



U.S. Citizenship
and Immigration
Services

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

[Redacted]

FILE: LOS 214F 1935 Office: LOS ANGELES, CALIFORNIA Date:

FEB 11 2004

IN RE: Petitioner:

[Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

PUBLIC COPY

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

for 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, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO). The appeal was timely filed. The appeal will be dismissed.

The Form I-17 reflects that the petitioner in this matter [REDACTED] is a private non-degree granting school, established on August 13, 2002. The petitioning school provides vocational education and seeks approval for the following study programs: cosmetology, esthetician, and manicurist. The petitioner seeks initial approval for its courses of study for attendance by M-1 nonimmigrant students. On the Form I-17, the school declares it has three instructors.

The interim district director denied the petition, finding that the petitioner failed to submit sufficient evidence to establish that its courses 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 interim district director also found that the petitioner failed to demonstrate that the school is an established institution of learning or other recognized place of study. The interim district director determined that the petitioner failed to show that the school had been in operation for two years with approval from the State of California prior to the filing of the Form I-17 petition. Finally, the interim district director found that the petitioner had failed to establish that it is a bona fide school, that it possesses the necessary finances and facilities to conduct instruction, and that it is, in fact, engaged in instruction.

Counsel for the petitioner offers the following evidence and statements as the basis for the appeal:

- A copy of certificate of attendance by the petitioner's owner to a National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS) Accreditation Workshop.
- A certificate of approval dated July 22, 2002 from the Bureau for Private Post-Secondary and Vocational Education (BPPVE) to operate as a private postsecondary educational institution in California.
- A copy of approval from the Consumer Affairs Division of the Bureau of Barbering and Cosmetology dated August 15, 2002.
- There is no requirement that a school be in operation for two years prior to filing the petition.
- Additional financial statements.
- Photographs of teachers instructing students and of the first five graduating classes.

The regulation at 8 C.F.R. § 214.3(c) provides, 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.

Evidence that its courses of study are accepted as fulfilling the requirements for the attainment of a vocational objective.

Accreditation by a nationally recognized accrediting agency is evidence that a school's courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional or vocational objective. Alternatively, a school can meet this requirement by submitting letters from employers who have hired the school's graduates.

Counsel for the petitioner asserts that the petitioner has applied for accreditation by the NACCAS and that the petitioning school is listed on the NACCAS website. Counsel further asserts that the owner of the petitioning school, ██████████ attended a NACCAS accreditation workshop. In review, merely applying for accreditation is not equivalent to obtaining accreditation. Similarly, a listing on the NACCAS website and attendance at a workshop are insufficient to establish that the petitioner has obtained accreditation.

In reply to the interim district director's request for additional evidence, specifically, for "letters, on company letterhead, from at least three employers, each of which attest to all of the following: Recent graduates of the petitioning school (within the last two years) are fully qualified in the field of training. Each letter must include the name and title or position of the graduate, school from which the student graduated, and dates of employment with the firm," the petitioner submitted three letters. None of the three letters are written on company letterhead. All three letters are formatted identically. The letters confirm that three different individuals have been in their employ since 2003. None of the letters indicate that the individual employees had previously attended the petitioner's school. One of the letters is written by Palace Beauty Supply, which is also owned and operated by the owner of the petitioning school. However, the petitioner submitted school records indicating that the three named individuals had attended and graduated from the petitioning school. In review, two of the letters are undated and cannot be considered. The petitioner has failed to satisfy the requirements of 8 C.F.R. § 214.3(c).

The regulation at 8 C.F.R. § 214.3(e)(1) provides that the evidence with respect to the petitioning school 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.

Bona fide, established institution with necessary facilities and finances, actually engaged in instruction.

Counsel for the petitioner asserts that there is no requirement that the petitioner show it has been in operation for two years with state approval prior to filing the Form I-17. The AAO concurs. The statute and regulations are silent as to what constitutes an "established institution of learning." According to an internal memorandum,¹ an established institution of learning is one that has been in operation for two years with state approval. The memorandum does not preclude CIS from determining that an unaccredited institution is established if it has been in operation for less than two years. The more narrow construction of this regulation requiring two years of operation with state approval would constitute impermissible rulemaking by the agency. The memorandum's author undoubtedly intended to give guidance and illustration of what would constitute an established institution of learning. Nonetheless, the petitioner must show that it is an established

¹ James A. Puleo, Acting Executive Associate Commissioner, Office of Operations, Memorandum dated January 14, 1994.

institution of learning or a recognized place of study. In the instant case, the petitioner filed the petition on December 30, 2002, a mere four months² after the petitioning school was established. A certificate of approval from the Bureau of Private Post-Secondary Vocational Education (BPPVE) is not evidence that the school is an established institution of learning. An authorization to operate by the BPPVE does not mean that the school is an established institution of learning, especially when, as in the instant case, the approval is temporary.³ A BPPVE certificate of approval is evidence of authorization to operate in the state of California, and nothing more.

The petitioner submitted financial records and tax returns to CIS. The petitioner, [REDACTED] initially asserted that he owned the petitioner school as a sole proprietor. He submitted his personal income tax return for 2002 showing a business loss for the Palace Beauty College in 2002 of \$43,209. Subsequently, the petitioner, [REDACTED] informed CIS that on October 21, 2002, the petitioning school was incorporated as an "S" corporation and that [REDACTED] has fifty percent ownership and his wife, [REDACTED] has fifty percent ownership. The petitioner submitted 2002 corporate income tax forms showing an ordinary income loss of \$254,697 at the end of 2002. According to the evidence on the record, the petitioner paid only two instructors wages in 2002 in the amount of \$9,836 and \$18,054; yet the petitioner claimed to have three instructors on staff on the Form I-17. 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 possesses the necessary finances to conduct instruction.

In assessing whether a school is an established institution of learning, CIS considers the length of time the school has been in operation, whether the school has adequate physical facilities, finances and qualified faculty, whether the school has been approved by a state agency or accredited by an appropriate authority. In the instant case, the petitioner has failed to overcome the interim district director's objections.

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 is dismissed.

² According to the Form I-17, classes started on August 16, 2002. According to other evidence on the record, the petitioner started business on September 12, 2002, three months prior to filing the petition.

³ The BPPVE granted the petitioner temporary approval to operate from July 22, 2002 through July 18, 2003.