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FILE: SFR 214F 01666 Office: SAN FRANCISCO, CALIFORNIA Date: FEB 15 2005

IN RE: Petitioner:

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:



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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 (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The record reflects that the petitioner in this matter, the University of Northern California, is a private school established in 1993. The school offers bachelor, master, and doctorate level degrees. The petitioner declares an enrollment of approximately 46 students per year with 12 instructors. As indicated on the petitioner's Student and Exchange Visitor Information System (SEVIS) petition, the petitioner seeks continuation of approval for attendance by F-1 nonimmigrant students as required by 8 C.F.R. § 214.3(h)(1). The petitioner received its original approval on April 28, 1995.

The district director determined that the petitioner failed establish it has the necessary facilities, personnel, and finances to demonstrate eligibility under 8 C.F.R. § 214.3(e). The district director further noted that the petitioner was not accredited and that its degrees were not recognized, and determined the petitioner failed to establish that its credits have been and are accepted unconditionally by at least three institutions of higher learning.

On appeal, the petitioner submits a brief accompanied by additional evidence.

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;
- (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 mandate the submission of specific supporting documentation depending upon the type of school seeking approval (e.g., language schools, public schools vs. private schools, and elementary and secondary schools vs. schools of higher education).

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

Any other petitioning school shall submit 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.

The record contains evidence that the California Bureau for Private Postsecondary and Vocational Education (BPPVE) granted the petitioner approval to operate and indicated specific approval for the following programs<sup>1</sup>:

Bachelor of Arts in Applied Linguistics  
Bachelor of Arts in Chinese  
Bachelor of Engineering: Biomedical Engineering  
Bachelor of Science in Optical and Photonic Engineering  
Master of Arts in Applied Linguistics-Concentration in TESOL  
Master of Business Administration  
Master of Science in Biomedical Engineering  
Master of Science in Optical and Photonic Engineering  
Master of Science in Systems Engineering  
Ph.D. in Biomedical Engineering  
Certificate in English as a Second Language

As this approval from the state of California satisfies the requirement of certification by the appropriate licensing or approving official, the district director did not take issue with such approval.

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

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<sup>1</sup> The courses of study for which the petitioner seeks approval on the SEVIS Form I-17 are consistent with the programs approved by the BPPVE.

Given that the petitioner is a private institution and has provided no evidence that it has been accredited by a nationally recognized accrediting body,<sup>2</sup> 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.

In his decision, the district director noted that the petitioner failed to provide “instruction in all the courses of study for which [it was] approved,” and concluded that the petitioner “does not have the necessary facilities and personnel to provide instruction in the courses of study that are offered.” The district director further determined that the “tuition revenue for 2002 does not reflect the tuition for 46 annual students as indicated” on the petitioner’s application.

On appeal, the petitioner states that “[n]o institution, regardless of its prestige, size, or resources, offers every course during every academic period.” The petitioner further argues, “the fact that the University has broad authority to offer certain programs and degrees in no way obligates it to offer all of those programs and degrees at any point in time, or for that matter, at all.”

We agree with the petitioner and find the district director’s conclusions to be erroneous. Although the petitioner is not permitted to enroll students in programs that have not been approved by the BPPVE, once approved, there is no requirement that the petitioner offer every course and program each academic period. While we note the district director’s concern that the petitioner may not be maintaining appropriate standards by not offering all programs during each academic period, we find such concern to be unwarranted. The fact that the petitioner’s approval must be renewed by the BPPVE on a continual basis means the petitioner must maintain the appropriate standards in order to secure continued approval.

The petitioner further argues that the district director “draws a faulty conclusion when it reasons that the [petitioner] does not have sufficient finances to conduct instruction based on the observation that ‘tuition revenue for 2002 does not reflect the tuition for 46 annual students as indicated on [the University’s application].’” The petitioner states:

There is no obligation that an institution generate sufficient tuition revenue to meet its operating needs. Indeed, reducing reliance on tuition revenue is the goal of every college and university . . . The [d]ecision does not challenge the sufficiency of the University’s revenue base, which is heavily subsidized by gifts and grants; rather, it calculates total student tuition revenue and concludes that the institution could not be financially responsible at that level. Of course that is correct, *were the tuition the principal or even a significant source of such support* . . . The University is fortunate to have substantial

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<sup>2</sup> 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/admins/finaid/accred/accreditation.html#Overview> (01/31/05). 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.

sources of support from non-tuition sources. Together with a very significant unrestricted fund balance (in excess of \$4 million) it is very much able to pay the costs of providing its students with a quality postsecondary education.

The petitioner submits financial statements and tax returns to support its contention that it has the requisite finances. In this instance, we find the evidence in the record sufficiently demonstrates the petitioner has established it has the requisite finances.<sup>3</sup>

The section of the California Education Code relevant to the approval of institutions that offer degrees as private postsecondary schools is section 94900. Section 94900 states, in pertinent part:

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

The [BPPVE] shall not issue an approval . . . until it has conducted a qualitative review and assessment of, and has approved, each degree program offered by the institution, and all of the operations of the institution, and has determined all of the following:

- (1) The institution has the facilities, financial resources, administrative capabilities, faculty, and other necessary educational expertise and resources to ensure its capability of fulfilling the program or programs for enrolled students.
- (2) The faculty are fully qualified to undertake the level of instruction that they are assigned and shall possess degrees or credentials appropriate to the degree program and level they teach and have demonstrated professional achievement in the major field or fields offered, in sufficient numbers to provide the educational services.
- (3) The education services and curriculum clearly relate to the objectives of the proposed program or programs and offer students the opportunity for a quality education.
- (4) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.
- (5) The program of study for which the degree is granted provides the curriculum necessary to achieve its professed or claimed academic objective

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<sup>3</sup> We note that the first time the petitioner mentions a deficiency regarding the petitioner's finances is in the denial. Although the record contains two requests for evidence, dated August 8, 2003 and December 24, 2003, respectively, neither request mentions the petitioner's finances. However, as we have determined the petitioner has established it has the necessary finances, there is no reason to further discuss this error.

for higher education, and the institution requires a level of academic achievement appropriate to that degree.

- (6) The institution provides adequate student advisement services, academic planning and curriculum development activities, research supervision for students enrolled in Ph.D. programs, and clinical supervision for students enrolled in various health profession programs . . .

(b) The approval process shall include a qualitative review and assessment of all of the following:

- (1) Institutional purpose, mission, and objectives.
- (2) Governance and administration.
- (3) Curriculum.
- (4) Instruction.
- (5) Faculty, including their qualifications.
- (6) Physical facilities.
- (7) Administrative personnel.
- (8) Procedures for keeping educational records.
- (9) Tuition, fee, and refund schedules.
- (10) Admissions standards.
- (11) Financial aid policies and practices.
- (12) Scholastic regulations and graduation requirements.
- (13) Ethical principles and practices.
- (14) Library and other learning resources.
- (15) Student activities and services.
- (16) Degrees offered.

The requirements for approval specified by the BPPVE for approval are more stringent and specific than those required by 8 C.F.R. § 214.3(e). Given that the BPPVE is an agency whose specific function is to determine institutional eligibility, we find the BPPVE is in a better position to evaluate the petitioner's eligibility as a whole. In granting the petitioner its approval to operate, the BPPVE has evaluated the petitioner's facilities, financial resources, faculty and adequacy of the petitioner's advisement services and found them to meet the BPPVE's standards.

Accordingly, we find that the information contained in the record related to the petitioner's finances, staff, and facilities, combined with the statement of the BPPVE that its approval was based on a determination that the petitioner "meets the minimum standards for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement" satisfies the remaining documentary requirements of 8 C.F.R. § 214.3(b). Such information further demonstrates that the petitioner possesses the necessary facilities, teaching staff, and finances required under 8 C.F.R. § 214.3(e)(iii) to conduct instruction in recognized courses.

The remaining issue is whether the petitioner has satisfied the regulation at 8 C.F.R. § 214.3(c) which states, in pertinent part:

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.

In his decision, the district director states, “a ‘recognized’ degree is one issued by an accredited institution.” As the petitioner has not shown such accreditation, the district director then required a showing that the petitioner’s credits have been and are unconditionally accepted by at least three institutions of higher learning.

On appeal, the petitioner states the district director’s “reasoning fails because it is premised upon an erroneous, unworkable interpretation of the phrase ‘recognized degree’ as used in the regulations.” Though the regulation provides no definition for the term “recognized,” we agree with the petitioner that the district director’s decision draws an impermissible interpretation of the regulation. For the district director to interpret a “recognized” degree to mean a degree issued by an accredited institution renders the reference to “a school accredited by a nationally recognized accrediting body” in 8 C.F.R. § 214.3(b)(2) meaningless. The clause cited above, related to institutions of higher education, is grounded in the premise that the petitioning institution is neither public nor accredited.

In this instance, we find that because the petitioner’s programs have been evaluated by the BPPVE and approved as degree granting programs, the petitioner’s degrees are recognized. Given this determination we will not address the remaining issue of whether the petitioner has submitted evidence that its credits have been and are accepted unconditionally by at least three such institutions of higher learning.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. That burden has been sustained in this case. Accordingly, the decision of the district director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.