U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

File: CHI 214F 01637000 Office: CHICAGO, ILLINOIS Date: SEP 13 2004

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, 8 U.S.C. § 1101(a)(15)(M)(i)

IN 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Student (Form I-17) was denied by the District Director, Chicago, Illinois. 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, American Academy of Massage Therapy, is a private school established in February 2003. The Student and Exchange Visitor Information System (SEVIS) petition was submitted on August 25, 2003, in accordance with 8 C.F.R. § 214.3(a)(1)(i). The petitioning school provides vocational education and offers a diploma for its Introduction to Massage Therapy program which requires 600 clock hours to complete. The Form I-17 indicates that the petitioner has an average annual number of 30 students with 10 instructors.

The district director denied the petition on September 15, 2003, after determining that the petitioner did not possess the facilities, personnel and finances to conduct instruction in recognized courses as required by 8 C.F.R. § 214.3(e)(1).

The petitioner files a timely appeal with additional evidence.

The issue to be determined in this case is whether the petitioner has established that it meets the eligibility requirements of 8 C.F.R. §§ 214.3(b) and (e)(1) as they relate to the qualifications of the petitioner's facilities, teaching staff, and finances.

The regulation at 8 C.F.R. § 214.3(e), provides the following:

> (1) Eligibility. 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;
>
> *(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.

[Emphasis added].

In order to establish each of these requirements, the regulations require supporting documentation to be submitted depending upon the type of school seeking approval (e.g.; public vs. private schools, vocational, language school, etc.).

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

(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.

[Emphasis added].

Although the petitioner has submitted evidence of membership in the American Massage Therapy Association (AMTA), such membership does not demonstrate that the petitioner has been accredited by a nationally recognized accrediting body. Therefore, the petitioner, as a private, non-accredited school, must submit a catalogue or written statement as cited above.

On appeal, the petitioner submits a drawing of its facilities, evidence related to the qualifications of eight instructors, a balance sheet and budget projection, and an inventory list. We find the evidence submitted on appeal does not satisfy the regulatory requirements.

First, the petitioner fails to provide evidence to establish the salaries of its teachers. Second, the balance sheet and budget projection do not satisfy the regulation which requires a certified copy of accountant's last statement of school's net worth, income, and expenses.

Moreover, although not specifically noted in the district director's decision, the petitioner also failed to provide any evidence related to its grading policy, and the amount and character of supervisory and consultative services available to students and trainees, all of which are required by 8 C.F.R. § 214.3(b).

Without sufficient evidence to establish its personnel, finances, and facilities, the petitioner does meet the requirements of 8 C.F.R. § 214.3(c). Therefore, the petitioner cannot establish eligibility under 8 C.F.R. § 214.3(e).

Beyond the decision of the district director, we note that in order to complete all of the required clock hours for the petitioner's program, a student must complete 100 hours of "clinical practices." This requirement is incompatible with 8 C.F.R. § 214.2(m)(14) which states that practical training may only be authorized *after* completion of the M-1 nonimmigrant student's course of study. Regardless of whether the petitioner's students are being paid, the regulations do not permit an M-1 nonimmigrant student to undertake any practical training until the course of study has been completed. As the petitioner's program would cause an M-1 nonimmigrant student to fall out of lawful status, we cannot approve such a program for attendance by M-1 nonimmigrant students. Thus, the petition would be denied for this additional reason were it not already denied for failure to establish the eligibility under 8 C.F.R. § 214.3(e).

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.

ORDER: The appeal is dismissed.