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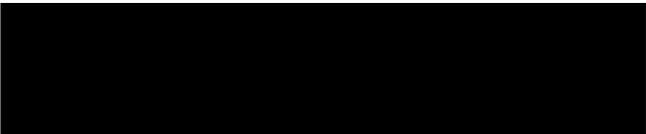


FILE: SFR 214F 1141 Office: SAN FRANCISCO, CALIFORNIA Date: **MAY 05 2004**

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:



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, San Francisco, California. 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 by [REDACTED] accordance with 8 C.F.R. § 214.3(h)(1) seeking approval for continued 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 is a private institution of higher education that offers Masters degrees and Doctorate degrees in professional studies.

The district director denied the petition after determining that an F-1 nonimmigrant student enrolled at the petitioning institution would not be able to maintain a full course of study as required by Section 101(a)(15)(F)(i) of the Act. The district director's determination was based upon the fact that the petitioner's classes are offered only through distance education.

The petitioner, through counsel, files a timely appeal with additional documentation.

Section 101(a)(15)(F)(i) of the Act defines an F-1 nonimmigrant student as:

An alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student *qualified to pursue a full course of study* and who seeks to enter the United States temporarily and *solely for the purpose of pursuing such a course of study...*

(Emphasis added).

8 C.F.R. § 214.2(f)(6)(i)(G) limits the types of study that can be considered a full course of study. The regulation states:

For F-1 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted toward the full course of study requirement *if the class* is taken on-line or through distance education and does not require the student's physical attendance for classes, examination or other purposes integral to the *completion of the class*. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing...

On appeal, the petitioner argues that it does offer a full course of study as required by the Act and regulation. William K. Bruff, Ph.D., Associate Vice President for Academic Affairs, contends that all of the petitioner's academic programs require two types of mandatory physical attendance; residential orientation and residential conferences. Mr. Bruff states:

Residential Orientation. All students are required to attend **one Residential Orientation** during their career at the Graduate School and all students are required to attend **two Residential Conferences each academic year** of their program, until they pass the oral examination for doctoral candidacy or M.A. completion. Students who are admitted mid-year are required to attend at least one Residential Conference in their first year. Residential Orientations are the first activity in every student's career at the Graduate School. Students also begin their first courses at this meeting. The Student Handbook explicitly provides the attendance requirements that all students are required to attend the entire orientation and all must be on-site on the opening day for registration and remain in residence until the closing meal on the last day of the 7 days.

Residential Conferences. Residential Conferences are scheduled twice yearly and all pre-candidacy students are required to attend both Residential Conferences each year until M.A. students have successfully completed the thesis, project, or comprehensive exam; or Ph.D. students have passed their essay orals. At Residential Conferences, students and faculty gather for academic courses and seminars and for academic workshops.

Counsel argues physical attendance at the Residential Orientation and Residential Conferences is an "essential element" of the petitioner's coursework and, therefore, meets the physical attendance requirement of 8 C.F.R. § 214.2(f)(6)(i)(G). Counsel states:

The Residential Orientation is for new students and is held at the beginning of the semester. For continuing students, full and complete and fully verified attendance at the Residential Conference occurs in each semester for at least a full week [sic] is one of the **prerequisites** to a student receiving credit for each and all courses that semester.

The plain language of the regulation indicates that if an on-line or distance education course does not require physical attendance, only one such course may be counted toward the full course of study requirement for that particular term or semester. In this case, counsel argues that the petitioner's classes do require physical attendance. We do not agree. While we do not dispute the fact that the petitioner requires its students to initially attend a Residential Orientation, as well as two residential conferences per year, the attendance is required as part of the overall program. The individual classes undertaken by the petitioner's students do not require physical attendance. As the petitioner's individual classes do not require the student's physical attendance for completion of the class, the next issue is whether they are considered as "on-line" or "distance education."

Counsel argues that the petitioner's programs are "in the nature of guided independent study" and do not fit within the regulatory definition of "distance education" or "on-line" classes in that the programs do not "rely on mass distribution via television or audio transmissions; it makes use of computer technology, primarily for individual faculty-student tutoring with regard to instruction, research projects, tutorials, projects, theses and posting course guidelines."

We are not persuaded by counsel's argument. As cited above, in addition to the two manners of communication noted by counsel, television or audio transmission, the definition of "distance education" and "on-line" also includes the use of computer transmission. Counsel attempts to remove the petitioner from the definition provided in the regulation by claiming that the petitioner uses "computer technology" as the means by which students at the petitioning institution interact with their professors. We do not find there to be any differentiation between counsel's acknowledgment of the use of "computer technology" and the regulatory language of "computer transmission."

As the petitioner's courses fall within the definition of on-line and distance education and do not require students to physically attend in order to complete the class, in accordance with 8 C.F.R. § 214.2(f)(6)(i)(G), the petitioner's students are not permitted to count more than the equivalent of one class or three credits per term or semester toward the full course of study requirement.

The next issue is whether one class or three credits per semester can be considered a full course of study. As the petitioner offers postgraduate and postdoctoral study there are no minimum clock hours required by regulation. Instead, 8 C.F.R. § 214.2(f)(6)(i)(A) states that a "full course of study" as required by Section 101(a)(15)(F)(i) of the Act means: "postgraduate study or postdoctoral study at a college or university . . . certified by a DSO as a full course of study."

Counsel states: "[t]he Graduate School's DSO and predecessor DSO have properly certified all full time students as fulfilling the requirements of a full course of study." However, as the petitioner's students may only count one class or three credits toward the full course of study requirement, we find it difficult to believe that the petitioner would classify such a student as a full-time student. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

For the reasons stated above the petitioner has not established eligibility for approval. However, beyond the decision of the director, the petitioner has failed to meet additional regulatory requirements. Specifically, the petitioner has failed to comply with the requirements of 8 C.F.R. § 214.3(b) that requires the petitioner to submit a certification by the appropriate licensing, approving, or accrediting official certifying that the petitioner is licensed, approved, or accredited. In this case, the petitioner operates within the state of California but has provided no evidence that the petitioner has received approval by the California Bureau for Private Postsecondary and Vocational Education (BPPVE).

Section 94900 of the California Education Code states:

- (a) No private postsecondary educational institution may issue, confer, or award an academic or honorary degree unless the institution is approved by the council to operate in California and award degrees.

Section 94302 (w) defines "Private postsecondary educational institution" as:

[A]ny person doing business in California that offers to provide, or provides, for a tuition, fee, or other charge, any instruction, training, or education under any of the following circumstances:

- (1) A majority of the students to whom instruction, training, or education is provided during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
- (2) More than 50 percent of the revenue derived from providing instruction, training, or education during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
- (3) More than 50 percent of the hours of instruction, training, or education provided during any 12-month period is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
- (4) A substantial portion, as determined by the council, by regulation, of the instruction, training, or education provided is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

The petitioner does provide evidence that it has been accredited by the Western Association of Schools and Colleges (WASC). However, such accreditation cannot take the place of the proper approval in accordance with state or local laws.

As the petitioner failed to obtain approval by the state of California, the petitioner also cannot establish eligibility under 8 C.F.R. § 214.3(e) that it is a bona fide and established institution of learning, or that it has been engaged in instruction in recognized courses.

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.