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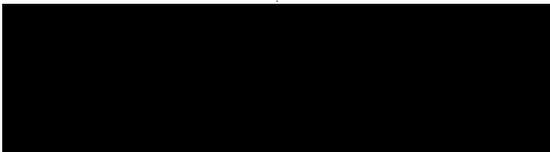


FILE: SFR 214F 1335 Office: SAN FRANCISCO, CALIFORNIA Date:

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 Appeals Office on appeal. The appeal will be sustained.

The Form I-17 reflects that the petitioner in this matter, American Language Programs, Inc. is a private school established in 1996. The school offers English language training and declares an enrollment of approximately 60 students per year, with 3 instructors. The petitioner was originally approved for attendance by F-1 nonimmigrant students on October 21, 1985. The petition at issue in this case is the SEVIS Form I-17 submitted in accordance with 8 C.F.R. § 214.3(h)(1) for continued approval.<sup>1</sup>

The district director denied the petition on July 14, 2003 after finding that the petitioner failed to establish that its programs were not avocational or recreational in nature. Further, the district director determined that the petitioner failed to maintain the curriculum and teaching staff as represented in the petitioner's original approval.<sup>2</sup>

On appeal, the petitioner, through counsel submits a timely brief with additional documentation.

The first issue as determined by the district director is whether the petitioner meets the requirements of 8 C.F.R. § 214.3(c) which state:

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 language training. The district director's decision erroneously imposed the following requirement:

For institutions seeking F-1 approval, letters from at least three public educational or

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<sup>1</sup> In his decision the district director notes that the petitioner changed ownership without notifying CIS and cites the automatic withdrawal provisions contained in 8 C.F.R. § 214.4(a)(2). In contrast to these provisions, the district director then applies the withdrawal on notice provisions of 8 C.F.R. § 214.4(a)(1) which are applicable to currently approved schools. While the record does reflect a change in the petitioner's president, we do not find that the record contains sufficient evidence to determine that the actual ownership of the school has ever changed. Regardless, even if the petitioner's previous approval was automatically withdrawn and the SEVIS petition was considered an initial approval, the outcome of this decision would still be the same.

<sup>2</sup> The district director's denial also makes reference to several compliance violations on the part of the petitioner. We agree with counsel that such references were unnecessary and not relevant to the determination on the SEVIS petition as the violations were remedied prior to the filing of the petitioner's SEVIS petition.

nationally accredited institutions attesting that graduates from the petitioning institutions have been and are accepted unconditionally. Such letters must state the name of the petitioning school, the name of its graduate(s), date of enrollment, and the new program(s) into which the graduate(s) has (have) been accepted . . .

While the evidence indicated as a requirement by the district director does satisfy 8 C.F.R. § 214.3(c), such evidence is not the only way for the petitioner to establish eligibility. According to regulation, the sole evidence that the petitioner is required to show under this section is that its courses of study fulfill the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in nature.

Counsel argues the fact that the petitioner is registered in California as an intensive English language institution is sufficient evidence for CIS to determine that the petitioner's courses of study fulfill the attainment of an educational, professional, or vocational objective.

We agree with counsel's argument and find that under the California education code, as the petitioner is registered with California's Bureau for Private Postsecondary Vocational Education (BPPVE), such registration is sufficient evidence that the petitioner's programs are not avocational or recreational in nature. As we agree with counsel's argument and find the petitioner to meet the requirements of 8 C.F.R. § 214.3(c) we do not find it necessary to address counsel's remaining arguments related to this issue.

As indicated in the district director's decision, the next issue to be determined is whether the petitioner has sufficiently maintained its curriculum and teaching staff. The district director cites 8 C.F.R. § 214.4(a)(1)(xvi) and finds that the petitioner's "teaching staff, number of classes, and the number of students have drastically declined since [sic] approval" and that the petitioner failed to "provide documentary evidence that [it] maintains adequate teaching staff to provide instruction to accommodate three annual classes with 60 annual students."

Counsel argues that the district director's reliance on 8 C.F.R. § 214.4 is misplaced as it "deals with situations whereby a school is given formal, written notice of alleged violations that can serve as a basis for withdrawing a school's authorization." Instead, counsel argues the district director should have applied 8 C.F.R. § 214.3 which deals with the petition and approval process.

We find counsel's argument to be persuasive.

The regulation at 8 C.F.R. § 214.3(h)(1) states:

*Review of schools for initial enrollment in SEVIS.* Each school that is currently approved for attendance by nonimmigrants . . . is required to apply for review by [CIS] for continuation of approval and access to SEVIS no later than the SEVIS mandatory compliance date [January 30, 2003].

The regulation at 8 C.F.R. § 214.3(h)(2) further states:

*[CIS] adjudication.* [CIS] will review the electronic Form I-17 information submitted in SEVIS and will require an on-site visit of the school. If [CIS] approves the certification request, SEVIS will be updated to reflect the approval . . . If [CIS] denies SEVIS certification, [CIS] will send

electronic notification through SEVIS to the school and mail written notification that includes the reasons for denial and the process for seeking review of such denial.

As the petitioner in this case was approved for attendance by nonimmigrant students at the time of filing the instant petition in SEVIS, the district director's application of 8 C.F.R. § 214.4 was erroneous.<sup>3</sup>

To be eligible for approval, a petitioner must establish that it is a bona fide school, it is an established institution of learning or other recognized place of study, it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses, and that it is engaged in those courses.<sup>4</sup> The record contains sufficient evidence to establish that the petitioner meets these eligibility requirements.

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 appeal is sustained.

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<sup>3</sup> Even if 8 C.F.R. § 214.4 were applicable, the district director failed to provide any notice to the petitioner prior to issuance of the denial.

<sup>4</sup> See 8 C.F.R. § 214.3(e)(1).