

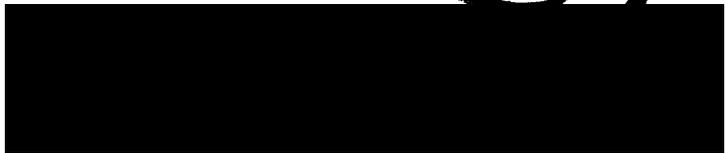
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
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Washington, D.C. 20536

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FEB 12 2004

File: LOS 214F 2005

Office: LOS ANGELES, CALIFORNIA

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:

SELF-REPRESENTED

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 Citizenship and Immigration Services (CIS) 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 
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 record reflects that the petitioner in this matter, the Los Angeles campus of the American Musical and Dramatic Academy, was established May 1, 2003. The Form I-17 indicates that the petitioner offers "conservatory training" and issues certificates in theatre. The petitioner declares an enrollment of approximately 80 students per year, with 15 teachers. The petitioner seeks approval to enroll F-1 nonimmigrant students.

The district director denied the petition after determining that the petitioner did not meet the requirements of 8 C.F.R. § 214.3(a)(2), (b) and (c). However, the district director failed to present any argument or explanation for why the petitioner was not eligible under the regulations. Further, the district director failed to make a request for evidence prior to issuing the denial. Pursuant to 8 C.F.R. § 103.2(b)(8), where there is no evidence of ineligibility, and initial evidence or eligibility information is missing, or Citizenship and Immigration Services (CIS) finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, CIS shall request the missing initial evidence, and may request additional evidence. The district director's recitation of the regulations, with no specific language to provide the petitioner with reasons for a denial, does not provide the petitioner with the opportunity to respond to the denial in any meaningful way. As discussed below, the case will be remanded to the district director for action consistent with this decision.

The first issue noted by the district director in his decision is whether the petitioner can be approved to enroll F-1 nonimmigrant students under 8 C.F.R. § 214.3(a)(2).

Under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(F)(i) an F-1 nonimmigrant is defined as:

an alien ...who seeks to enter the United States... for the purpose of pursuing such a course of study ... at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States.

The regulation at 8 C.F.R. § 214.3(a)(2) expands upon and defines the types of schools that may be approved for F-1 students. The regulation states, in pertinent part:

(i) F-1 classification. The following schools may be approved for attendance by nonimmigrant students under section 101(a)(15)(F)(i) of the Act:

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

- professional degrees.
- (B) A community college or junior college which provides instruction in the liberal arts or in the professions and which awards recognized associates degrees.
 - (C) A seminary.
 - (D) A conservatory.
 - (E) An academic high school.
 - (F) A private elementary school.
 - (G) An institution which provides language training, instruction in the liberal arts or fine arts, instructions in the professions, or instruction or training in more than one of these disciplines.

Based upon the evidence in the record, the petitioner cannot be considered an institution of higher learning that issues recognized degrees, a community college or junior college, a seminary, conservatory, high school or private elementary school. The remaining category that the petitioner must establish eligibility under to qualify for approval to enroll F-1 nonimmigrant students is section (G). Clearly, the only language applicable to the petitioner in this section is "instruction in the ... fine arts." Therefore, we must determine whether the petitioner is an institution that provides instruction or training in "fine arts."

As cited above, the Act, at § 1101(a)(15)(F)(i) does not include the term "fine arts" in its definition of schools that may be approved for attendance by F-1 nonimmigrant students. Further, while 8 C.F.R. § 214.3(a)(2) includes the term "fine arts," it does not provide any specific definition of the "fine arts."

A review of CIS regulations does not provide any further clarification of the term "fine arts" as it relates to categories of schools eligible for approval to enroll F-1 nonimmigrant students. However, the CIS regulation, 48 FR 14575, published on April 5, 1983, adds the term "fine arts" to the definition of a full course of study. Although adding the term, the rule did not provide any explanation for the change in the supplementary information, nor did it further define the term "fine arts" in the regulation itself. Instead, the term is listed as one of a number of "[CIS] Initiated Changes." The rule states:

The [CIS] has made editorial changes to improve readability. The Service (now CIS) has also made necessary changes in paragraph designation and other necessary technical changes which came to its attention ... In § 214.2(f)(6)(iii) and 214.2(f)(6)(iv), liberal arts, fine arts, and other nonvocational programs are added to the definition of a full course of study for F-1 students.

Absent any statutory or regulatory definition of "fine arts" we must look to other commonly used meanings of the term. Funk and Wagnalls Standard College dictionary offers the following definition of "fine arts":

Those arts considered purely esthetic or expressive, including painting, drawing, sculpture, and architecture, and sometimes including literature,

music, drama, and the dance.

Although the petitioner's Form I-17 indicates that it teaches "theatre (acting)," the catalogue submitted by the petitioner provides a much more comprehensive list of the actual programs and courses offered. These courses all include instruction in some form of acting, dance, music, and voice. We find that these courses clearly fall within the definition of "fine arts;" therefore, the petitioner has established eligibility under 8 C.F.R. § 214.3(a)(2).

The next issue indicated by the district director is whether the petitioner has established eligibility under 8 C.F.R. § 214.3(b). The regulation states, in pertinent part:

Any other petitioning school shall 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 ... 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).

On appeal, the petitioner submits a copy of a letter from the California Bureau of Private Postsecondary and Vocational Education (BPPVE) dated June 17, 2003. The letter from the BPPVE indicates that the petitioner was been granted "temporary approval" to operate courses of instruction in the "Advanced Professional Program," the "Integrated Program," and the "Studio Program."¹

However, the approval letter from the BPPVE also appears to place a condition upon the petitioner that must be met prior to the petitioner's commencement of classes. The letter states that "AMDA must submit a final fire clearance to the [BPPVE] *before* student instruction commences." There is no evidence in the record to indicate whether the petitioner complied with this stipulation. However, as noted earlier, not only did the district director not indicate whether this issue was a ground for denial, the district director did not afford the petitioner with an opportunity to provide the evidence that was the district director determined was lacking.

On appeal, the petitioner also submits an approval letter from the National Association of Schools of Theater (NAST) indicating that the petitioner was approved as "the new branch campus" of the American Musical and Dramatic Academy. However, there is no evidence to establish that NAST,

¹ We do not find the BPPVE's classification of the petitioner's programs as "non-degree (vocational) programs" to be a determinative factor in this case. From the language of California's education code, it appears that any non-degree programs would be considered under this section. That fact that California classifies non-degree granting programs in the same category as vocational programs does not mean that a non-degree program is a vocational program.

as an accrediting official, is a nationally recognized accrediting body. It is long standing policy that an accrediting body is only considered a “nationally recognized accrediting body” if it is recognized by the United States Department of Education (DoE). By law, the DoE is the agency charged with the publication of the list of nationally recognized accrediting agencies.²

Regardless, the petitioner has not demonstrated that it has met the conditions of the BPPVE, and therefore, the state of California, to commence operation and instruction of its students. We do find, however, that the catalogue, consolidated financial statement, and the written statement submitted on appeal satisfy the remainder of the regulation that requires evidence of information concerning the size of the petitioner’s physical plant, facilities, staff qualifications and salaries, attendance and scholastic grading policy, supervisory and consultative services, and finances.

On appeal, although we do not find that the petitioner has met all of the requirements of 8 C.F.R. § 214.3(b), as this issue was not specifically addressed in the denial, nor was the petitioner afforded an opportunity to provide necessary evidence prior to denial, it is only reasonable to allow the petitioner the opportunity to submit such evidence. Therefore, on remand, the district director should request evidence that the BPPVE received the petitioner’s final fire clearance prior to the petitioner’s commencement of classes.

The final ground for denial as indicated by the district director is the petitioner’s failure to establish eligibility under 8 C.F.R. § 214.3(c). 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 petitioner is not a language school, a business school, or an American institution of research recognized as such by the Attorney General. The petitioner also is not an institution of higher education. The regulation applied in the district director’s denial, therefore, is not applicable to the petitioner. As such, the district director’s stated ground for denial cannot be supported.

In accordance with this decision, this case shall be remanded to the district director to request further evidence from the petitioner as outlined above. After receipt and consideration of the additional evidence, the district director shall enter a new decision.

² See an overview of accreditation on the Department of Education website at <http://www.ed.gov/admins/finaid/accred/accreditation.html#overview> 12.08.03

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.