

Subject	Date
Revised School Approval Policy and Procedures	JAN 14 1994

To

- All Regions (SAFOS)
- All District Directors
- All Service Center Directors
- All Officers in Charge
- All Port Directors

From

Office of  
Operations

THIS MEMORANDUM SUPERSEDES ALL PREVIOUSLY ISSUED GUIDELINES/POLICY WITH REGARD TO 8 CFR § 214.3 INCLUDING OPERATIONS INSTRUCTIONS (OIS) AT 214.3 (b) (5) (i-iii) and (b) (9) (I).

Summary: Effective October 1, 1993, the Department of Education is no longer reviewing Forms I-17, Petition for Approval of School for Attendance by Nonimmigrant Students, pursuant to a final rule published on October 29, 1993 in 58 *Federal Register*, p. 58098 (to be codified at a CFR § 214.3(c)). The following detailed procedural guidelines are being disseminated in conjunction with additional reference materials in order to facilitate Service processing of Forms I-17. They are organized as follows:

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## I. INTRODUCTION:

(A) Implementation of revised policies and procedures: 8 CFR § 214.3(c) has been revised to remove the provision for Department of Education consultation for individual schools and emphasize the importance of additional evidence in I-17 adjudications. Currently, Headquarters Adjudications (MQADN) is reviewing all policies, regulations and procedures pertaining to school approvals in light of Service-wide resource constraints in preparation for publication of a new proposed rule. HQADN feels confident that with sufficient guidance and support, Service officers can process I-17s smoothly and efficiently without advisory opinions from the Department of Education.

Until a final rule takes effect, the modifications detailed below are expected to streamline and standardize I-17 adjudications without placing additional burdens on Service adjudications' resources. As part of this policy memorandum, local offices are being provided with copies of relevant reference and training materials including a directory of accredited postsecondary education institutions<sup>1</sup> which by definition meet the eligibility requirements at § 214.3(e) (i)–(iii). In addition, I-17 adjudications are expected to be part of future Journeyman Immigration Examiner and Field Examiner training.

(B) Background: Dating from 1965, the existing school approval process was designed to ensure that the petitioning school would provide instruction suitable to the needs of foreign students, and that it would act in accordance with the regulations at 8 CFR when admitting and advising foreign students. Currently, there are over 28,000 campuses approved for attendance by F-1 and/or M-1 nonimmigrant students. In FY 1993 alone, the Service received almost 2,000 new petitions for school approval. Each of these required an average of 2.85 hours Service officer time, and many required Department of Education review.

Historically, Department of Education reviews were based on the guidelines at 8 CFR § 214.3, and were designed to serve as only one factor among many to be considered in the adjudicative process. Although these reviews were a good indication of whether or not a petitioning school provided suitable instruction, they were never intended to supersede comprehensive adjudication by a Service officer. By 1993, however, the combination of new and expanded statutory requirements imposed on the Department of Education by the Higher Education Amendments of 1992, generally increasing workload, and staffing limitations forced the Department of Education to reexamine their responsibility and basic mission. As a result, the Department of Education decided to discontinue the individual review of school petitions submitted by the Service.

## II. MEETING THE ELIGIBILITY REQUIREMENTS:

(A) Types of institutions which may be considered for approval: Because only those types of institutions listed in § 214.3(a) may be considered for approval, a petition must state clearly that the petitioner falls within one of the categories so listed. This is accomplished by either submitting a cover letter stating that the petitioning school seeks approval as a particular type of institution, or checking the appropriate combination of questions on Form I-17 (i.e., questions 5, 14, and 16). When afforded the opportunity, Service officers should encourage the prospective petitioner to include a cover letter because the current version of Form I-17 is confusing in this regard.

A petition that does not clearly identify the category, indicates eligibility in more than one category, or indicates eligibility to enroll a classification of students for which it is not eligible (e.g., a vocational school

seeking to enroll F-1s) should be returned with a request that the petitioner pick one category and submit the evidence required for that category.<sup>2</sup> A postsecondary institution which operates a high school and seeks approval for both postsecondary and high school students must submit two separate petitions but only one fee. If the resubmitted petition does not clearly indicate the category at § 214.3(a) under which it seeks approval, it should be denied because only institutions of the types so listed may be approved for admission of F-1 and/or M-1 students.

(i) Categories of F-1 schools: The Department of Education has advised the Service of the following general distinctions among institutions listed at § 214.3(a) (i):

(1) For both “a college or university, i.e., an institution of high learning which awards recognized bachelor’s, master’s, doctor’s or professional degrees” and “a community college of junior college which provided instructional in the liberal arts or in junior college which provides instruction in the liberal arts or in the professions and which awards recognized associate degrees” the distinguishing factor is the award of “recognized” degrees.

(a) For purposes of the I-17 adjudication process, a “recognized” degree is one which is awarded by an “accredited” institution or program that has been reviewed by the appropriate agency or association and found to meet certain standards; such an agency or association must itself be “nationally recognized” by the Secretary of Education as a reliable authority on the quality of instruction in question.

(b) Evidence of accreditation may take the form of either a listing in a current published directory such as the “Higher Education Directory” or “Accredited Institutions of Postsecondary Education: Programs and Candidates” or a notarized copy of the accreditation approval notice. Whether an accrediting agency or association has been so recognized by Secretary of Education may be verified by checking the current version of “Nationally Recognized Accrediting Agencies and Associations” (updated every two years by the Department of Education).

(2) A “seminary” generally trains priests, ministers, or rabbis and awards a degree or certificate.

(3) A “conservatory” is a school of music or dramatic art which awards a degree or certificate.

(4) An “academic high school” (usually grades 9–12) provides college preparatory instruction.

(5) An “elementary school” (grades K–8, and sometimes 9) includes lower, middle and junior high schools.

(6) An “institution which provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines” encompasses programs which are primarily academic but may have a secondary emphasis on career training, including those at Montessori training academies, certain business schools, and some computer programming (not technology) programs. Such institutions may award a certificate or unrecognized degree. However, if the degree awarded is recognized (i.e., the school is accredited), the school should seek approval as an institution of high learning under (II) (A) (i) (1) above.

(ii) Categories of M-1 schools: The Department of Education has advised the Service of the following general distinctions among institutions listed at § 214.3(a) (ii):

(1) For a “community college or junior college which provides vocational or technical training and which awards recognized associate degrees” the distinguishing factor is the award of “recognized” degrees as per (II) (A) (i) (a) & (b) above; such training usually leads to a job rather than a bachelor’s degree program.

(2) A “vocational high school” (grades 9 or 10–12) provides instruction in the trades or technical occupations.

(3) A “school which provides vocational or nonacademic training other than

language training” encompasses programs which are primarily career-oriented but may have a secondary emphasis on basic academic subjects. They are often “proprietary” or private for-profit educational concerns (e.g., food service management institutes, religious schools other than seminaries, acting or drama schools other than conservatories, flight/pilot schools, hair styling academies, secretarial schools, acupuncture schools, computer technology institutes). Such institutions may award a certificate or unrecognized degree.

(iii) Fields of study: The Department of Education has advised the Service of the following general distinction among fields of study mentioned in § 214.3 (a):

(1) The “liberal arts” are those fields of study of general cultural concern such as literature, philosophy, history and, in some cases, theology.<sup>3</sup>

(2) The “fine arts” are those which exist chiefly for beauty rather than utility, such as music, sculpture, and painting (as opposed to photography which is usually taught as a technical skill unless in conjunction with a degree in fine arts).

(3) The term “profession” includes but is not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries (Immigration and Nationality Act § 101(a) (32)).

(4) The terms “vocational” and “technical” relate to training in a trade, technique, or mechanical or industrial skill.

(B) Supporting documents at § 214.3(b): A petition must be submitted with all supporting documentation required by § 214.3(b) and any additional evidence specified in § 214.3(c) (revised as of October 1993) to prove that the school qualifies for approval pursuant to § 214.3(e). If the petition is practically complete (e.g., missing only one required document), it may be returned with a specific request for additional documentation. A petition which is missing more than one documentary requirement or has already been returned once for insufficient documentation and still is incomplete should be denied pursuant to a CFR § 214.3(e) because the petitioner would have failed to establish that it meets the criteria specified for eligibility.

(i) Evidentiary requirements according to school category: The following are reviewed in the order each appears in § 214.3.

(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” must submit a certification to that effect signed by the appropriate public official who must also certify that s/he is authorized to provide such certification. A “private or parochial elementary or secondary school or school system” must meet the requirements of the State or local public educational system and must submit a certification to that effect signed by the appropriate public official who must also certify that s/he is authorized to provide such certification. Both these certifications may take the form of a state license or approval.<sup>4</sup> Such schools may also be accredited. However, accreditation may not be substituted for the required certifications.

(2) All other schools (except as noted in (a) and (b) directly below) must be licensed, or approved or accredited and submit a certification to that effect signed by the appropriate official who must also certify that s/he is authorized to provide such certification. A charter is not a license, approval or accreditation. A petition which does not include a certification of licensure, approval, or accreditation should be denied pursuant to § 214.3(b).

(a) In lieu of such certification, a school (other than a flight/pilot school) which offers courses recognized by a state educational authority as appropriate for study by veterans under the provisions of a 38 U.S.C. § 3675 and 3676 may submit a statement of recognition for specific programs signed by the appropriate public official who must also certify that s/he is authorized to do so. The statement of recognition must be for the same program(s) listed on Form I-17.

(b) Flight/pilot schools must be licensed or approved by the state and approved by the Federal Aviation Administration (FAA). In certain cases, the state license/approval will be

issued by the transportation, not the education, agency. In all states, FAA approval will take the form of an “air agency certificate” and must include a list of authorized courses, instruction ratings, and flight hours, and an attachment certifying approval pursuant to 14 CFR Part 141.<sup>5</sup> Flight schools may also be accredited. However, accreditation may not be substituted for state licensure/approval and FAA approval.

(ii) Submission of catalogue and/or written statement: All petitioning schools, except as provided in § 214.3(b) (1), (2), and (3) (i.e., 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, a school accredited by a nationally recognized accrediting body, or a secondary school operated by or as part of a school so accredited) must submit a catalogue and/or written statement with the following information:

- (1) size of physical plant (e.g., description of school buildings and grounds);
- (2) nature of facilities for study and training (e.g., number and size of classrooms, size of library and number of volumes it contains, specialized facilities such as laboratories, and practice rooms);
- (3) educational, vocational, or professional qualifications of the teaching staff (e.g., resumes or curriculum vitae);
- (4) salaries of the teachers (i.e., specific salaries or hourly rates of pay);
- (5) attendance and scholastic grading policy (e.g., when a student’s enrollment is terminated for failure to attend classes, when a student is placed on academic probation);
- (6) amount and character of supervisory and consultative services available to students and trainees (e.g. faculty to student ratio, office hours, counseling services, tutoring and mentor programs);
- (7) current finances, including a copy of accountant’s last statement of school’s net worth (i.e., the difference between assets and liabilities), as well as total income and expenses certified to be true and correct either by the accountant or by the owner of the petitioning institution).<sup>6</sup>

(C) Other evidence at § 214.3(c): The Department of Education has advised the Service that certain categories of institutions must submit evidence in addition to that described above.

(i) A vocational, business, or language school, or American institution of research recognized as such pursuant to 8 CFR 5 316.20 must submit evidence that its courses of study fulfill the appropriate educational, professional, or vocational objective and are not avocational or recreational in character. Evidence of accreditation is sufficient to meet this requirement. Otherwise the following documents must be submitted:

(1) For institutions seeking F-1 approval and vocational schools which award recognized associate degrees: letters from at least three accredited institutions attesting that graduates from the petitioning institution have been and are accepted unconditionally. Such letters must state the name of the petitioning school, the name of its graduate(s), date of enrollment, and the new program(s) into which the graduate(s) has (have) been accepted; or

(2) For all other institutions seeking M-1 approval: letters from at least three employers attesting that recent graduates of the petitioning 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 s/he graduated, and dates of employment with the firm. Letters from graduates who are self-employed are not acceptable.

(ii) A postsecondary institution neither publicly owned and operated nor accredited must submit evidence that it credits have been and are accepted unconditionally by at least three accredited institutions of higher education. The following documents meet this evidentiary requirement:

(1) For institutions seeking F-1 and/or M-1 approval, letters on institutional letterhead from at least three accredited institutions attesting that the accredited institution unconditionally

accepts and has accepted credits from the petitioning institution. Such letters must state the name of the petitioning school, the name of its graduate(s), date of enrollment at the accredited institution, and the program(s) in which the petitioner's graduate(s) enrolled at the accredited institution; or

(2) Evidence that the institution or program has established satisfactory assurance of accreditation from the appropriate accrediting body.<sup>7</sup>

(iii) An elementary or secondary school that is neither publicly owned and operated, nor owned and operated by an accredited postsecondary institution must submit evidence that attendance satisfies the compulsory attendance requirements of the state in which it is located and that graduation from the petitioning school qualifies students for acceptance by schools of higher educational level which are either publicly owned and operated, or accredited, or owned and operated by an accredited institution. The following documents satisfy this requirement:

(1) A certificate of accreditation or approval from the appropriate local educational agency, if such an agency is required by the State to approve private schools through an on-site team visit using local or State approved standards (see footnote #4); or

(2) A certificate of accreditation or successful evaluation by an organization holding membership in the Council for American Private Education (1726 N St., NW, Washington, DC 20036; tel. 202-659-0016), or the American Association of Christian Schools (PO Box 2189, Independence, MO 64055; tel. 816-795-7709, fax, 816-795-7462); and

(3) Letters on institutional letterhead from at least three institutions of higher educational level which are either publicly owned and operated, or accredited, or owned and operated by an accredited institution attesting that graduates from the petitioning institution have been and are accepted unconditionally.

### III. ADJUDICATION OF THE PETITION BY THE SERVICE.

(A) Eligibility Requirements: Once the school has submitted a complete application, the Service officer must determine whether or not it meets the four criteria for approval at § 214.3(e).

(i) Bona fides (§ 214.3(e) (i)–(iii)): The Department of Education has advised the Service that publicly owned and operated schools and those accredited by a nationally recognized accrediting agency meet these first three criteria by definition. All other schools must satisfy the following criteria:

(1) “Bona fide school” (§ 214.3(e) (i)): For purposes of I-17 approval, this means an institution which provides an educational program. A “school” which merely gives credit for instruction provided by other schools or for accomplishments such as “life experience” would not be considered to be providing an educational program. Nonaccredited schools can meet this criterion by submitting the evidence under (II) (c) (i), (ii), or (iii) above.

(2) “Established institution of learning or other recognized place of study” (§ 214.3(e) (ii)). Nonaccredited schools must have been in operation and enrolling students for at least two years or have established satisfactory assurance of accreditation from the appropriate accrediting body (cf. footnote #7).

(3) “Necessary facilities, personnel, and finances to instruct in recognized courses leading to an educational, vocational, or professional objective” (§ 214.3(e) (iii)). Nonaccredited schools may meet this requirement by submitting the evidence required under (II) (B) and (C) (i), (ii), or (iii) above.

(ii) Engagement in instruction (§ 214.3(e) (iv)): All schools petitioning for approval must demonstrate that they are actually engaged in instruction of the courses listed on the I-17. This can be determined by comparing the information on the institution's courses of study and the number of students currently enrolled with the information provided on Form I-17 (i.e., questions #19 and #22). For example, if a school offering a certificate in English for Business Purposes indicates that the average number of classes is 10 and the average number of students is 100, but in reality it regularly offers only one beginning English course with 10 students and 1 teacher, then the school cannot be considered to be “engaged” in the

instruction for which approval is sought. Institutions which fail to demonstrate that they are engaged in the instruction described on the petition should be denied pursuant to § 214.3(e) (iv).

(B) Interview and/or site visit: Although it is not always necessary to interview an authorized representative of a petitioning school, there are times when an interview and even a site visit are appropriate especially if the school is neither publicly owned and operated, nor accredited, nor owned and operated by an accredited institution. Service officers are encouraged to visit the premises of a petitioning school as their time permits, or to request a formal investigation of the petitioning school by a Field Immigration Examiner. The findings of any interview/site visit/investigation must be documented for the petition record.

(C) Full course of study requirements: In addition to the eligibility criteria at § 214.3(e), Service officers must take into consideration the requirement that nonimmigrant F-1 and M-1 students pursue a full course of study. This is most commonly an area of concern with petitions from language schools and schools offering only night classes. A school which does not provide sufficient class hours to enable students to meet the requirements at § 214.2(f) (6) and (m) (9) is ineligible for approval.

(D) Approval of the petition: A school approved for attendance by nonimmigrant students is notified using Form I-516 and sent copies of the necessary forms. However, some of the forms listed on the current I-516 are no longer in use, or have been superseded by other forms. Until the I-516 is revised, Service Officers should annotate the I-516 as per the attached sample before sending it to the school. At a minimum, the notice of approval should include a copy of the attached Federal regulatory resource list, a phone number for designated school official contact, and information regarding local liaison (e.g., scheduled days/hours for DSO liaison, walk-in EAD issuance, etc.).

(E) Denial of the petition: When notifying a petitioner of a denial, Service officers must give the reason(s) for the denial, cite the relevant provision of law, and notify the petitioner of his/her right to appeal to the Administrative Appeals Unit.

(F) Filing of the petition: The approved petition should be alpha-filed with all supporting documentation separately from other Service files in an area easily accessible by the appropriate Service officer. The carbon copies of Forms I-17, I-17a and, if appropriate, I-17b should be sent to the Service Data Processing Center (PO Box 140, Highway 25 South, London, KY 40741). Petitions which are denied should also be alpha-filed but should not be sent to the Service Data Processing Center.

James A. Puleo  
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Operations

Enc. [not reprinted here]

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<sup>1</sup> For purposes of the school approval process the term “postsecondary institution” refers to any institution which requires a high school diploma or its equivalent for admission, similar to “institution of higher education” at § 214.3(c), and “institution of higher learning” at § 214.2(f) (6) (ii) but not at § 214.3(a) (2) (A) which covers only those schools which award a bachelor’s or higher degree.

<sup>2</sup> A school seeking approval for attendance by both F-1 and M-1 students should indicate only one category under each classification, e.g., an institute which offers an associate degree in the professions and a certificate in vocational training.

<sup>3</sup> Please note that “Ph.D.” is the abbreviation for Doctor of Philosophy; thus a Ph.D. in Philosophy is a “Doctor of Philosophy in Philosophy.”

<sup>4</sup> State laws governing schools vary greatly (e.g., most states require compliance with compulsory

attendance regulations; others also require compliance with health, safety, and fire codes). It is up to Service officers to consult with the appropriate state educational authority to determine the format for such certifications (i.e., is it in the form of a license or approval?).

<sup>5</sup> Please note that a review of financial resources is not part of the FAA approval process.

<sup>6</sup> If it is unclear from the statement of finances whether the school has sufficient resources to operate as a bona fide educational institution, additional information (such as financial statements or income tax returns from prior years of operation) may be requested in order to provide an indication of year-to-year stability and/or profitability. Please note, however, that businesses in the start-up years or during a period following the change of ownership/management often do not generate great (if any) profits.

<sup>7</sup> Often referred to as “preaccreditation” or “candidate for accreditation” status, such assurance is only available from a very limited number of nationally recognized agencies (see “Nationally Recognized Accrediting Agencies and Associations”).