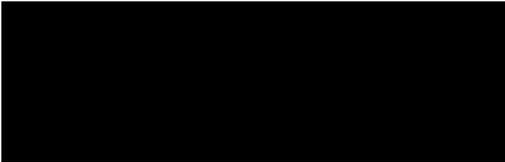


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prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
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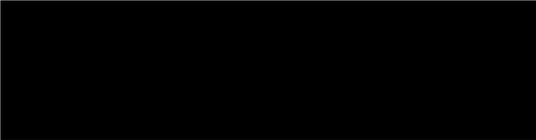
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FILE: ELP 214F 0314 Office: EL PASO, TEXAS Date: **MAY 05 2006**

IN RE: Petitioner: 

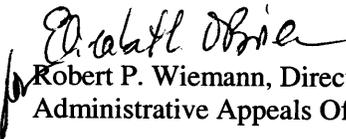
PETITION: Petition for Approval of School for Attendance by Nonimmigrant Student under Section 101(a)(15)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(F)(i)

ON BEHALF OF PETITIONER:



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, El Paso, Texas. The matter is now before the Administrative Office of Appeals (AAO) on appeal. The appeal will be dismissed.

The Form I-17 petition 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) seeking approval for attendance by nonimmigrant students under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(F)(i). The petitioner was not previously approved by Citizenship and Immigration Services (CIS) for attendance by nonimmigrant students. The petitioner is a private school that provides instruction in pre-school and kindergarten.

The petition was denied by the district director based on a determination that as the petitioner's "primary function is as a day care center," it was not approvable as a private, elementary school.

The petitioner, through counsel, files a timely appeal.

The issue to be determined on appeal is whether the petitioner can be considered a private elementary school as listed in 8 C.F.R. § 214.3(a)(2)(i)(F). On appeal, counsel states that "although there is a day care in the same facility, the [petitioner] is a school and is not a day care. The school and the day care are separate entities." We are satisfied from the evidence contained in the record that the petitioner has programs that include both a day care and kindergarten.

While the regulation does not provide a definition of an "elementary school," *Webster's Ninth New Collegiate Dictionary* defines an "elementary school" as "a school including the first four to eight grades and often a kindergarten." This definition is similar to other definitions of "elementary school" which define an elementary school as encompassing a course of education from the age of six to eight years. Based upon these definitions, we do not find that the day care program offered by the petitioner can be considered an elementary school. Further, we do not find that the kindergarten program offered by the petitioner can be considered an elementary school as the petitioner does not allow for the attendance of students beyond kindergarten.

As the petitioner's programs cannot be considered as a private elementary school, we agree with the decision of the district director that the petitioner does not offer an approvable program under 8 C.F.R. §214.3(a)(2)(i)(F).

Even were the petitioner considered to be a private elementary school, it has not submitted the evidence required by 8 C.F.R. § 214.3 (b) which states, in pertinent part:

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.

We note that other than a compulsory attendance law, private schools in the state of Texas are not subject to any specific requirements. The compulsory attendance law states that a child may be exempt from attending public schools if he or she attends a private or parochial school that teaches good citizenship.<sup>1</sup> Therefore, in order for the petitioner to show that it meets the requirements of the state or local public educational system, it must show that it complies with the compulsory attendance requirement of the state of Texas.

The record contains a copy of a document issued by the Texas Department of Protective and Regulatory Services (Texas DPRS) Child Care Licensing. However, this document indicates that the petitioner meets the "minimum standards for a day care center." As determined above, the petitioner cannot be approved by CIS to admit nonimmigrant students into a daycare program. Further, while the document issued by Texas DPRS mentions the petitioner's licensure as it relates to its daycare program, the document does not satisfy the regulatory requirement of evidence that the petitioner be in compliance with the compulsory attendance requirement.

Moreover, 8 C.F.R. § 214.3(c) requires other evidence, in pertinent part, as applicable:

If the petitioner is an elementary or secondary school and is not [a public school or a licensed, approved, or accredited school] 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 its graduates for acceptance by schools of a higher education level...

As the petitioner is not a public school and is unable to demonstrate licensure or approval in the state of Texas, it must be determined whether the petitioner is an accredited school. By law, the Department of Education is the agency charged with the publication of the list of nationally recognized accrediting agencies.<sup>2</sup> As such, CIS policy and regulations were written in consultation with the Department of Education. It is long standing policy that an accrediting body, as contemplated in this regulation, is considered a "nationally recognized accrediting body" if it is recognized by the Department of Education.

In this case, the petitioner has submitted a letter dated November 12, 2001, from the National Academy of Early Childhood Programs. There is no evidence that this organization is recognized by the Department of Education.

In addition to accreditation by an organization recognized by the Department of Education, in this case we would also accept accreditation by an organization approved by the Texas Private School Accreditation Commission (TEPSAC). The Texas Education Agency (TEA) recognizes the accrediting process for non-public schools as administered through TEPSAC.<sup>3</sup> Once a private school's accreditation by an approved association is recommended to TEPSAC, the school will be recognized as an accredited school by the Commissioner of Education and will be so listed in the Texas Non-Public School Directory, published annually by the Texas Education Agency. We find that such recognition from the TEA would also satisfy the requirements of this

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<sup>1</sup> See Texas Education Code 25.086(a)(1).

<sup>2</sup> See an overview of accreditation on the Department of Education website at <http://www.ed.gov/offices/OPE/accreditation> (04/14/04).

<sup>3</sup> In order for the State officially to recognize the accreditation of a private school, however, its operation, curriculum, staffing and instruction must be sufficiently comparable to and compatible with those of the public schools to justify that recognition. See <http://taaps.org> (4/22/04).

regulation. However, the petitioner has not established that the National Academy of Early Childhood Programs is an approved TEPSAC association or that the petitioner was recognized by the TEA as an accredited school. Further, even if the National Academy of Early Childhood Programs were recognized by the Department of Education or the TEA, the letter does not indicate that the petitioner has actually received accreditation from the organization, merely that the petitioner is involved in the accreditation process.

As the petitioner is not a public school, and is not licensed, approved, or accredited, the petitioner falls within the category of institutions that must submit evidence cited above that it satisfies the compulsory attendance requirements of Texas and that it qualifies its graduates for acceptance by schools of a higher education level.

We have already determined that the petitioner has failed to submit evidence that it meets the compulsory attendance requirements. We find also that the record contains no evidence that the petitioner's students qualify for acceptance by schools of a higher education level.

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 not sustained that burden.

ORDER:       The appeal is dismissed.