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U.S. Citizenship  
and Immigration  
Services



File: SFR 214F 1857 Office: SAN FRANCISCO

Date:

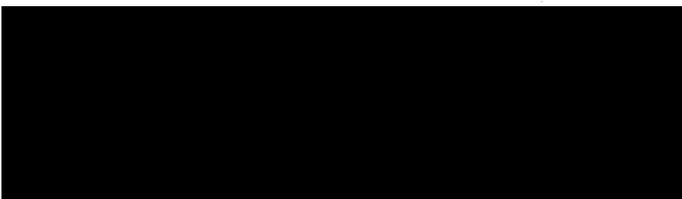
FEB 24 2004

IN RE: Petitioner



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

ON BEHALF OF PETITIONER:



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

**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*

*RP* 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, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner filed the petition seeking initial approval for attendance by M-1 nonimmigrant students as a vocational or technical training school. The petition reflects that the petitioner is a private school established on July 19, 2000. The school declares an enrollment of 100 students per year, with 30 instructors.

In a decision dated July 11, 2003, the interim district director denied the petition, finding that the petitioner had violated the regulations by inappropriately advertising the availability of nonimmigrant student visas and by allowing a foreign transfer student to attend classes without complying with school transfer provisions mandated by the regulations. The interim district director denied the petition, finding that because these are both grounds for withdrawal of school approval on notice, the school petition must be denied.

On appeal, the petitioner submits a brief and documentation indicating that its use of the inappropriate language in the school catalogue was unintentional and resulted in part from a failure by other CIS district offices to identify the incorrect language when approving school petitions for the same school located in two other districts. The petitioner submits evidence indicating that it corrected the erroneous catalogue language.

On appeal, the petitioner states that it was unaware that CIS regulations were violated when an M-1 student properly enrolled in its Miami school took courses at its San Francisco location, as the student had not transferred enrollment, but was participating in a special "Quarter Away" program that allows the petitioner's students to maintain enrollment at the M-1 school, while taking courses at another of its schools located in another city. We note that the Student and Exchange Visitor Information System (SEVIS) regulation at 8 C.F.R. § 214.2(m)(11) requires that a student who intends to study at a new school location, even if within the same school, must receive a transfer to the new school location. On appeal, the petitioner states that any violation of this regulation was unintentional, and that it will comply with the SEVIS regulation requiring that students in the "Quarter Away" program first receive a transfer in the future.

According to 8 C.F.R. § 103.3(a)(2)(i), an affected party must file an appeal within 30 days of service of the decision. The regulations allow an additional three days for filing the appeal when service of the decision is accomplished by mail. 8 C.F.R. § 103.5a(b). The record reflects that the petitioner filed the appeal on August 19, 2003, more than 33 days after the decision was issued. Counsel for the petitioner indicates that the envelope for the interim district director's decision was postmarked on July 14, 2003. A PS Form 3811 in the record indicates that the decision was delivered to the petitioner on July 16, 2003. Even if we were to accept the postmarked date of July 14, 2003 as the date of the decision, the appeal has still been filed more than 33 days after the date of the decision. The appeal was untimely filed and will be rejected. The regulations do not allow the AAO to extend the thirty-day appeal timeframe.

If an appeal is untimely, the appeal must be treated as a motion to reopen or reconsider if it meets the requirements of a motion to reopen or reconsider. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

A motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion for reconsideration must state the reasons for reconsideration and be supported by any pertinent precedent decisions. 8 C.F.R. § 103.5(a)(3).

The official having jurisdiction over a motion to reopen or to reconsider is the official who made the last decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii)

The district director should consider the evidence presented on appeal to determine whether it meets the requirements for reopening or reconsideration, and issue a decision accordingly. In considering the motion, the director should evaluate the extent to which the petitioning school has taken steps to rectify the specified violations. If the record establishes that the petitioner has corrected the specified violations and intends to comply with the requirements for maintaining school approval under SEVIS, the petition should be approved.

**ORDER:** The appeal is rejected.