

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS, 3/F  
425 I Street N.W.  
Washington, D.C. 20536



**PUBLIC COPY**

File: SFR 214F 1005

Office: SAN FRANCISCO, CALIFORNIA

Date:

IN RE: Petitioner



**JAN 22 2004**

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

Identifying data deleted to  
prevent disclosure of information  
invasion of personal privacy

**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 *Mari Johnson*  
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 The interim district director's decision will be withdrawn and the case will be remanded to the interim district director for further consideration and entry of a new decision.

The record reflects that the petitioner in this matter [REDACTED] was previously approved for attendance by nonimmigrant students. The Form I-17 at issue in this proceeding is the Student and Exchange Visitor Information System (SEVIS) petition filed in accordance with 8 C.F.R. § 214.3(a)(1)(i) for continuation of approval. The Form I-17 indicates that the petitioner is a private school established in 1980. The school offers English language training and declares an enrollment of approximately 1,500 students per year, with 8 teachers.

The record contains a notice of intent to withdraw approval dated July 14, 2003. It does not appear, however, that the interim district director issued the notice to the petitioner. The record further contains a denial notice, also dated July 14, 2003, in which the interim district director determined that the petitioner no longer maintained operations as represented at the time of initial approval. The interim district director noted that while the petitioner's original petition indicated a course offering of 80 classes, with 960 students and 27 staff members, the conclusion of an on-site visit resulted in the determination that the petitioner was "closed...[and] out of business." The denial also indicated that the petitioner had failed to report a change in its address to Citizenship and Immigration Services (CIS).

The petitioner submits a timely appeal of the interim district director's denial, with a written statement, but offers no additional supporting evidence.

The first issue to be addressed is the petitioner's alleged failure to notify CIS of its change of address. The regulation at 8 C.F.R. § 214.3 (e)(2) states in pertinent part:

An approved school is required to report immediately to the district director having jurisdiction over the school any material modification to its name, address or curriculum for a determination of continued eligibility for approval. The approval is valid only for the type of program and student specified in the approval notice.

The interim district director noted that the petitioner's "school file does not contain any evidence of a change of address" and concludes, therefore, that the petitioner failed to notify CIS of the change. On appeal, the petitioner acknowledges that on October 1, 2001, it ceased operations at its original location. The petitioner argues that it notified the CIS office in San Francisco by phone of the change of address and was told that written notification was not necessary. The regulation requires only that the petitioner "report immediately to the district director," it does not specify that the notification be in writing. The fact that the interim district director was unable to locate notification of the change of address in the petitioner's "school file" does not mean that CIS was not notified. Further, we find the petitioner's statements to be credible. Although the record contains no direct evidence to corroborate the petitioner's written statement, we find the fact that the petitioner notified the California Bureau of Private Postsecondary Education of the change of address to be persuasive

evidence that the petitioner also properly notified CIS.

The next issue is whether the close of the petitioner's Intensive English Program was a material modification to its curriculum and, therefore, also required notification to CIS. The record contains the original approval granted by the former Immigration and Naturalization Service (legacy INS), on November 7, 1986. The approval notice indicates that the petitioner was approved for attendance of F-1 academic and/or language students, but does not list the individual programs for which the petitioner was approved. The petitioner's original Form I-17 states, "Intensive English as a Second Language taught." There are no other programs listed on the petitioner's form. From the record of proceeding it can be inferred that the original approval received from legacy INS was for the Intensive English Program only.

On appeal, the petitioner acknowledges that its Intensive English Program ceased operations in December of 2001. However, the petitioner states that although it has suspended the Intensive English Program, it "has maintained the proper facilities and curriculum to reinstate the program when [it has] sufficient student enrollment to do so." The petitioner further argues that in addition to its now defunct Intensive English Program, it offers other English language programs such as the "Holiday Homestay English Program" and "English for Specific Purposes Programs."

We do not find the petitioner's arguments related to this issue to be persuasive. From the documents contained in the record and by the petitioner's own admission, the sole program for which the petitioner was approved ceased to exist in December of 2001. Clearly, the closure of this program is considered a "material modification" from what was represented in the original petition. That the petitioner has maintained the facilities and curriculum for this defunct program cannot cure the fact that the petitioner failed to notify legacy INS of such a material change. Further, we note that the petitioner offers additional English programs that were not part of the original approval and for which the petitioner failed to inform legacy INS until the filing of the appeal on the SEVIS petition. According to regulation, the penalty for failure to notify CIS of any material modifications and failure to maintain operations as indicated in the petition for approval is withdrawal in accordance with 8 C.F.R. § 214.4.

As indicated in the interim district director's denial, the two types of withdrawal relevant to the petitioner's case are withdrawal on notice and automatic withdrawal. As we noted previously, however, it does not appear that the interim district director provided any notice of withdrawal to the petitioner prior to the denial. Therefore, the sole grounds for which we could uphold the interim district director's denial would be based upon the automatic withdrawal provision of the regulation.

8 C.F.R. § 214.4(a)(2) states:

*Automatic Withdrawal.* If an approved school terminates its operations, approval will be automatically withdrawn as of the date of termination of the operations. If an approved school changes ownership, approval will be automatically withdrawn sixty days after the change of ownership unless the school files a new petition for school approval within sixty days of that change of ownership.

The remaining issue then, is whether the fact the petitioner's Intensive English Program was no

longer in existence as of December 2001, resulted in the petitioner's automatic withdrawal as of that date. In that regard, we do not find that the termination of operations of a *program* is tantamount to the termination of the operations of the *school* which would require automatic withdrawal under 8 C.F.R. § 214.4(a)(2). Even if the Intensive English Program was the school's only program approved for attendance by nonimmigrant students, evidence in the record suggests that school operations may not have terminated in December 2001. However, although we do not find the fact that the petitioner's Intensive English Program ceased operations in December 2001 resulted in automatic withdrawal, we must still determine whether the petitioner, in its entirety, was still in operation as of that date.

In his denial, the interim district director noted that the CIS contractor who performed the petitioner's on-site visit determined that the petitioner was "closed...and out of business." In direct contrast to the statement made by the contractor, the petitioner's statements on appeal and other evidence in the record indicate that it is still in operation and continues to offer language programs to groups and individuals. Based upon the conflicting statements, and with no other evidence to establish the accuracy of either statement, we are unable to make a conclusive determination as to whether the petitioner had, in fact, terminated operations as of December 2001.

In order for such a determination to be made, we must remand the case to the interim district director to conclusively establish whether the petitioner was in operation as of December 2001. On remand, the interim district director should request evidence pertaining to the remaining programs (including the date of inception of each program), class schedules and curriculum, as well as evidence of students who completed the programs.

If the interim district director determines that the petitioner's remaining programs were in existence as of December 2001, the petitioner's approval could not have been automatically withdrawn. Instead, the interim district director must make a determination as to whether the petitioner's remaining programs, were eligible for continued approval. As part of such a determination, the interim district director must make a finding as to whether the petitioner's remaining programs offer a course of study in which an F-1 nonimmigrant can maintain a full course of study. If the interim district director concludes that the petitioner continued to operate, but that the petitioner's remaining programs cannot be approved by CIS for study by F-1 nonimmigrant students, or the petitioner is otherwise not eligible for continued approval, a notice of intent to withdraw should be issued notifying the petitioner of the specific reasons that it cannot be approved.

Alternatively, if the interim district director concludes that there were no students in attendance, or otherwise determines the petitioner was no longer in operation as of December 2001, the petitioner's approval will be automatically withdrawn as of that date. In such a case, the instant filing of the SEVIS petition should be considered by the interim district director as an initial filing.

This case shall be remanded to the interim district director to request further evidence from the petitioner to establish whether the petitioner was and is still in operation and, if so, whether the petitioner's remaining programs can be approved for attendance by F-1 nonimmigrant students. After receipt and consideration of the additional evidence, the interim district director shall enter a new decision.

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 interim district director's decision is withdrawn. The case is remanded to the interim 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.