We agree with counsel that the above regulation does not “require” evidence of accreditation, but find that this issue was of little consequence in the district director’s decision. The focus of the district director’s determination with regard to 8 C.F.R. §214.3(c) was not that the petitioner failed to establish that it was accredited. Instead, the district director determined that because the petitioner had failed to establish that it was accredited, the petitioner was, therefore, required to provide letters from at least three accredited institutions.

We are also not persuaded by counsel’s argument that the regulation is “silent” as to accreditation by an agency recognized by the Department of Education (DoEd). By law, the DoEd is the agency charged with the publication of the list of nationally recognized accrediting agencies.¹ CIS policy and regulations were written in consultation with the DoEd. It is long standing policy that an accrediting body is only considered a “nationally recognized accrediting body” if it is recognized by the DoEd. Regardless, we find counsel’s argument to be moot as the petitioner has not shown that it has ever been accredited by any accrediting body.

As the petitioner is not a public school and has not submitted any evidence of accreditation, the petitioner falls within the category of institutions that must submit evidence in accordance with 8 C.F.R. § 214.3(c) that its degrees are recognized, or in the alternative, that three accredited institutions accept the petitioner’s credits.

As evidenced by the letter from the BPPVE, we have already determined that the petitioner lawfully operates within the laws of California. Counsel argues that because the petitioner has shown that it operates within the laws of the state of California, its degrees are recognized. We do not agree with counsel’s argument and find that the fact that the petitioner operates lawfully within a state, does not mean that the state recognizes the petitioner’s degrees. This determination is supported by the language contained in the October 20, 2003, document issued by the BPPVE that states:

[I]t shall be unlawful for any institution to express or imply or represent by any means whatsoever, that the State of California or the Bureau for Private Postsecondary and Vocational Education (Bureau) has made any evaluation, recognition, accreditation, approval, or endorsement of any course of study or degree. The institution may state or advertise that it is

¹ See an overview of accreditation on the Department of Education website at <http://www.ed.gov/offices/OPE/accreditation> (9/2/03)

not a private postsecondary education institution as that term is defined in law.

The language contained in the BPPVE's letter directly refutes counsel's argument that in order to obtain approval to operate as a degree granting institution in the state of California, the state "requires that the coursework fulfill stringent requirements which the petitioner met" and, therefore, demonstrates that the petitioner's degrees are recognized. Although we do agree the evidence supports the fact that petitioner is authorized to operate within the state of California, the state did not make any determinations as to the standards of the petitioners courses or degrees and clearly does not recognize the petitioner's degrees. Again, while we find that the district director failed to articulate his reasons for finding that the petitioner's degrees were not recognized, the district director was correct in determining that the petitioner has failed to show that its degrees are recognized.

As the petitioner's degrees are not recognized, 8 C.F.R. §214.3(c) alternatively requires the petitioner to submit evidence that its credits *have been and are* unconditionally accepted by at least three institutions of higher learning. The petitioner provides three letters on appeal; the first from Christian Heritage College, the second from The Master's Seminary, and the third from Biblical Theological Seminary. Each letter indicates that credits from the petitioner are transferable and that the schools "would" accept the petitioner's students. However, the fact that the schools would, at some point in the future, accept the petitioner's credits, does not satisfy the requirements of the regulation that require the petitioner to show that its credits *have been and are* accepted. Counsel explains that no student has ever transferred from the petitioning institution since it was established. While we accept counsel's explanation, the fact remains that there is no evidence in the record that the petitioner's credits have ever been accepted by any institution of higher learning.

We note that in his decision, the district director finds that the petitioner failed to provide three letters from "accredited institutions" attesting that they "unconditionally accepts and ha[ve] accepted *credits and students* from the petitioning institution (emphasis added)." While we do acknowledge that the regulation requires evidence that only *credits*, not *students*, be accepted, we do not find any error on the part of the director. Similarly, we do not find that the district director's requirement that the letters be from accredited institutions, versus institutions of higher learning, resulted in error as the petitioner failed to show that any of its credits have ever been accepted by another institution.

Although the above discussion renders the petitioner ineligible for approval, the remaining issue is whether the petitioner was engaged in actual instruction of recognized courses.

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.

In his decision, the district director noted that several attempts made by CIS officers and contractors to visit the petitioner and view classes were not successful. While we do not dispute the findings of CIS officers or contract personnel, we do find that the times the petitioner was visited may have been during times when classes were not in session (e.g., after the morning classes had ended or during the summer break). We also find that the petitioner has submitted credible evidence, including commencement photos and documents, magazine articles referring to graduates of the petitioner, and letters from members of Congress that is sufficient to establish that the petitioner is, in fact, engaged in instruction. However, that fact that the petitioner is engaged in instruction satisfies only part of the regulatory requirement as the petitioner must show that it is engaged in the instruction of *recognized* courses. As we have determined that the petitioner's courses are not recognized, we cannot find that the petitioner is engaged in the instruction of *recognized* courses as required by 8 C.F.R. §214.3(e).

As always, 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.