

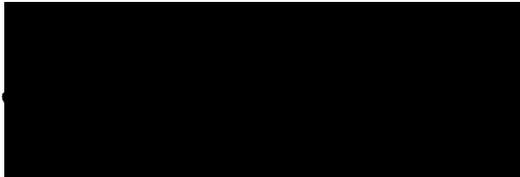


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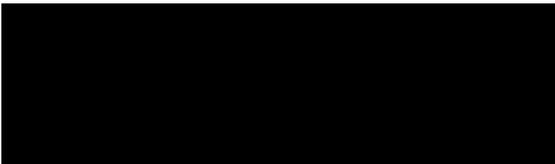
FEB 11 2004

IN RE: Petitioner:



PETITION: 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)

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 Acting District Director, Los Angeles, California, on December 17, 2002 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On November 18, 1996, the petitioner filed the Form I-17, seeking initial approval for attendance by nonimmigrant alien students under sections 101(a)(15)(F)(i) and 101(a)(15)(M)(i). The petitioner is a privately operated degree granting post-secondary school offering programs of study in religion, religious music and language. The petition reflects that the school was established in February 1991 in the state of California.

The acting district director denied the petition, finding that the petitioner failed to provide the supporting documents required by 8 C.F.R. § 214.3(b), including evidence that the petitioning school is approved, licensed or accredited. The acting district director determined that the petitioner had failed to show that it confers recognized degrees or in the alternative that its credits have been and are accepted unconditionally by at least three accredited institutions of higher learning. The acting district director found that the petitioner failed to meet the eligibility requirements of 8 C.F.R. § 214.3(e) and noted discrepancies in the evidence submitted.

On appeal, counsel for the petitioner asserts that the acting district director erred in denying the instant petition.

The first issue to be addressed in this proceeding is whether the petitioner established that it satisfies the criteria set forth at 8 C.F.R. § 214.3(b).

The regulation at 8 C.F.R. § 214.3(b) states, in pertinent part, that:

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 . . . amount and character of supervisory and consultative services available to students and trainees, and finances . . . .

The acting district director determined that the petitioner failed to provide sufficient evidence regarding 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 and the amount and character of supervisory and consultative services available to students and trainees. The acting district director further noted discrepancies between the amount of income reported and anticipated tuition receipts.

The petitioner submitted the following:

- A blue print of its leased space.
- An office lease.

- The square footage of its plant facilities.
- A list of the faculty members' qualifications.
- A description of consultative services available to students in the school catalogue.
- Financial reports and tax returns.

In review, the petitioner satisfied many but not all of the requirements of 8 C.F.R. § 214.3(b) and those listed by the acting district director. The petitioner failed to state the faculty members' salaries.

The acting district director found that the petitioner had failed to submit evidence that it had been licensed, approved or accredited and cited language from the California Bureau for Private Postsecondary and Vocational Education (BPPVE) stating that the BPPVE had not made any evaluation, recognition, accreditation, approval, or endorsement of any course of study or degree of the petitioner.

The petitioner submitted a letter from the BPPVE stating that the petitioner was granted an exemption from the requirements of the state's regulation of private postsecondary education in California.

In review, to the extent that the petitioner has shown that it has complied with the state of California's regulatory requirements by obtaining an exemption as a nonprofit religious corporation, the petitioner has satisfied the first part of the regulation at 8 C.F.R. § 214.3(b) requiring certification that the school is licensed, approved or accredited.

The next issue to be addressed in this proceeding is whether the petitioner has shown that it awards recognized degrees or that its credits are unconditionally accepted by other institutions of higher learning.

The regulation at 8 C.F.R. § 214.3(a)(2)(i) provides, in part, that school approval for F-1 visas may be authorized for:

- (A) A college or university, i.e., an institution of higher learning which awards recognized bachelor's, master's, doctor's or professional degrees.

\* \* \*

- (G) An institution which provides . . . instruction in the professions . . . .

The regulation at 8 C.F.R. § 214.3(c) provides further, in pertinent part, that:

If the petitioner is an institution of higher education and is not within the category described in paragraph (b)(1) or (2) of this section, it must submit evidence that it confers upon its graduates recognized bachelor, master, doctor, professional, or divinity degrees, or if it does not confer such degrees that its credits have been and are accepted unconditionally by at least three such institutions of higher learning.

The petitioner asserted that three accredited institutions of higher education honors credits from the petitioner unconditionally.

In review, the evidence is insufficient to establish that at least three accredited institutions of higher education unconditionally accept the petitioner's credits. Only one letter, written by a representative of Azusa University, indicated that it has and does *unconditionally* accept the petitioner's credits. Two letters were silent as to whether those institutions accepted the petitioner's credits unconditionally. Two institutions indicated that they have and will accept the petitioner's credits on a conditional basis only because the petitioner is not accredited. The petitioner has not shown its satisfies the requirements of 8 C.F.R. § 214.3(c).

8 C.F.R. § 214.3(a)(2)(ii)(C) provides that school approval for M-1 visas may be authorized for: "A school which provides vocational or nonacademic training other than language training."

8 C.F.R. § 214.3(c) provides further, in pertinent part, that:

If the petitioner is a vocational . . . school, 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.

The petitioner submitted letters written by six different employers stating that they had hired the petitioner's graduates. These letters establish that the petitioner, as a vocational school, offers courses of study that are accepted as fulfilling the requirements for the attainment of professional or vocational objectives and are not avocational or recreational in character.

The next issue to be addressed in this proceeding is whether the petitioner established it meets the requirements of 8 C.F.R. § 214.3(e) that provides that:

(1) Eligibility. 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 acting district director called into question whether the petitioner was in fact engaged in instruction because on two occasions, Citizenship and Immigration Services (CIS) officers performed an on-site visit and found no students on the premises. The site visits were performed between 11 am and 2 pm on one occasion and in the morning on another occasion. Yet the petitioner had already submitted information to CIS indicating that the petitioner only offered classes in the evening hours. The acting district director also noted that when a CIS employee tried to call the petitioning school, the call was received by a cell phone. The acting district director concluded that the petitioning school did not have a phone on the premises, ergo, it was not a bona fide school. On appeal, counsel for the petitioner asserts that all calls are put through to the petitioner's owner if staff are unavailable to take the call.

In review, the financial evidence indicates that the petitioner had paid only three employees (including the petitioner's owner) in the year 2000 and only two employees (including the petitioner's owner) in 2001. Yet the petitioner submitted evidence that it employed at least ten instructors in the fall of 2000. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has failed to establish that it satisfies the requirements of 8 C.F.R. § 214.3(e).

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 will be dismissed.