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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

JUN 1 6 2004

FILE: SFR 214F 1668 Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: Petitioner: [redacted]

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

Elizabeth O'Brien

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 (AAO) on appeal. The appeal will be dismissed.

The Form I-17 reflects that the petitioner in this matter, Acupressure Institute of America, Inc., is a private school established in 1988. The record reflects that the petitioner was originally approved for attendance by nonimmigrant M-1 students on May 5, 1994. However, this approval was automatically withdrawn on January 31, 2003 in accordance with 8 C.F.R. § 214.4(3). Therefore, the petition at issue in this proceeding, the Student and Exchange Visitor Information System (SEVIS) petition, submitted on March 14, 2003 is considered an initial filing.

The petitioning school provides vocational education and offers certification in the following programs: Basic Acupressure/Shiatsu, Advanced Specialization, and Therapist. The Form I-17 indicates that the petitioner has approximately 200 students with 50 instructors.

The district director denied the petition on October 30, 2003, after determining that the petitioner had failed to establish that it was approved by any nationally recognized accrediting association or agency. The district director further determined that the petitioner failed to establish that it possesses the necessary personnel to conduct instruction and that its courses of study were not avocational or recreational in nature. Finally, the district director determined that the programs offered by the petitioning school did not provide sufficient clock hours for an M-1 nonimmigrant student to meet the full course of study requirements mandated by regulation.

The petitioner files a timely appeal with additional evidence.

The first issue to be addressed is whether the petitioner has established that it meets the requirements of 8 C.F.R. § 214.3(b). The regulation states that if the petitioner is not a public school, or a private or parochial elementary or secondary school, the following supporting documentation is required:

> [A] certification by the appropriate licensing, approving, or accrediting official who shall certify that he or she is authorized to do so to the effect that it is licensed, approved or accredited.

This regulation further requires:

> 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:

(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.

In his decision the district director noted that the petitioner is a private institution and has provided no evidence that is has been accredited by a nationally recognized accrediting body. These facts are not disputed by the petitioner on appeal.[1] The issue is whether the petitioner has provided the required information regarding the qualifications of its teaching staff. The district director found that the petitioner had submitted resumes for only 5 of its teachers.

On appeal, the petitioner submits resumes for nine additional instructors. However, as indicated by the petitioner on its Form I-17, the petitioner employs approximately 50 instructors. The petitioner's submission of a total of 14 resumes is not adequate in this case. Moreover, despite the fact that the district director specifically mentioned the petitioner's failure to submit a resume for "Jason F.," an instructor specifically listed in the petitioner's current class schedule, no such resume was submitted on appeal. We therefore concur with the findings of the district director that the information submitted by the petitioner does not sufficiently establish the qualifications of the petitioner's teaching staff.

In addition, although not addressed by the district director in his decision, we find that the record lacks any evidence regarding its 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,[2] all of which are required by 8 C.F.R. 214.3(b). Therefore, even if the petitioner had been able to overcome the finding of the district director regarding 8 C.F.R. § 214.3(b) the petition would be denied on these additional grounds.

The next issue to be addressed is whether the petitioner's courses are avocational or recreational in nature.

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

> Other evidence. The Service has also consulted with the Department of Education regarding the following types of institutions and determined that they must submit additional evidence. 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

[1] The petitioner has submitted evidence that it was approved by California's Bureau for Postsecondary Private and Vocational Education on January 1, 2000. The approval expires on March 30, 2003. In this case, while approval by the BPPVE satisfies the requirements of 8 C.F.R. § 214.3(b) in that it establishes the petitioner received "certification by the appropriate licensing, approving, or accrediting official," such approval does not establish that the petitioner has been accredited by a nationally recognized accrediting body.

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

> 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.

In his denial, the district director stated that in order to meet this requirement the petitioner must submit:

> ...letters from at least three employers attesting that recent graduates of the school (within the last two years) are fully qualified in the field of training. Such letters must be written on company letterhead and state the name and title or position of the graduate, the school from which he or she graduated and the dates of employment with the firm.

While the evidence indicated as a requirement by the district director would satisfy 8 C.F.R. § 214.3(c), such evidence is not required or the only way for the petitioner to establish that its courses of study are not avocational or recreational in nature. The statute and regulations are silent as to what constitutes evidence that the petitioner's "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 nature." While we note that the evidence required by the district director is consistent with an internal memorandum previously issued by Citizenship and Immigration Services (CIS)[3], the memorandum does not preclude CIS from determining that a petitioner's course of study is not avocational or recreational in nature and fulfills an educational, professional, or vocational objective without submission of such letters from employers. Such an interpretation would constitute impermissible rulemaking. The memorandum's author intended to give guidance and illustration of what would constitute evidence that the petitioner's programs were not avocational or recreational in nature.

As noted previously in this decision, the petitioner has submitted evidence of approval from California's Bureau for Private Postsecondary and Vocational Education (BPPVE). In this case we find the fact that the petitioner has received such approval from the BPPVE for its programs, sufficiently establishes that the petitioner's programs are not avocational or recreational in nature.

The petitioner has overcome this objection of the director.

The remaining issue to be addressed is whether the petitioner's programs allow an M-1 nonimmigrant student to be enrolled in a full course of study as required by statute and regulation.

Section 101(a)(15)(M)(i) of the Immigration and Nationality Act defines an M-1 nonimmigrant as:

> [A]n alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution . . .

A "full course of study" is defined in the regulations at 8 C.F.R. § 214.2(m)(9) which states, in pertinent part:

> . . . (ii) Study at a postsecondary vocational or business school, other than in a language training program except as provided in § 214.3(a)(2)(iv) which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either: (1)

[3] James A. Puleo, Acting Executive Associate Commissioner, Office of Operations, Memorandum dated January 14, 1994.

> A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or (2) a school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve hours of instruction a week, or its equivalent as determined by the district director; or
>
> (iii) Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in Sec. 214.3(a)(2)(iv), certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work . . .

In his decision, the district director considered the petitioner's programs under 8 C.F.R. § 214.3(m)(iii) and determined that the petitioner's programs "fail to consistently provide students with classroom attendance of at least twenty-two clock hours per week." We note that the regulation requires at least twenty-two clock hours a week only when the dominant part of the course of study consists of laboratory or shop work. As the petitioner's programs consist of classroom instruction, the clock hours necessary to maintain a full course of study is at least 18-hours. However, despite the fact that the district director incorrectly referred to the twenty-two clock hour requirement, we do not find this error to have been material to the final determination.[4] Because of the structure of the petitioner's programs, which vary in clock hours from week to week, the petitioner was not able to establish that it provided a minimum of 18-clock hours per week.

On appeal, the petitioner asserts that it has revised it program schedule to provide students with 22 clock hours per week. In support of this assertion, the petitioner provides computer-generated copies demonstrating the current hours and classes required for each of the petitioner's programs. These computer-generated schedules are insufficient to establish that the petitioner has actually amended each of its course requirements to meet the requirements of the regulations.[5]

Moreover, according to regulation, a petition shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the petition was filed. 8 C.F.R. § 103.2(b)(12). The evidence submitted by the petitioner in response to the district director's request demonstrates that the petitioner's programs did not offer an M-1 nonimmigrant a full course of study at the time the petition was filed. The petitioner then changed its program requirements more than one year after the initial filing date in order to meet the requirements of 8 C.F.R. § 214.2(m)(9). As the petitioner was not eligible at the time of filing such a defect cannot be cured by changing its program requirements in order to support an appeal.

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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[4] As the petitioner does not confer associates degrees and did not submit any evidence that its credits have been and are accepted unconditionally by at least three public institutions or three institutions of higher learning that have been accredited by a nationally recognized accrediting body, we do not find the district director's failure to consider the petitioner's programs under 8 C.F.R. § 214.2(m)(9)(ii) to be in error.

[5] Despite the fact that the petitioner need only offer a minimum of 18-clock hours of instruction per week, we do not find these computer-generated printouts to be adequate proof that the petitioner's program requirements have changed.

ORDER: The appeal is dismissed.