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

PUBLIC COPY

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



AUG 25 2003
Date:

File: CHI 214F 20830 Office: MILWAUKEE, WISCONSIN

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED *Identifying data deleted to prevent clearly unwarranted invasion of personal privacy*

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.

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, Milwaukee, Wisconsin. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

According to 8 C.F.R. § 103.3(a)(2)(i), an appeal must be filed with the office where the unfavorable decision was made within 30 days after service of the decision.

The director issued his decision on November 27, 2002. The appeal was received on January 24, 2003. The appeal was, therefore, filed untimely. We note that as the denial was sent to the mailing address listed on the Form I-17, any argument that the Bureau used an incorrect address is specious.

8 C.F.R. § 103.3(a)(2)(v)(B) states that an appeal that is not filed within the time allowed must be rejected as improperly filed; however, 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.

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.

The petitioner gives the following reasons for appeal:

- excessive adjudication period (Feb. 14, 2002 – Nov. 27, 2002)
- lack of any INS petition receipt
- no reply to important query letters sent certified mail (April 14, May 20, July 22, 2002)
- No reply to certified letter expressing my willingness to set up a physical presence in August for preparation of proposed autumn session – Sept. 9 – Oct. 25 (July 22, 2002)
- ‘Request for Evidence’ letter mailed to incorrect address on two occasions (no attempt to mail to correct address) This INS letter was forwarded to me on December 19, 2002 by Tyler Schwartz, caseworker for Wisconsin Sixth District Congressman Tom Petri

The regulation at 8 C.F.R. § 214.3(e)(1), requires a petitioner to establish that it is a bona fide school, that it is an established institution of learning, and possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses, and is engaged in instruction in those courses. The petitioner has only a “proposed location”, and prospective students.

The petitioner’s reasons for appeal fail 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. Clearly, we cannot

approval a school that is not yet even in existence.

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.