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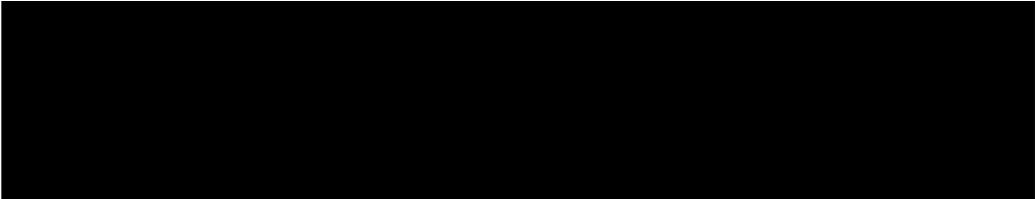
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

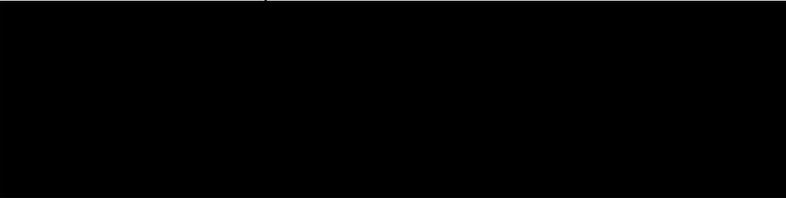


FILE: MIA 214F 1366 Office: MIAMI, FLORIDA Date: **FEB 24 2004**

IN RE: Petitioner:

PETITION: 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.

Robert P. Wiemann

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, Miami, Florida. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The petitioner then filed a motion to reopen, which the AAO dismissed. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed.

The Form I-17 reflects that the petitioner in this matter, the Church of Scientology Flag Service Organization, Inc., is a private school licensed by the Church of Scientology to provide religious training to its parishioners. The school offers certificates of completion to its graduates. The school declares an enrollment of 250 to 300 students with 38 instructors. The petitioner seeks approval for attendance by F-1 nonimmigrant academic students. There is no indication on the record that the school has ever been approved for attendance by nonimmigrant students in the past.

The district director denied the petition, finding that the petitioner failed to provide CIS with evidence of national accreditation and that the petitioner failed to demonstrate that the school is an established institution of learning or other recognized place of study.

On motion, counsel for the petitioner submits a brief.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

On motion, counsel for the petitioner has submitted a letter from the Assistant Secretary of the Church of Scientology International, affirming that the Church of Scientology International is the sole agency to accredit the petitioner school, and a compilation of its paid tax bills for the year ending 2001 that lists real property assets and the amount of annual tax paid on each property. Counsel submitted copies of financial statements for the years 1989 through 1992. Counsel also submitted a letter dated June 24, 1999 stating that the petitioner's teachers or supervisors do not receive a salary. Counsel also submitted an affidavit written by the Senior Qualifications Secretary over all religious activities at the petitioner's affiliated church's facilities in Clearwater, Florida, listing the number of certificates and awards issued to students and the number of students who have completed their curricula of study at the petitioner's seminary.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [CIS] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel does not submit any document that would meet the requirements of a motion to reconsider. Counsel states the reason for reconsideration, i.e., CIS improperly interpreted the regulations. Counsel states that *a religious college* may operate without governmental oversight according to Florida law. *See* Fla. Stat. § 1005.06(1)(f). Counsel further states that the petitioner is not *a religious college* as defined in this Florida statute. *See* Fla. Stat. § 1005.02. Counsel does not cite any precedent decisions in support of a motion to reconsider; therefore, the motion must be dismissed.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is dismissed.