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**U.S. Citizenship
and Immigration
Services**



File: LOS 214F 1809

Office: LOS ANGELES, CALIFORNIA

Date:

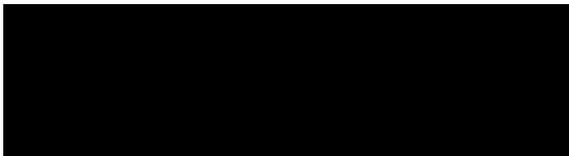
MAR 03 2004

IN RE: Petitioner:



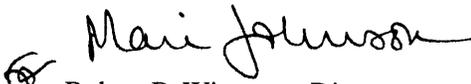
PETITION: Petition for Approval of School for Attendance by Nonimmigrant Students under Sections 101(a)(15)(F)(i) and (M)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(F)(i) and (M)(i)

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, 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The appeal will be sustained and the petition will be approved.

The record reflects that the petitioner in this matter, Learnet Academy, Inc., is a private school established in 1993. The school offers vocational and technical education and English language training. The school declares an enrollment of approximately 100 students per year, with 10 teachers. The petitioner seeks initial approval for attendance by F-1 and M-1 nonimmigrant students.

The director denied the petition, finding that the petitioner failed to establish that its programs are bona fide, that it is an established institution of learning, and that it possesses the necessary facilities and personnel to conduct instruction. The director concluded that the petitioner had failed to establish that its courses were not avocational or recreational in nature. The director also found that the petitioner had engaged in unlawful practices.

On appeal, the AAO concluded that the petitioner was an established institution of learning and that its programs were bona fide. The AAO also concluded that the petitioner had not engaged in a clear or willful violation of law. The AAO dismissed the appeal, finding that the petitioner had inadequate facilities and teaching staff, and that the petitioner failed to demonstrate that its courses of study fulfilled the requirements for the attainment of an educational, professional or vocational objective, and were not avocational or recreational in character.

On motion, the petitioner submits a brief and additional evidence.

The regulation at 8 C.F.R. § 214.3(e)(1) requires that a school 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.

On motion, the petitioner submits evidence that, it claims, establishes that it possesses the necessary facilities and personnel to conduct instruction. It submits copies of its California DE-6 quarterly wage reports from 2000 – 2002, and a list identifying its contractors by name, position and social security number, indicating that it employed, on a part-time basis: 12 contractors (5 instructors, 7 administrative staff) during the quarter ended 12/31/99; 8 contractors (4 instructors, 4 administrative) during the quarter ended 3/31/00; 6 contractors (2 instructors, 4 administrative) during the quarter ended 6/30/00; 8 contractors (3 instructors, 5 administrative) during the quarter ended 9/30/00; 5 contractors (all administrative) during the quarter ended 12/31/00; 7 contractors (4 instructors, 3 administrative) during the quarter ended 3/31/01; 13 contractors (7 instructors, 6 administrative) during the quarter ended 6/30/01; 10 contractors (4 instructors, 6 administrative) during the quarter ended 9/30/01; 7 contractors (4 instructors, 3 administrative) during the quarter ended 12/31/01; 5 contractors (3 instructors, 2 administrative) during the quarter ended 3/31/02; 6 contractors (3 instructors, 3 administrative) during the quarter ended 6/30/02; 4 contractors (2 instructors, 2 administrative) during the quarter

ended 9/30/02; and 2 contractors (both instructors) during the quarter ended 12/31/02. Counsel argues that the number of employees fluctuates on a ratio with the number of students enrolled, and that the petitioner has hired sufficient personnel as needed. Counsel indicates that enrollment has decreased substantially since state budget cutbacks have reduced the public funding available to send students for work training. Counsel's statements are supported by the record. In review, the petitioner has established that it possesses the necessary personnel to conduct instruction.

With respect to sufficient classroom space, the petitioner submits an analysis of its facilities indicating that it can physically accommodate a maximum of 118 students on a daily basis. The analysis overcomes the AAO's concern that the petitioner has insufficient classroom space to accommodate 100 students on a full-time basis. The petitioner meets the requirements of the regulation at 8 C.F.R. § 214.3(e)(1).

The regulation at 8 C.F.R. § 214.3(c) 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 record reflects that the petitioner is not an institution of higher education, but is a school that offers vocational and technical education and language training. Under this regulation, the petitioner is required to show that its courses of study fulfill the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in nature. On motion, the petitioner submits letters from three schools indicating that they have unconditionally accepted students from the petitioner school. The petitioner submits letters from former students indicating that they have successfully transferred to other schools after studying at the petitioner school. The petitioner also submits letters verifying employment of former students of the petitioner school. In review, the petitioner has established that its courses of study fulfill the attainment of an educational, professional or vocational objective.

On motion, the petitioner has overcome the grounds for dismissal of the appeal.

The petitioner has submitted copies of re-approval documents from the Bureau for Private Postsecondary and Vocational Education (BPPVE) dated March 26, 2003 indicating that the school has been approved to offer the listed educational programs. It is noted that the Form I-17 petition approval will only be granted for those programs and courses of study for which the petitioner has received approval to operate by the BPPVE. The petitioner will only be authorized to issue the Form I-20 for F-1 students to enroll in the English as a Foreign Language (EFL) program, in accordance with section 101(a)(15)(F)(i) of the Act, 8 U.S.C. § 1101(a)(15)(F)(i). The petitioner will only be authorized to issue the Form I-20 for M-1 students to enroll in the vocational computer programs, in accordance with section 101(a)(15)(M)(i), 8 U.S.C. § 1101(a)(15)(M)(i).

LOS 214F 1809

Page 4

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 sustained that burden.

ORDER: The decisions of the AAO dated August 5, 2003 and of the interim district director dated April 17, 2003 are withdrawn. The petition is approved.