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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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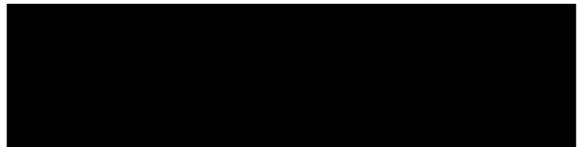
File: SFR 214F 1593 Office: SAN FRANCISCO, CALIFORNIA Date:

FEB 11 2003

IN RE: Petitioner:

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

IN BEHALF OF PETITIONER:



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 Service 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 THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations on appeal. The district director's decision will be withdrawn and the case will be remanded for entry of a new decision.

The petitioner in this matter, Ecology Action's Common Ground Mini-Farm, is a private, non-profit educational organization offering instruction in vocational and technical training. More specifically, the petitioner school offers training in biointensive sustainable mini-farming. The petitioner offers two courses of study: a three-year apprenticeship program and a six and one-half month internship program. The school declares an average enrollment of three students with two salaried instructors. The petitioner seeks approval for attendance by M-1 nonimmigrant vocational students. The petition was filed on November 19, 1998.

According to the evidence on the record, the petitioner retained counsel after it filed the instant petition. Counsel for the petitioner responded to the district director's verbal request for additional documentation to show that the petitioner's coursework fulfills requirements for the attainment of an educational, professional or vocational objective as required by 8 C.F.R. § 214.3(c). Counsel for the petitioner provided the Service with three letters from employers of the petitioner's graduates.¹ The evidence submitted satisfies this requirement.

The district director denied the petition, finding that the petitioner failed to provide the Service with evidence that it is licensed, approved or accredited. The district director determined that the petitioner failed to submit sufficient documentation on its attendance and scholastic grading policy. Finally, the district director found that the petitioner had failed to establish that it is a bona fide school and engaged in instruction as required by the regulations.

On appeal, the petitioner school submits a statement and additional documentation.

8 C.F.R. § 214.3(b) specifies required supporting evidence, in pertinent part, as follows:

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 charter shall not be considered a license,

¹ The evidence indicates that the district director asked counsel for the petitioner to resubmit the documentation seven months after it was initially submitted.

approval, or accreditation. 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).

8 C.F.R. § 214.3(e)(1) provides that 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.

On appeal, the petitioner provided the Service with a full description of its grading and attendance policy. The petitioner has overcome this objection of the district director.

In his decision, the district director denied the petition, in part, because the petitioner failed to submit a class schedule, hence the Service was unable to determine whether the petitioner provides sufficient weekly class hours to allow nonimmigrant students to maintain lawful status. On appeal, the petitioner indicates that it provides its nonimmigrant students with 1,606 hours of training within a six-month timeframe. The petitioner has overcome this objection of the district director.

On July 11, 2002, the district director denied the petition, in part, because the evidence on the record failed to establish that the petitioner school is a bona fide school engaged in instruction as required by 8 C.F.R. § 214.3(e)(1). The district director denied the petition, in part, because the petitioner failed to provide any evidence to establish that the school is licensed, approved, or accredited by the appropriate licensing, approving, or accrediting agency. Pursuant to 8 C.F.R. § 103.2(b)(8), where the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service may request

additional evidence. Here, the district director did not provide the petitioner an opportunity to submit additional evidence to satisfy these requirements. Instead, the district director simply denied the application. The district director's action was fundamentally unfair to the applicant.

Accordingly, the district director's decision will be withdrawn and the case remanded to him so that he may review the record as it is presently constituted, and request any additional evidence deemed necessary to assist him in determining whether the requirements set out at 8 C.F.R. § 214.3(e)(1) and 8 C.F.R. § 214.3(b) have been met. Specifically, the district director should provide the petitioner an opportunity to submit evidence that the school is licensed, approved, or accredited by the appropriate authority and that the petitioner is a bona fide school engaged in instruction.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Associate Commissioner for review.