

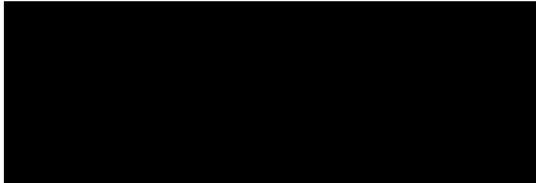
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

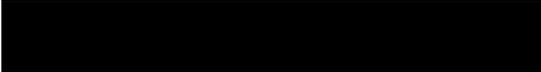
PUBLIC COPY

JT



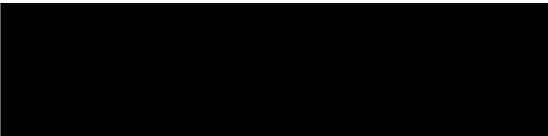
FEB 11 2004

FILE: LOS 214F 1588 Office: LOS ANGELES Date:

IN RE: Petitioner: 

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:



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.

Mari Johnson

to 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 District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to the district director for further consideration and entry of a new decision.

The petitioner filed the Form I-17 Petition for Approval of School for Attendance by Nonimmigrant Student on November 15, 2002. The petition seeks continuation of approval of the school as a private post-secondary language school and a degree granting institution of higher learning. The petition indicates that the school was established in 1985, and declares an enrollment of 250 students with 25 teachers. The district director denied the petition, finding that the petitioner failed to establish eligibility under the regulation at 8 C.F.R. § 214.3(c) and (e).

In order to establish eligibility for approval for attendance by nonimmigrant students under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(F)(i), a petitioner must satisfy several eligibility requirements.

According to 8 C.F.R. § 214.3(e), there are four eligibility requirements.

- (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.

In order to establish each of these requirements, the regulations require supporting documentation to be submitted depending upon the type of school seeking approval (e.g., public vs. private schools, vocational, language school, etc.).

In accordance with 8 C.F.R. § 214.3(b), if the petitioner is not a public school or a private or parochial elementary or secondary school, the petitioner is required to submit:

A certification signed 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.

If the petitioner is not accredited, the regulation at 8 C.F.R. § 214.3(b) further requires the submission of:

A school catalogue, if one is issued ... 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

Finally, further documentary evidence is required under 8 C.F.R. § 214.3(c) if the petitioner is a language school, or an institution of higher education that is neither a public school, nor accredited by a nationally recognized accrediting body. The regulation states, in pertinent part:

If the petitioner is a vocational, business, or *language school*, or American institution of research recognized as such by the Attorney General, 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. If the petitioner is an *institution of higher education* and is not [a public school or a school accredited by a nationally recognized accrediting body], 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.

[Emphasis added.]

The record reflects that the petitioner in this matter, California Union University, was originally approved for attendance by F-1 nonimmigrant students on July 8, 1994. On or about March 30, 2001, legacy Immigration and Naturalization Service (legacy INS, now Citizenship and Immigration Services [CIS]) began an investigation of the petitioner based upon allegations of fraudulent issuance of Forms I-20. As a result of the investigation, legacy INS learned that the petitioner had changed locations without proper notification. Legacy INS then issued a notice to the petitioner that its approval was automatically withdrawn on July 7, 1999.

The petitioner appealed the district director's decision to automatically withdraw its approval. On September 30, 2002, the AAO withdrew the decision of the district director and remanded the case to the district director for further review. The AAO's decision to remand the case was based upon a determination that the district director's automatic withdrawal of the petitioner's approval was in error. The AAO specifically indicated that on remand the district director should:

Review the school's status and determine if the school has corrected any and all practices that violate the governing regulations. If the school is not in complete compliance with the controlling regulations, the director should issue a detailed warning letter advising the Designated School Official ("DSO") of any noncompliance and permit the DSO to show good faith efforts to correct any noncompliance. If the issues are not corrected, the director, in consultation with [legacy INS] Office of Adjudications, shall issue a notice of intent to withdraw approval and afford the petitioner thirty days in which to respond ... If the petitioner still has not corrected the issues, or has exhibited a lack of good faith in complying with the regulations, the director shall withdraw such approval by written decision.

There is no evidence in the record to establish that the district director took any action on this case in response to the AAO's remand.

On November 15, 2002, the petitioner filed a Student and Exchange Visitor Information System (SEVIS) Form I-17 in accordance with 8 C.F.R. §214.3(a)(1).¹ As the district director's original decision was

¹ Although the SEVIS Form I-17 was signed by the Dr. Samuel Chaicho Oh, the president of the petitioning school, on January 7, 2003, the date the petition was electronically submitted and accepted in SEVIS was

withdrawn by the AAO in the remand decision, and the district director took no action in accordance with remand decision, the petitioner's SEVIS filing is considered to be a petition for continued approval, not an initial filing.

After the filing of the petitioner's SEVIS petition, the district director requested further evidence from the petitioner. Although the record contains a request for evidence dated January 30, 2003, we note that the letter was not actually faxed to the petitioner until February 7, 2003. The district director's letter requested that the petitioner submit the following:

- A list of classes, including the name, description, cost of tuition, start and end dates, the times and days the classes were conducted, and the number of students who completed each class actually conducted, for the previous two years and for the two years prior to submission of the SEVIS Form I-17;
- Evidence of the petitioner's accreditation by a nationally recognized agency or a school catalogue;
- Evidence of the physical plant and facilities including the number and size of the classrooms, library, labs, etc.;
- Qualifications of the teaching staff from January of 1999 to the present, as well as names, dates of employment, classes taught, and hourly rate of pay;
- Attendance and scholastic grading policy;
- Amount and character of supervisory and consultative services offered;
- Finances, including a copy of the three most recent annual income tax returns, a certified copy of an accountant's last statement of the petitioner's net worth, income and expenses, copies of W-2 and 1099 forms for all employees from January 1999 to the present;
- Copies of the last three years of the petitioner's California quarterly wage reports;
- Bank statement for the year 2001;
- Ledger for the year 2001;
- List of all students for the year 2001 with a description of how each student paid the tuition;
- Evidence that the petitioner confers recognized degrees or letters from other institutions indicating that they accept and have unconditionally accepted the petitioner's credits; and
- Evidence of ownership and control.

On February 18, 2003, the petitioner submitted a response to the district director's request.

On June 10, 2003, the district director issued a warning letter to the petitioner referring to the petitioner's SEVIS Form I-17.² The warning letter states that the petitioner "may be in violation of current regulations related to schools approval for attendance by nonimmigrant students." The district director cited the regulation at 8 C.F.R. § 214.3(c) and requested that the petitioner submit letters from "at least three institutions of higher educational level ... [indicating that the school] accepts and has accepted credits from the petitioning institution." The petitioner was afforded 12 weeks in which to respond to the warning letter.

Less than 12 weeks later, on July 14, 2003, the district director denied the petitioner's SEVIS Form I-17.

November 15, 2002. The November 15, 2002 date was written in pencil on page 1 of the SEVIS Form I-17, presumably by the district officer, and was subsequently confirmed by the AAO to be the date of filing.

² The warning letter mistakenly indicates that the filing date of the petitioner's SEVIS Form I-17 was January 7, 2003.

We could find no evidence in the record to demonstrate that the petitioner responded to the district director's request prior to the date of the denial. The district director erred by not giving the petitioner the full 12 weeks in which to respond to the warning letter.

On appeal, the petitioner argues that it was not afforded sufficient time to respond to the district director's warning letter prior to the denial. Included in the petitioner's evidence submitted on appeal, is a copy of a warning letter dated July 1, 2003. There are several details about this document that we find questionable. First, this letter is not contained in the voluminous record of proceeding. As noted above, the warning letter contained in the record is dated June 10, 2003. The second and most glaring inconsistency is the signature of the Interim District Director, Jane Arellano. The warning letter submitted by the petitioner on appeal contains a signature with absolutely no likeness to the signatures contained in the record of proceeding. Further, only the petitioner's submission contains a letter that is date stamped, while all letters and denials issued by the district director are dated in the same type-face and font as the body of the letter. While we cannot conclusively establish that the petitioner has altered this document and are unclear as to why the petitioner would alter the document given that even using the June 10, 2003 date, the petitioner still was not afforded twelve weeks in which to respond, the fact that the record of proceeding does not contain such a document, combined with the other inconsistencies noted, causes concern.

We agree with the petitioner that it was not afforded an opportunity to respond prior to the district director's issuance of the denial. Further, as the district director did not explain the reasons for finding the petitioner ineligible under 8 C.F.R. § 214.3(c) and (e), it is unreasonable to expect the petitioner to be able to offer satisfactory evidence on appeal. In our review of the record, while we are able to make a determination that the petitioner clearly meets certain sections of the pertinent regulations, there are other facts to be determined and issues outstanding. We thus withdraw the decision of the district director, and remand the case for further review and consideration, additional evidence, and the entry of a new decision.

The district director denied the decision, in part, finding that "the petitioner did not submit sufficient evidence to establish that its courses of study meet the requirements in section 214.3(c) of Title 8 Code of Federal Regulations" with respect to whether the petitioner issues recognized degrees. This portion of the district director's decision is erroneous. The fact that the petitioner is a private postsecondary institution that has received approval from California's Bureau for Private Post-Secondary and Vocational Education (BPPVE) satisfactorily establishes that the petitioner issues recognized degrees.³ As such, we will not address additional evidence submitted by the petitioner to establish this requirement, including the letters from other institutions.

The district director denied the petition, in part, citing the language of 8 C.F.R. § 214.3(e). The district director did not discuss any of the petitioner's evidence or provide any explanation as to why she concluded that the evidence was not sufficient. The district director's failure to adequately address this issue, coupled with her failure to act on our previous remand decision, does not provide us with a record sufficient to establish whether the petitioner is bona fide and established, and whether it possesses the necessary facilities, personnel, and finances to be engaged in instruction. On remand, the district director must discuss whether the petitioner is a bona fide, established institution of learning or other recognized place of study that possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and is, in fact, engaged in instruction in those courses.

An additional issue to be determined is whether the petitioner meets the first section of 8 C.F.R. § 214.3(b)

³ We note that BPPVE approval in the case of a nonprofit institution would not establish that a school confers recognized degrees. Under California's education code, as a nonprofit institution is not considered a private postsecondary institution, the BPPVE does not evaluate, approve, endorse, or recognize any course of study or degree issued by such an institution.

which requires the petitioner to submit certification by the “appropriate licensing, approving, or accrediting official.” The record clearly establishes that the petitioner has been, and continues to be, approved by the BPPVE since at least June 1991. The petitioner has received approval from the BPPVE to offer the following degrees:

Bachelor of Biblical Studies, Bachelor of Christian Education, Doctor of Ministry, Doctor of Religious Education, Master of Christian Education, Master of Oriental Medicine, and Master of Divinity.

We find such approval by the BPPVE sufficiently satisfies 8 C.F.R. § 214.3(b). Curiously, however, the petitioner’s response also contains evidence of BPPVE approval for “California Union Christian University” to offer the following courses:

Bachelor of Christian Education, Bachelor of Church Music, Bachelor of Theology, Doctor of Church Music, Doctor of Healing Ministry, Doctor of Religious Education, Doctor of Religious Philosophy, Honorary Doctor Degree, Master of Christian Social Welfare, Master of Church Music, and Master of Divinity.

Given the documents submitted by the petitioner, we note that the BPPVE has issued two separate school codes to the petitioner and to “California Union Christian University.” Although the information for the two institutions differs in zip code and telephone number, the two institutions share the same street address, 905 South Euclid Street, Fullerton, California.

As the petitioner in this case is “California Union College,” and the record of proceeding does not contain any reference to “California Union Christian University,” the only courses of study that could be approved for attendance by nonimmigrant students would be those of the petitioner that are registered and approved in accordance with the state of California. Therefore, on remand, if the district director determines that the petitioner establishes all of the eligibility requirements and approves the petitioner for attendance by nonimmigrant students, that approval should clearly indicate only those programs for which the petitioner was approved by the BPPVE.

We note a separate issue concerning the petitioner’s program which must be addressed on remand by the district director. The petitioner’s language program does not appear to have been listed in the BPPVE’s approval of the petitioner’s courses. Section 94931 of the California Education Code indicates:

(a) No private postsecondary educational institution, except those offering degrees and approved under Article 8 ... or offering vocational and nondegree granting programs and approved under Article 9 ... or those that are exempt from this chapter, may offer educational services or programs unless the institution has been registered by the bureau as meeting the requirements of this section.

(b) *An institution approved to offer degrees under Article 8 ... or approved to offer vocational and nondegree granting programs under Article 9 may offer registered programs without affecting its status under either of those articles so long as the registered program is disclosed in its approval to operate application or the institution completes a registration application and receives specific authorization for the program, maintains compliance for all registered programs.*

(c) ... The educational services that qualify for registration status are limited to:

- (1) An educational service ... that is offered to provide an *intensive English language program*.

[Emphasis added.]

We can find no evidence in the record to establish that the petitioner has received authorization from the BPPVE or that it registered its English language program with the BPPVE. As such, even if the petitioner does ultimately receive institutional approval for attendance by nonimmigrant students, the petitioner's English language program would not be considered to fall under the approval without evidence of approval or registration by the BPPVE.

As the petitioner has not established that it is accredited, it must establish whether it has satisfied the remaining portion of 8 C.F.R. § 214.3(b), requiring the submission of a school catalogue or a written statement containing information concerning its physical plant, facilities, qualifications and salaries of the staff, attendance and grading policy, and finances. As noted above, the district director failed to address this section of the regulations in his decision, despite the fact that the record contains several of the petitioner's catalogues, as well as a detailed response to the district director's request for evidence. On remand, the district director must evaluate the evidence contained in the record to determine whether the petitioner satisfies the requirements of 8 C.F.R. § 214.3(b) related to a school catalogue or written statement.

In a separate memorandum provided by the district director to the AAO, the district director states:

[The petitioner], though claiming to bone [sic] fide, did not have students at their school both during a visit by the United States Citizenship and Immigration Services (U.S.C.I.S.) [sic] ... the school had previously been denied, so the SEVIS application is actually an initial application and not a continuation of their previous approval. Based upon the information learned while visiting the school (which was taped and the school's inability to obtain the necessary three letters and advice from headquarter, the case was denied.

The record does not contain any material that documents the date or findings of an on-site visit. Although we do note the existence of illegible notes scribbled on the back page of supplement B of the SEVIS Form I-17, these notes do not suffice as findings of the on-site visit. Further, if the information gathered as a result of the on-site visit served as the basis for the denial, the district director erred by not notifying the petitioner of such derogatory evidence, and by not giving the petitioner the opportunity to respond to these findings. 8 C.F.R. § 103.2(b)(16)(i). On remand, the district director should investigate the school to determine whether or not it is in compliance with the regulations and whether it is actually involved in instruction. As part of the investigation, the district director should make a determination as to whether the petitioner fraudulently issued Forms I-20 to students who never attended the petitioner's school.⁴ Any such investigation and subsequent findings should be well documented. If there are negative findings that warrant a withdrawal of the petitioner's approval, the district director must first notify the petitioner of those negative findings.

In accordance with this decision, this case shall be remanded to the district director to request further

⁴ We note that the record contains a warning letter from the district director to the petitioner to desist from the issuance of Forms I-20. This warning letter was issued after the petitioner's approval was incorrectly terminated. With the instruction we are providing on remand, we are not concerned with the petitioner's issuance of Forms I-20 during the time that they were terminated. The issue is whether, at any time, the petitioner issued Forms I-20 to aliens when the petitioner knew the alien would not attend the petitioning school, or other similar fraudulent issuance.

evidence and make determinations as outlined above. After receipt and consideration of the additional evidence, the district director shall enter a new decision. The district director shall follow the direction given in the remand decision and not wait until the petitioner files a subsequent petition or some other event occurs to cause the district director to delve into the petitioner's record.

As always, the burden of proof in these proceedings 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 action consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.