**U.S. Department of Homeland Security**
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Washington, DC 20529

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**U.S. Citizenship and Immigration Services**

[redacted]

FILE: SFR 214F 01938 Office: SCHOOL CERTIFICATION BRANCH, ICE Date: DEC 10 2004

IN RE: Petitioner: [redacted]

PETITION: Petition for Approval of School for Attendance by Nonimmigrant Students 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:

[redacted]

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

**DISCUSSION:** The Petition for Approval of School for Attendance by Nonimmigrant Student (Form I-17) was denied by the Immigration and Customs Enforcement (ICE), Student and Exchange Visitor Program (SEVP) Chief, School Certification Branch. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-17, filed on March 19, 2004, reflects that the petitioner in this matter, the Pacific Boychoir Academy, is a private school established in 1999. 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). The petitioner seeks approval for attendance by F-1 nonimmigrant students as an elementary school offering instruction in grades 3 through 8. The petitioner declares an enrollment of approximately 105 students per year with 7 instructors.

The Chief denied the petition on September 17, 2004,[1] after determining that the petitioner was not an established institution of learning or engaged in instruction at the time of filing. The Chief further found that the petitioner failed to provide evidence of state licensure or registration and that it meets the state's compulsory attendance laws and curriculum.

The petitioner, through counsel, files a timely appeal.

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

> To be eligible for approval, the petitioner must establish that -
>
> (i) It is a bona fide school;
>
> (ii) It is an established institution of learning or other recognized place of study;
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> (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.

In addition to the eligibility requirements contained in 8 C.F.R. § 214.3(e)(1), the regulations require additional supporting evidence to be submitted if the petitioner is a private elementary school.

The regulation at 8 C.F.R. § 214.3(b) 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

[1] Though the denial is dated September 16, 2004, the U.S. Postal Service Certified Mail Receipt attached to the denial contained in the record, reflects a postmark date of September 17, 2004.

> authorized to so do to the effect that it meets the requirements of the State or local public educational system . . .

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

> If the petitioner is an elementary or secondary school and is not [a public 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 graduates for acceptance by [public schools or schools accredited by a nationally recognized accrediting body] of a higher educational level . . . .

On appeal, counsel for the petitioner argues that at the time of filing, the petitioner:

> [W]as engaged in a substantial part of the curriculum it had established for its full-time day school. [The petitioner] taught 100 boys a full course load of music theory, voice, music history and physical education . . . [t]he boys attended the school regularly each week for a full section rehearsal and study, small group practice and music theory and individual tutorial sessions. All boys typically committed five to ten hours a week of on site attendance . . . [It] made this a requirement pursuant to its long term goal of becoming a full-time day school for treble voiced boy choristers . . . [It] was in full compliance with all of the available guidelines and requirements for operating a private school at the time of its application to SEVP, on March 19, 2004.

We are not persuaded by counsel's arguments. The record contains electronic correspondence from the petitioning school to the California Department of Education (CDE) dated Monday, June 28, 2004. In this correspondence, the petitioner states:

> We would like to get our affidavit filed with the State of California as soon as possible since we plan to open our doors . . . on or about September 8, [2004].[2]

The record also contains a copy of the petitioner's brochure, which states the petitioner "is scheduled to open in the [f]all of 2004." Further, by counsel's own admission on the Form I-290B, the petitioner did not begin providing full-time elementary education until September 2004, six months after the filing of the petition. Though the petitioner may have been "engaged in a substantial part of the curriculum," at the time of filing, the regulations do not provide for any waivers or exceptions for schools engaged in only a portion of the curriculum for which it seeks approval. A petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See generally* 8 C.F.R. § 103.2(b)(12); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc.

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[2] The petitioner mistakenly indicated the year 2003 rather than 2004.

Comm. 1998). Given that the petition was filed in March 2004, and the petitioner did not actually open its doors as a full-time private day school until September 2004, the petitioner has failed to demonstrate that it was either established or engaged in instruction of the courses for which is sought approval at the time of filing.

Further, despite counsel's assertions, the record does not reflect that the petitioner was in compliance with "all of the available guidelines and requirements for operating a private school" at the time of its application.

Section 51210 of the California Education Code indicates that the course of study for grades 1 through 6 must include English, Mathematics, Social Sciences, Science, Visual and Performing Arts, Health, and Physical education.

Section 51220 of the California Education Code indicates that the course of study for grades 7 through 12 must include English, Social Sciences, Foreign language or languages, Physical education, Science, Mathematics, Visual and performing arts, Applied arts, career technical education, and automobile driver education.

Counsel claims that at the time of filing the petitioner provided instruction in only "music theory, voice, music history and physical education." The record contains no evidence that the petitioner provided instruction in English, Mathematics, Social Sciences, Science, Health, Physical education, or foreign languages. As the petitioner was not engaged in instruction of the curriculum required by the California Education Code, we cannot find that the petitioner meets the requirements of the state or public educational system as required by 8 C.F.R. § 214.3(b).

Further, we find the record does not establish the petitioner was in compliance with California's compulsory education requirements as required by 8 C.F.R. § 214.3(c). California's compulsory education requirements are contained at Section 48200 of the California Education Code, which states:

> Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter . . . is subject to compulsory full-time education.

Section 48222 exempts "children who are being instructed in a private full-time day school by persons capable of teaching" from the compulsory education requirements. However, this section explicitly states that:

> Exemptions under this section *shall be valid only after verification by the attendance supervisor of the district, or other person designated by the board of education, that the private school has complied with the provisions of Section 33190* requiring the annual filing by the owner or other head of a private school of an affidavit or statement of prescribed information with the Superintendent of Public Instruction.

[Emphasis added].

The provisions of Section 33190 require:

> Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level between the first and 15th day of October of each year, commencing on October 1, 1967, file with the Superintendent of Public Instruction an affidavit or statement, under penalty of perjury, by the owner or other head . . . .

Given that the petitioner's students could only be exempted from the compulsory education requirements *after* verification by the attendance supervisor of the district, or other person designated by the board of education, the fact that at the time of filing the petitioner had not yet submitted the affidavit required under Section 33190 to meet the exemption requirements of Section 48222, precludes a finding that the petitioner satisfies the compulsory attendance requirements of the state of California.

Contrary to counsel's assertion that the petitioner was in "full compliance with all of the available guidelines and requirements," the record reflects that at the time of filing the petitioner was not engaged in instruction in either the courses for which is sought approval from CIS, or the curriculum required by the California Education Code, and had not established compliance with California's compulsory education requirements.

In addition, the petitioner also failed to establish that it qualifies its graduates for acceptance by schools of a higher educational level that are either public schools or schools accredited by a nationally recognized accrediting body.

The petitioner submitted three letters from schools in order to establish that the petitioner's graduates would be accepted at these particular schools. The first letter, written by [redacted] states:

> The Athenian School would be pleased to admit a student from [the petitioning school]. Having reviewed the curriculum, I can confirm that a successful [petitioning school] student would be considered a competitive application by the Athenian School's admission committee.

The second letter, written by [redacted] Director of Admissions and Financial Aid for the Head-Royce School, states:

> Graduates of [the petitioning school] will be welcome to apply for admission to our high school. Each year we admit approximately 30 new freshmen and fully expect their students to be competitive applicants in the pool.

The third letter, written by [redacted] states:

> As a college preparatory secondary school in northern California, Stevenson School would be willing to consider graduates of [the petitioning school] as applicants to

> Stevenson. [redacted] has known administrators at the school in a variety of capacities for many years and feels confident in their ability to graduate students who would be qualified to apply for admission to Stevenson School.

In determining that the petitioner's letters were lacking, the Chief stated that the petitioner "failed to provide letters that its graduates "have been and are accepted unconditionally." Contrary to the requirement imposed by the Chief, we find the regulation requires only that the petitioner qualify its graduates for acceptance by public schools or schools accredited by a nationally recognized accrediting body, of a higher educational level. For the Chief to require the petitioner to show that graduates "have been and are accepted unconditionally," imposes requirements not contemplated by the regulation.

Despite the Chief's erroneous application of the regulatory requirements, however, we agree with the ultimate decision that the letters do not establish the petitioner qualifies its graduates for acceptance by schools of a higher educational level that are either public schools or schools accredited by a nationally recognized accrediting body.

First, the letter from [redacted] does not establish that the Athenian School provides education at a higher level than that of the petitioner. Second, the record does not establish that either the [redacted] r the Athenian School have been accredited by a nationally recognized accrediting body.[3] Thus, the petitioner has failed to establish that it qualifies its graduates *for acceptance by public schools*, or *schools accredited by a nationally recognized accrediting body*, of a *higher educational level.*

Beyond the decision of the Chief, we find that the record is devoid of evidence of a school catalogue or statement by the petitioner as required by 8 C.F.R. § 214.3(b). The regulation states, in pertinent part:

> 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 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:

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[3] Though the petitioner submitted no evidence to establish that any of the schools have received accreditation by a nationally recognized accrediting agency, we note that the Western Association of Schools and Colleges, (WASC) lists the Athenian School as a member. *See* http://www.acswasc.org/pdf_general/DirectoryAccredited_2003-04%20.pdf [November 17, 2004]. The U.S. Department of Education website indicates that the WASC is recognized as a regional accrediting agency. *See* http://www.ed.gov/admins/finaid/accred/accreditation_pg6.html#Regional%20Institutional [November 17, 2004].

(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.

Given that the petitioner is a private institution and has provided no evidence that is has been accredited by a nationally recognized accrediting body,[4] the petitioner is required by regulation to submit either a catalogue or a written statement containing information concerning its size, facilities, educational, qualifications and salaries of the teachers, attendance and scholastic grading policy, supervisory and consultative services available to students and trainees, and finances.

Though the record contains a photocopy of a two-page brochure briefly describing the petitioning school, the brochure does not contain any of the information required by 8 C.F.R. § 214.3(b). Further, the record does not contain any statement by the petitioner in which it describes the size of its facilities, its grading policy, or supervisory or consultative services.

Although the record contains a letter entitled, "Salary and Staff for 2004 Academic Year Pacific Boychoir Academy," the letter only lists the salaries and qualifications for three individuals; [redacted] We note, however, that while the letter indicates tha[redacted]e classroom teachers, [redacted] is listed as a "Music Director," not a teacher. We further note that the petitioner's Form I-17 lists a total of seven teachers or instructors. Thus, the evidence submitted by the petitioner does not sufficiently establish the qualifications and salaries for its remaining five teachers or instructors.

As evidence of the petitioner's finances, the petitioner submits balance sheets, income statements, profit and loss statements, year-to-date comparative income statements, general ledgers, trial balance statements, and adjustments transaction journal statements. Though numerous statements were submitted, not one of the statements meets the requirement of the regulation, which requires a certified copy of accountant's last statement of school's net worth, income, and expenses.

Further, we note the cover sheet signed by the Brian K. Johnson, EA, CTA, indicates that:

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[4] By law, the Department of Education is the agency charged with the publication of the list of nationally recognized accrediting agencies. See http://www.ed.gov/offices/OPE/accreditation (10/28/04). CIS policy and regulations were written in consultation with the Department of Education. It is long standing policy that an accrediting body, as contemplated by 8 C.F.R. § 214.3(b), is considered a "nationally recognized accrediting body" only if the body has been recognized by the Department of Education. Though the petitioner's Form I-17 indicates they have been accredited by the "East Bay Independent School Association," there is no evidence that this association is recognized by the Department of Education.

> A compilation is limited to presenting in the form of financial statements information that is the representation of management. The statements were prepared on the cash basis of accounting, the same basis used in the preparation of the company's tax return.
>
> The owner has elected to omit substantial disclosures including the statements of retained earnings and cash flows. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

As indicated by [redacted] statement, the financial documents submitted by the petitioner are the representations of the petitioner and have had substantial amounts of information omitted from them.

On appeal, the petitioner has submitted several pictures with students in a classroom setting. However, these pictures do not provide enough information for them to be considered as evidence of the petitioner's size or facilities.

Based upon the preceding discussion, we find the record lacks sufficient evidence regarding the petitioner's size, the nature of its facilities for study and training, the salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees, and a certified copy of accountant's last statement of school's net worth, income, and expenses,[5] all of which are required by 8 C.F.R. § 214.3(b).

Without this supporting documentation, the petitioner is not able to establish eligibility under 8 C.F.R. § 214.3(e)(iii) that it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses. Therefore, even if the petitioner had been able to overcome the findings of the district director, the petition would be denied on these additional grounds.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. In this case the burden has not been met.

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[5] The petitioner's submission of its 2001 Corporate Income Tax Return does not provide sufficient detail to determine the petitioner's new worth, income, and expenses. The regulation specifically requires a certified statement from the petitioner's accountant.