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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass Ave, 3rd Floor
Washington, D.C. 20536

[redacted]

AUG 05 2003

File: LOS 214F 1809 Office: LOS ANGELES, CALIFORNIA Date:

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)

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.

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 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.

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 dismissed.

The Form I-17 reflects that the petitioner in this matter, [redacted] is a private school, established in 1993. The school offers vocational and technical education as well as English language training. The school declares an enrollment of approximately 100 students per year, with 10 teachers. The petitioner seeks initial approval for attendance by both F-1 and M-1 nonimmigrant students.

The director denied the petition on April 17, 2003, finding that the petitioner failed to establish that its programs are bona fide, that it is an established institution of learning, and that it possesses the necessary facilities and personnel to conduct instruction. Further, the director found that the petitioner had failed to establish that its courses were not avocational or recreational in nature. Finally, the director determined that the petitioner had engaged in unlawful practices during the time that it leased space from the College of the Canyons (Canyons).

Counsel for the petitioner timely filed an appeal with additional documentation. However, counsel failed to file a notice of appearance as required by 8 C.F.R. §292.4(a). Counsel's submission will be considered, but the Bureau will not recognize an appearance without proper notice.

8 C.F.R. § 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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> 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 . . . .

At the time of filing, the record contained evidence from the California Bureau for Private Postsecondary and Vocational Education (BPPVE) granting the petitioner approval to operate, and indicating that the petitioner had specific approval for the following programs: EFL (English as a Foreign Language), Computer Operator/Data Entry, Micromputer Operator, Microsoft Certified Systems Engineer, and Computer Training. The record also reflects BPPVE's approval to offer courses for study for veterans.

Documents submitted on appeal demonstrate that there have been five graduates of the petitioner's EFL program. While not a particularly overwhelming number, the petitioner also submits evidence of even more graduates in its other programs. Counsel argues that the low number of graduates in the EFL program is reflective of the fact that the petitioner does not have approval to enroll foreign students. Counsel further argues that once approval is received, the numbers of students enrolling, and, therefore, graduating from the ELF program will increase. Based upon the approval of the BPPVE and the evidence of graduates of the petitioner's various programs we find that the petitioner and its programs are bona fide and that the petitioner is an established institution of learning.

The next issue to be addressed is whether the petitioner has the adequate facilities and teaching staff to engage in instruction. Upon initial submission, the record contained Learnet Academy's catalogue, pictures of its facility, and statements about the equipment, size, and location of the facility. The director, however, questioned the petitioner's facilities, noting in his denial that while the petitioner offers 12 levels of English language training and various computer courses, the petitioner has only five classrooms.

On appeal, counsel asserts that:

> The space that [the petitioner] occup[ies] is more than sufficient to meet the needs of their student body and to perform the functions that they have been approved to perform. Many of the classrooms are multifunctional. They can be used for either the computer instruction or the English language instruction.

The director did not question the multifunctional nature of the petitioner's classrooms. Instead, the director questioned the capacity of the petitioner's facilities and the ability to conduct instruction of all courses taught by the petitioner, in those five limited classrooms. The record reflects at least 7 courses offered by the petitioner, all of which require at least 18 clock hours of attendance per week. The petitioner has not submitted evidence that specifically addresses the director's findings. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record also contained evidence relating to instructors at the petitioning school. This evidence included certificates of approval as instructors from the BPPVE, Microsoft certifications, and the resumes and qualifications of these instructors. While the Form I-17 indicates a total of 10 instructors, the evidence contains information relating to only five instructors. Further, after conducting a site visit, the director found that there were only two instructors, in addition to the owner of the school. The director stated that these two instructors are independent contractors who do not work full time for the petitioner. No information was submitted on appeal to address or refute the director's findings with regard to the adequacy of the petitioner's instructors.

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).

While the director found that the petitioner did not submit sufficient information to establish that its courses of study meet the above requirements, the director failed to mention any of the petitioner's evidence specifically. We note that the petitioner submitted six letters to establish this requirement; three of the letters are from accredited institutions, while the other three letters are from employers. The letters from the accredited institutions state that they have studied the petitioner's curriculum and will accept students who have a certification of completion from [redacted] Not one of the institutions indicates that they have actually accepted any of the petitioner's students. Furthermore, only one of the three letters written by the employers indicates that they have actually employed a prior student of the petitioning school. As this evidence does not satisfactorily establish that the petitioner adequately prepares its students for matriculation into a degree program at an institution of higher education, or with an employer in need of an employee with English language ability or computer skills, the petitioner has failed to demonstrate that its courses have been accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective.

Additionally, we do not find that the director's failure to specifically address the above evidence constitutes a significant error or that it unduly prejudiced the outcome of the director's decision. The director noted several grounds for ineligibility, and would still have denied the petition regardless of the issue discussed above.

The remaining issue is the petitioner's conduct during the time in which the petitioner leased space from Canyons. The director found that two students attended or intended to attend the petitioning school for EFL studies even though the students possessed Forms I-20 issued by other institutions. The director indicates that the students never attended the other institutions. We note that the enrollment of students with Forms I-20 issued by other institutions is not a violation on the part of the petitioner, but of the student. The regulations do not restrict schools from enrolling illegal aliens or students who are out of status. The regulations do, however, restrict the issuance of the Form I-20 to persons other than F-1 or M-1 nonimmigrant students or out of status students seeking reinstatement. The question remains then, whether the petitioner issued Forms I-20 to any students even though not approved by the Bureau.

Information in the record, submitted by the petitioner in support of eligibility, shows material in which the petitioner acted as if it had approval from the Bureau of Citizenship and Immigration Services (BCIS). For instance, the record contains a document from "International Group Services" which appears in the petitioner's enrollment material for students. The document discusses health insurance that is geared toward nonimmigrant students. Also, in the petitioner's "Student File (Check List)" one of the boxes for the petitioner's employee to check is a "photocopy of Learnet's I-20." The record also contains the petitioner's enrollment application which asks the applicant where he or she wants the Form I-20 to be sent and explains that the process the applicant must complete in order to obtain the Form I-20. The most egregious evidence in the file is the letter from [redacted] instructing a visa applicant to misrepresent his intended school. Despite the allegations against the petitioner and the dubious nature of the petitioner's documents referring to the Form I-20, we cannot find any substantive evidence that proves the petitioner actually *issued* Forms I-20 to any nonimmigrant student. Therefore, while we do feel that the actions of the petitioner questionable, and were done in such a way as to circumvent the intent of the regulations, especially in aligning its non-approved language school with that of an approved school, we can find no clear or willful violation.

Regardless of our determination as to the petitioner's past conduct, we find the petitioner ineligible on

other grounds. The petitioner has failed to demonstrate that its courses have been accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective. Moreover the petitioner has failed to provide any evidence to overcome the director's determination that the petitioner does not possess the necessary facilities and personnel to conduct instruction.

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.