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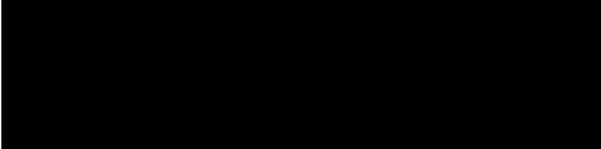
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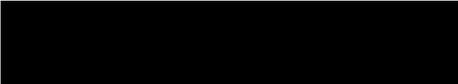
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: LOS 214F 2013 Office: LOS ANGELES, CALIFORNIA Date: **MAR 11 2004**

IN RE: Petitioner: 

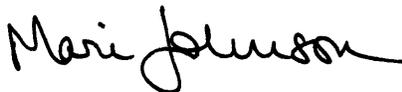
PETITION: Petition for Approval of School for Attendance by Nonimmigrant Student under Section 101(a)(15)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(F)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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 District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The Form I-17 reflects that the petitioner in this matter [REDACTED] is a private post-secondary school established in May 2000. The school offers English language training and degree programs in religious and professional studies. The school declares an enrollment of 30 students, with 15 teachers and four non-teaching employees. The petitioner seeks initial approval for attendance by F-1 nonimmigrant students.

The district director denied the petition on December 19, 2003, finding that the petitioner failed to provide Citizenship and Immigration Services (CIS) with the evidence required by 8 C.F.R. § 214.3(b), (c), and (e). Additionally, the district director found that the school failed to establish that it has been in operation with state approval for the two years immediately preceding the filing of the I-17 petition.¹

The certified mail receipt contained in the record shows that the denial was mailed to the petitioner at the address of record on December 19, 2003. The petitioner was allowed 30 days to file an appeal, plus three additional days for mailing, pursuant to regulations at 8 C.F.R. § 103.3(a)(2) and 8 C.F.R. § 103.5a(b).

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states:

Filing appeal. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by Sec. 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B) states:

Untimely appeal.

(1) *Rejection without refund of filing fee.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) *Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) of this part or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

¹ The statute and regulations are silent as to what constitutes an "established institution of learning." According to an internal memorandum, an established institution of learning is one that has been in operation for two years with state approval. The memorandum does not preclude CIS from determining that an unaccredited institution is established if it has been in operation for less than two years, because the more narrow construction would constitute impermissible rulemaking. The memorandum's author undoubtedly intended to give guidance and illustration of what would constitute an established institution of learning.

The Form I-290B, Notice of Appeal, was not filed until January 28, 2004, and as such, is considered as untimely filed.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. Further, 8 C.F.R. § 103.5(a)(3) indicates that 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 CIS policy. A review of the record indicates that the untimely appeal does not meet either of these requirements.

On appeal, the petitioner asserts that the district director's decision is based on incorrect data. In review, the district director erred in stating that the petitioner did not receive approval from the Bureau for Private Postsecondary and Vocational Education (BPPVE) until October 6, 2003. The petitioner submitted a copy of a certificate of the BPPVE temporary approval dated January 21, 2003.

On appeal, the petitioner further asserts that prior to January 2003, the petitioner operated as an institution exempt from BPPVE regulation. The petitioner failed to submit evidence to corroborate this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner argues that the district director has approved another school, Stanton University, located in the same market, targeting similar students, and operating with temporary approval from BPPVE; hence, the district director should approve the instant petition. The petitioner has failed to demonstrate that the facts of the Stanton University case are identical to its own.

The petitioner further argues that by virtue of its temporary BPPVE approval, it has established that it confers *recognized* degrees. According to the evidence submitted by the petitioner, BPPVE temporary approval is "merely an interim designation the [BPPVE] can authorize pending a qualitative review and assessment of the institution."²

We are not persuaded by these statements. On appeal, the petitioner has failed to provide any new facts pertaining to eligibility for approval, any clear reason for reconsideration, or any precedent decision to establish that the decision was based on an incorrect application of law or CIS policy.

As the appeal was untimely filed and does not meet the requirements of a motion to reopen or reconsider, the appeal will be rejected.

The Form I-290B was not signed by the petitioner as required by 8 C.F.R. § 103.2(a)(1) and (2). For this additional reason, the appeal will be rejected.

ORDER: The appeal is rejected.

² See BPPVE certificate dated January 21, 2003.