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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass Ave, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: SFR 214F 1893

Office: SAN FRANCISCO, CALIFORNIA

Date: **AUG 25 2003**

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:

[REDACTED]

PUBLIC COPY

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 school established in 1989. The school offers language training. The petitioner seeks initial approval for attendance by F-1 nonimmigrant students.

The director denied the petition on April 18, 2003, after determining that the petitioner was not approved to operate in the state of California. The director also found that the petitioner failed to list the courses for which the petitioner sought approval from the Bureau of Citizenship and Immigration Services (BCIS) and noted that some of the petitioner's courses do not provide sufficient course hours for an F-1 nonimmigrant to maintain a full course of study.

On appeal, the petitioner submits a brief with no additional evidence.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 each of 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.

The Form I-17 submitted by the petitioner indicates that it was established in 1989. The district director determined that as the petitioner was operating without the approval of the California Bureau for Private Postsecondary and Vocational Education (BPPVE), the petitioner could not establish that it was in operation or engaged in instruction. On appeal, counsel argues that BCIS regulations do not require the petitioner to obtain approval from a state agency. Instead, counsel argues, the petitioner is “merely” required to show that it has been accredited. The implication of counsel’s argument is that BCIS should approve a school, despite the fact that the school has not received authorization from the state in which the school operates, simply because the school has met the requirements of an accrediting agency. We do not find such an argument to be persuasive.

Counsel further argues:

In the past, Berlitz has taken the position that BPPVE was unnecessary because

¹ We note that the petitioner’s appeal was not submitted within the 30-day period required by 8 C.F.R. §103.3(a)(2)(i). However, counsel requests that the appeal be considered timely filed as the date on the copy of the petitioner’s denial could not be determined.

Berlitz does not fall within the Act's definition of "private postsecondary educational institution"...Berlitz has taken this position based on numerous discussions with BPPVE, and this position has never been formally challenged by BPPVE or its predecessor....

The petitioner does not submit any evidence on appeal to substantiate counsel's claim that the BPPVE found approval of the petitioner to be "unnecessary." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, a careful reading of Section 94739 of the California Education Code does not provide any basis for determining that the petitioner should not be considered a "private postsecondary institution under the California Education Code. Section 94735 defines "Private postsecondary educational institution" as:

[A]ny person doing business in California that offers to provide or provides, for a tuition, fee, or other charge, any instruction, training, or education under any of the following circumstances:

- (1) A majority of the students to whom instruction, training, or education is provided during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
- (2) More than 50 percent of the revenue derived from providing instruction, training, or education during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
- (3) More than 50 percent of the hours of instruction, training, or education provided during any 12-month period is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
- (4) A substantial portion, as determined by the council, by regulation, of the instruction, training, or education provided is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(b) The following are *not* considered to be private postsecondary educational institutions under this chapter:

- (1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.

(2) Institutions offering education solely avocational or recreational in nature, and institutions offering this education exclusively (emphasis added)....

While the petitioner may believe that the education it offers is avocational or recreational in nature, Section 70000 of the California Education Code defines "Avocational Education" as:

Education offered only for the purposes of personal entertainment, personal pleasure or enjoyment such as a hobby... Examples of education that are not "education solely avocational in nature" include, but are not limited to, education that in any manner does the following:

- (1) Enables a student to qualify for any immigration status, for which an institution is permitted to issue a Certificate of Eligibility for Nonimmigrant Student Status by the United States Immigration and Naturalization Service....

Clearly, the type of educational programs offered by the petitioner do not fall within any of the exceptions noted above, nor are they considered avocational in nature under the California Education Code. The fact that the "BPPVE [has not] formally notified [the petitioner] that it is required to register under the Act, nor has [sic] taken any action against [the petitioner] for failing to obtain approval to operate in California" does not relieve the petitioner of its responsibilities under state regulations.

Therefore, while we do not dispute that the petitioner has been holding classes, such courses are not recognized as the petitioner was never approved by the state of California. As the petitioner failed to obtain such approval, the petitioner also cannot establish that it is a bona fide and established institution of learning, or that it has been engaged in instruction in recognized courses.

The second 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 C.F.R. §214.2(f)(6) states, in pertinent part:

A full course of study . . . means –

* * *

(c) Study in a postsecondary language...program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning...

(d) Study in any other language...program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work.

In his decision, the district director noted that the petitioner did not indicate the specific courses for which the petitioner sought approval to enroll F-1 nonimmigrant students. The district director determined that only one of the many courses offered by the petitioner might enable an F-1 nonimmigrant student to maintain a full course of study. However, the district director further found

that the petitioner had not submitted sufficient evidence to determine whether that one course, the Berlitz Immerse and Converse Program, would allow an F-1 nonimmigrant to maintain a full course of study.

On appeal, the petitioner has failed to address the finding of the district director that students enrolled at the petitioning school, would not be able to pursue a full course of study in accordance with the regulation. No further evidence was submitted to indicate those specific courses for which the petitioner seeks approval, as well as evidence that those courses meet the requirements for a full course of study.

Beyond the decision of the district director is that fact that the record does not contain the supporting documentation required by regulation to accompany a petition for approval of a school. 8 C.F.R. § 214.3(b) specifies the following required supporting evidence:

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....A school catalogue, if one is issued, shall also 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 teaching staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees, and finances (including a certified copy of accountant's last statement of school's net worth, income, and expenses).

As discussed above, we do not find that the petitioner has submitted the certification required from the BPPVE to show licensure or approval in the state of California. Furthermore, the petitioner has failed to submit the educational, vocational or professional qualifications of the teaching staff, attendance and scholastic grading policy, and the amount and character of supervisory and consultative services available to students and trainees. Moreover, while the petitioner did submit a copy of its income statement for the month ending December 31, 2001, the regulation clearly requires that the petitioner provide the BCIS with a *certified copy of an accountant's last statement of the school's net worth, income, and expenses*. The petitioner failed to provide BCIS with a certified copy of an accountant's last statement of the school's net worth, income, and expenses.

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.