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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LOS 214F 1901 Office: LOS ANGELES, CA Date: JAN 10 2003

IN RE: Petitioner: [redacted]

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

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Form I-17 reflects that the petitioner in this matter, the Pasadena International Music Academy, is a private institution. The school offers vocational, language and postsecondary education. The school declares an enrollment of 20-50 students with 3-8 instructors. The petitioner seeks approval for attendance by M-1 nonimmigrant vocational students and by F-1 nonimmigrant academic students. There is no indication in the record that the school has ever been approved for attendance by nonimmigrant vocational students in the past.

The district director denied the petition, finding that the petitioner failed to provide the Service with sufficient evidence regarding the vocational or professional qualifications of the teaching staff, the teachers' salaries, and the amount and character of supervisory and consultative services available to students and trainees, and the school finances. The district director found that the petitioner failed to submit evidence that the school has state approval for its language training program and failed to provide sufficient evidence that its courses are accepted as fulfilling the requirements for the attainment of an educational, professional or vocational objective and that its courses are not avocational or recreational in character. In addition, the district director determined that the petitioner failed to provide evidence that the school is an established institution of learning or other recognized place of study as required under 8 C.F.R. 214.3(e). The district director noted that the school failed to submit evidence that the school has been in operation for two years, with approval from the State of California, prior to the filing of the I-17 petition. The district director noted that the school failed to establish that it is a bona fide school, and that it possesses the necessary personnel and finances to conduct instruction in recognized courses and is, in fact engaged in instruction in those courses. The district director concluded that the petitioner failed to provide sufficient detail to substantiate whether or not it offers sufficient class hours, per week, for an M-1 student to maintain a full course of study.

The owner of the school timely filed a Form I-290B Notice of Appeal indicting that he would submit additional documentation. The petitioner provided the Service with sufficient evidence regarding its teaching staff's qualifications and salaries, the amount and character of supervisory and consultative services available to students and trainees, and the school's finances.

The first issue in this proceeding is whether the petitioner has established eligibility for approval for attendance by M-1 nonimmigrant students.

In order to establish eligibility for approval for attendance by nonimmigrant students under section 101(a)(15)(M)(i) of the Act, a petitioner must satisfy each of several eligibility requirements.

According to 8 C.F.R. 214.3(e), there are four eligibility requirements.

> 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.

The district director determined that because the petitioner failed to submit evidence that the school had been in operation for two years with approval from the State of California prior to the filing of the I-17 petition, the petitioner had failed to establish that it is an established institution of learning.

The record shows that the petitioner filed the I-17 petition on March 19, 2002 and received course approval from the State of California on October 17, 2000, fourteen months earlier. The school has been in operation since January 1, 1998.

The statute and regulations are silent as to what constitutes an "established institution of learning." According to an internal memorandum,[1] an established institution of learning is one that has been in operation for two years with state approval. The memorandum does not preclude the Service from determining that an unaccredited institution is established if it has been in operation for less than two years, because the more narrow construction would constitute impermissible rulemaking. The memorandum's author undoubtedly intended to give guidance and illustration of what would constitute an established institution of learning. In the instant case, the petitioner has shown that it is operational; it has faculty on staff instructing students. Furthermore, the petitioner provided the Service with a copy of course approval from the State of California Bureau for Private Postsecondary and Vocational Education. The petitioner has met his burden of proof in establishing that it is an "established institution of learning."

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

The second issue in this proceeding is whether the petitioner offers sufficient class hours for an M-1 student to maintain a full course of study.

8 CFR 214.2(m)(9) states, in pertinent part:

> A *full course of study* . . . means -
>
> * * *
>
> (iii) Study in a vocational or other nonacademic curriculum . . . 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 . . . .

The petitioner provided the Service with a list of its programs of study with respective required class and lab hours. None of the programs require 18 hours a week of classroom instruction or 22 hours of lab work per week. The petitioner has failed to overcome the district director's objections.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.