U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

APR 09 2003

File: LOS 214F 1922 Office: LOS ANGELES, CALIFORNIA Date:

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:

SELF-REPRESENTED

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Students (Form I-17) was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded for entry of a new decision.

The petitioner in this matter, [redacted] is a private, elementary school. The petitioner was established in September 1966. The school declares an average enrollment of 400 students with 23 teachers or instructors. The petitioner seeks approval for attendance by F-1 nonimmigrant academic students. The petition was filed on August 12, 2002.

The district director denied the petition, finding that the petitioner failed to submit any evidence as required by 8 C.F.R. § 214.3(b). The district director further found that the petitioner failed to submit evidence to demonstrate that it qualifies graduates for acceptance by schools of a higher educational level as required by 8 C.F.R. § 214.3(c). The district director found that the petitioner failed to submit evidence to establish that the school satisfies the State of California compulsory education requirements as stated in 8 C.F.R. § 214.3(c). The district director further found that the petitioner did not submit sufficient evidence to establish that it is an established institution of learning, that it is a bona fide school, that it is engaged in instruction or that it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses. The district director determined that the petitioner failed to submit evidence to establish that the school complies with state, county, local laws and ordinances governing health, safety, fire standards, business licensing, and zoning requirements applicable to private schools.

On appeal, the petitioner school submits a statement and additional documentation.

8 C.F.R. § 214.3(b) specifies required supporting evidence, in pertinent part, as follows:

> 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. . . . A charter shall not be considered a license, approval, or accreditation. 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).

8 C.F.R. § 214.3(e)(1) provides that 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.

Pursuant to 8 C.F.R. § 103.2(b)(8), where the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Bureau shall request the missing initial evidence, and may request additional evidence. Here, the district director did not provide the petitioner an opportunity to submit missing initial evidence to satisfy these requirements. Instead, the district director simply denied the application. The district director's action was fundamentally unfair to the applicant.

Accordingly, the district director's decision will be withdrawn and the case remanded to him so that he may review the record as it is presently constituted, and request any additional evidence deemed necessary to assist him in determining whether the requirements set out at 8 C.F.R. § 214.3(e)(1) and 8 C.F.R. § 214.3(b) and (c) have been met. Specifically, the district director should provide the petitioner an opportunity to submit evidence that the petitioner's graduates have been accepted by either public high schools or high schools accredited by a nationally recognized accrediting body. The district director should specifically request that the petitioner submit a certified copy of an accountant's last statement of the school's net worth, income and expenses.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for action consistent with the above discussion and entry of a new decision,

which if adverse to the petitioner, is to be certified to the AAO for review.