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File: SFR 214F 1857

Office: SAN FRANCISCO

Date: **MAR 08 2004**

IN RE: Petitioner:



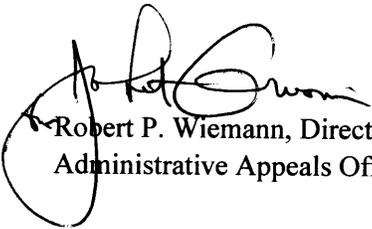
PETITION: Petition for Approval of School for Attendance by Nonimmigrant Student under Section 101(a)(15)(M)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(M)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Student (Form I-17) was denied by the Interim District Director, San Francisco, California. The Administrative Appeals Office (AAO) rejected a subsequent appeal. The case will be reopened by the AAO on motion pursuant to 8 C.F.R. § 103.5(a)(5)(i). The AAO decision of February 24, 2004 and the decision of the interim district director of July 11, 2003 will be withdrawn. The appeal will be sustained.

The petitioner filed the petition seeking initial approval for attendance by M-1 nonimmigrant students as a vocational or technical training school. The petition reflects that the petitioner is a private school established on July 19, 2000. The school declares an enrollment of 100 students per year, with 30 instructors.

In a decision dated July 11, 2003, the interim district director denied the petition, finding that the petitioner had violated the regulations by inappropriately advertising the availability of nonimmigrant student visas and by allowing a foreign transfer student to attend classes without complying with school transfer provisions mandated by the regulations. The interim district director denied the petition, finding that because these are both grounds for withdrawal of school approval on notice, the school petition must be denied.

The AAO rejected the petitioner's appeal, finding that the appeal was untimely filed. On motion, the AAO finds that the record establishes the appeal was timely filed with the San Francisco District Office.¹

On appeal, the petitioner submits a brief and documentation indicating that its use of the inappropriate language in the school catalogue was unintentional and resulted in part from a failure by other CIS district offices to identify the incorrect language when approving school petitions for the same school located in two other districts. The petitioner submits evidence indicating that it corrected the erroneous catalogue language.

On appeal, the petitioner states that it was unaware that the regulations were violated when an M-1 student properly enrolled in its Miami school took a course of study at its San Francisco location. The petitioner states that any violation of this regulation was unintentional, and that it will comply with the regulation in the future.

The regulation at 8 C.F.R. § 214.3(j) provides:

Advertising. In any advertisement, catalogue, brochure, pamphlet, literature, or other material hereafter printed or reprinted by or for an approved school, any statement which may appear in such material concerning approval for attendance by nonimmigrant students shall be limited solely to the following: This school is authorized under Federal law to enroll nonimmigrant alien students.

The Student and Exchange Visitor Information System (SEVIS) regulation at 8 C.F.R. § 214.2(m)(11) requires that an M-1 student who intends to study at a new school location, even if within the same school and without transferring paperwork, transcripts or tuition payments, must receive a transfer to the new school location.

The regulation at 8 C.F.R. § 214.4 provides that a school's approval to issue nonimmigrant student visas may be withdrawn under conditions set forth in the regulation. That regulation provides, in pertinent part:

¹ While the Form I-290B and fee receipt are both dated August 19, 2003, which would indicate an untimely appeal, a date stamp in the record indicates that the appeal was timely received on August 12, 2003. The petitioner has also submitted proof that the San Francisco District Office received the appeal on August 12, 2003.

- (a) *General* -- (1) *Withdrawal on notice* The approval by the Service, pursuant to sections 101(a)(15)(F)(i) or 101(a)(15)(M)(i) or both, of the Act, of a petition by a school or school system for the attendance of nonimmigrant students will be withdrawn on notice if the school or school system is no longer entitled to the approval for any valid and substantive reason including, but not limited to, the following:

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- (v) Any conduct on the part of a designated official which does not comply with the regulations.

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- (xiii) Failure to limit its advertising in the manner prescribed in § 214.3(j).

The interim district director found that because the petitioner had failed to comply with the cited provisions with respect to prohibited advertising and school transfer, he could not issue initial approval of the petition.

The record reflects that the petitioning school allowed an M-1 nonimmigrant student enrolled in its Miami location to study at the San Francisco location without transferring the student in SEVIS. The student was enrolled in a school program, "Quarter Away," which provides that a student may study for a period of time at one of the school's other campuses, while maintaining his or her registration where currently enrolled, e.g., tuition records, transcripts, contact information, Form I-20, etc. The petitioner states that it received inconsistent advice from Citizenship and Immigration Services (CIS) about the correct procedures to follow when allowing a foreign student to participate in the Quarter Away program.² As noted above, an M-1 student who studies at another school location for a temporary period, even if tuition, transcripts and registration remain at the enrolling school, must follow the procedures established for school transfer at 8 C.F.R. § 214.2(m)(11). The school indicates that it is willing to comply with SEVIS procedures respecting intra-school transfers.

The school catalogue submitted in support of the petition contains the following language:

Approved for foreign students. The U.S. Department of Justice, Immigration and Naturalization Service has approved Miami Ad School to issue I-20 M1 visas.

The petitioner listed all three locations of the school in the offending catalogue, including the location for the petitioning school which has never received approval to issue the Form I-20 to M-1 nonimmigrant students. The interim district director found this language to be a flagrant violation of federal regulation, particularly in light of

² The petitioner submits an email from the SEVIS help desk dated August 14, 2003 indicating that if the student's "paper work, contacts, payments, etc. are made to a single location, while the student moves around, the student would not need to be actually transferred in the system. An accurate address would need to be maintained, but the school that is maintaining responsibility for reporting on the student could be the 'home base' school. If, however, the student's other records transfer, tuition is paid at a different place, etc. the SEVIS record would also need to be transferred." This advice is incorrect and does not follow the school transfer requirements for M-1 students under SEVIS.

the fact that the school had previously been denied approval to issue M-1 nonimmigrant visas based on a finding that the school had violated 8 C.F.R. § 214.3(j) in a previous edition of the catalogue.³ The interim district director found in the previous denial that the language not only went beyond the language allowed in 8 C.F.R. § 214.3(j), but also that the petitioner had used the language in its catalogue without having ever received approval to issue the Form I-20. The interim district director found that the petitioner's violation of the limitation on advertising was repeated and willful.

On appeal, and in response to the interim district director's request for evidence, the petitioner stated that it did not receive a copy of the previous denial indicating that it had violated the regulation limiting advertising. The petitioner submitted evidence that the prohibited language was approved by other district offices in their review of the petitioning school's Form I-17 petition in two other locations, Miami and Minneapolis. The petitioner also submitted evidence indicating that the language of the school catalogue has been amended to read as follows:

Authorized for Nonimmigrant Alien Students. Miami Ad School and Miami Ad School Minneapolis are authorized under Federal law to enroll nonimmigrant alien students.

This language is in compliance with 8 C.F.R. § 214.3(j) and omits premature reference to the petitioning school's approval.

The provisions of 8 C.F.R. § 214.4 requiring withdrawal of school approval on notice are designed to ensure that a school, once approved, maintains continuing compliance with the requirements set forth in the regulation. If the approved school were to violate the regulation requiring withdrawal of school approval, the director must send notice of intent to revoke the approval, informing the school of the grounds for the intended revocation, and give the school 30 days notice to respond in writing why the approval should not be revoked. The regulation is remedial, in that if the grounds for revocation are rectified, the director may continue the school approval.

The petitioner has established that it is now in compliance with the advertising regulation, and will no longer violate the SEVIS regulation requiring transfers for M-1 nonimmigrant students in its school programs. As stated above, a violation under 8 C.F.R. § 214.4, if remedied, may allow the school to continue in approved status. Initial school approval should not be withheld under these circumstances.

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 sustained that burden.

ORDER: The decisions of the AAO dated February 24, 2004 and of the interim district director dated July 11, 2003 are withdrawn. The appeal is sustained and the petition is approved.

³ The previous catalogue contained the following language: **International Students -- Important Things to Remember.** 1. If you plan to leave the U.S. for vacation, it is necessary to have a school official sign the back of your yellow I-20 form. Please take care of this a week or two in advance of your vacation in case the official is out of town. 2. Please see Sandy before your I-20 expires at the end of your first year of studies to renew the visa.