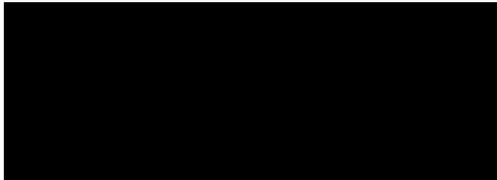


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



File: DEN 214F 00716000

Office: DENVER

Date: **MAR 29 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.

Mari Johnson

for
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, Services, Denver, Colorado. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the petitioner in this matter, [REDACTED] is a private elementary, middle and high school established in 1974. The school offers pre-kindergarten through 12th grade classes and grants a high school diploma. The school declares an enrollment of approximately 300 students per year, with 35 teachers. The petition reflects that the school is not accredited. The petitioner seeks continuation of approval for attendance by F-1 nonimmigrant students.

Following an on-site visit to the petitioning school, the district director requested the petitioner to submit additional documentation on January 27, 2003. The petitioner timely submitted a response to the request for evidence. Subsequently, the district director denied the petition, finding that the petitioner failed to establish eligibility under the regulation at 8 C.F.R. § 214.3(e)(1). The district director further concluded that the petition was deficient in that the petitioner failed to submit the required supporting documentation and other evidence required by the regulation at 8 C.F.R. § 214.3(b) and (c). The district director did not specify the provisions of these regulations the petitioner failed to satisfy.

The regulation at 8 C.F.R. § 214.3(b) provides, in pertinent part, that:

A petitioning private or parochial elementary or secondary school system shall submit a certification signed by the appropriate public official who shall certify that he or she is authorized to do so to the effect that it meets the requirements of the State or local public educational system A school catalogue, if one is issued, shall also be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement containing information concerning the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teaching staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees, and finances (including a certified copy of the accountant's last statement of school's net worth, income, and expenses). Neither a catalogue nor such a written statement need be included with a petition submitted by:

- (1) A school or school system owned and operated as a public educational institution or system by the United States or a State or a political subdivision thereof;
- (2) A school accredited by a nationally recognized accrediting body; or
- (3) A secondary school operated by or as part of a school so accredited.

The regulation at 8 C.F.R. § 214.3(c) provides, in pertinent part, that:

If the petitioner is an elementary or secondary school and is not within the category described in paragraph (b) (1) or (3) of this section, it must submit evidence that attendance at the petitioning institution satisfies the compulsory attendance requirements of the state in which it is located and that the petitioning school qualifies graduates for acceptance by schools of a higher educational level within the category described in paragraph (b)(1), (2), or (3) of this section.

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 appeal, the petitioner indicated that a catalogue was not available, and submitted a statement attaching evidence of the school's course of study, the size of its plant, the nature of its facilities, the salary and qualifications of its teachers, its attendance and grading policies, the amount and character of supervisory and consultative services available, and the school's finances. The petitioner submitted a letter from the Internal Revenue Service indicating that it is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. The petitioner also submitted letters from three universities indicating that the petitioner qualifies graduates for acceptance into higher education. This evidence satisfactorily establishes that the petitioner possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses and that it is engaged in instruction in those courses.

The documentation of record from the state of Colorado includes a copy of the petitioner's childcare license for its pre-kindergarten program, and a sales tax exemption certificate. The record does not contain the required certificate from the appropriate state official indicating that the petitioner meets the requirements of the state or local public educational system as required by 8 C.F.R. § 214.3(b). As the petitioner has not complied with this requirement, the petition cannot be approved.

The record fails to contain evidence that the petitioner is in compliance with the state's compulsory attendance laws as required by 8 C.F.R. § 214.3(c). On appeal, the petitioner indicates that, as it is a private school, it is not required to comply with the state's compulsory attendance laws. It nevertheless submits a statement indicating that the school requires a minimum of 170 days attendance per school year, and argues that this requirement is in compliance with Colorado law, which requires a minimum of 160 days. The petitioner misreads the requirements of Colorado law, which makes school attendance at a public school compulsory unless the child "is enrolled for a minimum of one hundred seventy-two days in an independent or parochial school which provides a basic academic education." C.R.S.A. § 22-33-104(2)(b). As the petitioner is an independent school providing less than 172 days of education per year, it fails to comply with the compulsory attendance requirements of Colorado law as required by the Student and Exchange Visitor Information System (SEVIS) regulation.

The petitioner indicated that it was unclear from the district director's decision what additional information the district director needed in order for the school to be in compliance. While the district director's decision could have been more specific, it is noted that the request for evidence dated January 27, 2003 requested evidence of compliance with the compulsory attendance laws of the state of Colorado. Further, as the record reflects that at the time of filing the petitioner did not offer sufficient annual school days to comply with Colorado's compulsory attendance law, the petition could not have been approved even with more specific instruction from the district director. A petition must establish eligibility at the time the application or petition is filed. 8 C.F.R. § 103.2(b)(12).

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 failed to meet that burden.

ORDER: The appeal is dismissed.