



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 02 2014** Office: VERMONT SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the field of education. The petitioner, a public charter school, seeks to employ the beneficiary in the position of teacher for middle grade math for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has extraordinary ability in the field of endeavor, which has been demonstrated by sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation. Specifically, the director determined that the evidence submitted did not satisfy the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the director's denial involves misinterpretation and misapplication of the law and facts, and that the evidence establishes the beneficiary's eligibility under at least three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner submits an appeal and additional evidence in support of the appeal.

For the reasons discussed below, the AAO will uphold the director's decision and dismiss the appeal.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of a qualified alien who:

has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim . . . and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the lower standard for the arts).

In a policy memorandum, the legacy Immigration and Naturalization Service (INS) emphasized:

It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession. The O-1 classification is substantially higher than the old H-1B prominent standard. Officers involved in the adjudication of these petitions should not "water down" the classification by approving O-1 petitions for prominent aliens.

Memorandum, Lawrence Weinig, Acting Asst. Comm'r., INS, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

- (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

The decision of U.S. Citizenship and Immigration Services (USCIS) in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg at 41820.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach set forth in a 2010 decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her

achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The AAO finds the *Kazarian* court's two part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In the present matter, the petitioner has submitted evidence pertaining to several of the evidentiary criteria, but has not established that the beneficiary has risen to the very top of her field or that she has achieved sustained national or international acclaim. 8 C.F.R. §§ 214.2(o)(3)(ii) and (iii).

II. Discussion

The sole issue to be addressed is whether the petitioner established that the beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The beneficiary is a native and citizen of the Philippines who was last admitted to the United States in H-1B status as a secondary math teacher at [REDACTED]. The petitioner, an elementary and secondary public charter school, filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to employ the beneficiary as a math teacher for middle grades. The record consists of: the Form I-129 petition and supporting evidence, the director's request for evidence and the petitioner's response; the director's decision; and the petitioner's appeal and supporting evidence. The AAO has reviewed the evidence of record in its entirety in reaching its decision.

A. The Beneficiary's Eligibility under the Regulatory Criteria

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulations cite to the Nobel Prize as an example of a major award. *Id.* The petitioner does not claim that the beneficiary can meet this criterion.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8

C.F.R. § 214.2(o)(3)(iii)(B). The petitioner has claimed eligibility under all eight criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1)-(8).¹ Each criterion will be discussed below.

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), the petitioner submitted evidence establishing that the beneficiary has received numerous prizes or awards from the [REDACTED]. In particular, the petitioner emphasized the beneficiary's award for Outstanding Science Teacher, Division Level, on May 22, 2004.² Other prizes or awards the beneficiary has received include: a Certificate of Appreciation for her nomination as a division entry to the regional search for the Most Outstanding Science Club Advisor in 2001; [REDACTED] for Modules Prepared/Tried Out at the Regional Science and Technology Day in 2006; Certificate of Recognition for Most Creative Teacher of the Science and Technology Department of [REDACTED] in 1998; Certificate of Recognition for Supportive Teacher of the Science and Technology Department of [REDACTED] in 1998; and numerous awards recognizing the beneficiary as a coach/advisor for winning students at student science contests.

With respect to the beneficiary's award for Outstanding Science Teacher, Division Level, the petitioner submitted documentation from the [REDACTED] program are given at a national level, as well as at a department/regional level. The petitioner also submitted documentation from the [REDACTED], indicating that the competition for the Outstanding Science Teacher award is made at three levels: school, division, and regional, with regional being the highest level.

In the denial, the director determined that the awards or prizes the beneficiary has received from the Philippines [REDACTED] are regional awards, and do not rise to the level of national or international recognition.

On appeal, the petitioner asserts that the [REDACTED] program is "a national program [that sets] the standards and criteria to qualify for the Outstanding Science Teacher Awards." The petitioner states: "Although they are given for each region but the criteria is national in scope. This being said, the Outstanding Science Teacher recognitions of [the beneficiary] is considered national level or scope [sic]."

¹ Specifically, in the initial documentation, the petitioner claimed eligibility under the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (2), (4), (5), (6), and (7). In response to the RFE, the petitioner claimed eligibility under all eight criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1)-(8). On appeal, the petitioner claims eligibility under the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (4), (7), and (8).

² The petitioner asserted that the beneficiary was also recognized as Outstanding Science Teacher on December 16, 2005, but submitted no identifiable evidence of this award. The AAO observes that the letter from [REDACTED] I, states only that the beneficiary was adjudged the Division Winner for Outstanding Science Teacher in 2004.

Upon review, the AAO concurs with the director that the awards or prizes the beneficiary has received from the [REDACTED] are regional in scope, and do not rise to the level of “nationally or internationally recognized prizes or awards” as required by the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

In particular, while certain awards under the [REDACTED] program are awarded at the national level, the beneficiary’s award for Outstanding Science Teacher, Division Level, is a regional level award, in which she placed at the second highest level (division level). The petitioner submitted no evidence to establish that the beneficiary’s award for Outstanding Science Teacher, Division Level, is recognized beyond the regional department which presented the award. Notably, the letter from [REDACTED] Supervisor, Department of Education, Region I, states that the beneficiary’s award for Outstanding Science Teacher, Division Level, gave her “the chance to participate in the National Search for Outstanding Teachers like the [REDACTED].” The fact that a national award is given for Outstanding Teachers underscores the regional nature of the beneficiary’s award for Outstanding Science Teacher, Division Level. While the AAO acknowledges that [REDACTED] is a national program, the national scope of the overall program does not equate to evidence that every department/regional level award or prize given under the [REDACTED] program is “nationally or internationally recognized.”

The petitioner failed to establish that the beneficiary’s other awards from the [REDACTED] rise to the level of “nationally or internationally recognized prizes or awards” as required by the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). As such, the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) has not been met.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields.

In the denial, the director determined that the petitioner failed to establish that the beneficiary’s memberships in the [REDACTED] and the [REDACTED] Advisors, among others, require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

On appeal, the petitioner does not contest or even address the director’s finding with respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). Therefore, the AAO considers the petitioner’s claim of eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) to be abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation

In the denial, the director determined that the petitioner did not submit sufficient evidence meeting the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). Specifically, the director noted the petitioner’s failure to

establish that the instructional materials the beneficiary constructed were published in professional or major trade journals.

On appeal, the petitioner does not contest or even address the director's finding with respect to this criterion. Therefore, the AAO considers the petitioner's claim of eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) to be abandoned. *Id.*

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought

As evidence under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), the petitioner submitted evidence that the beneficiary was a panelist during the 2004 and 2005 Division Level Science Fair, Quiz and Sci-Dama, Elementary Level. In addition, the petitioner asserted that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) because she has been "sought out to consult, advise and act as a coach by fellow teachers." The petitioner elaborated that the beneficiary has mentored both students and colleagues in various settings and competitions, including the mentoring of her colleague [REDACTED] in constructing instructional materials that won a division competition. The petitioner submitted evidence that the beneficiary was a Master Teacher I of the [REDACTED] [REDACTED] was to mentor colleagues in the construction of instructional materials, including [REDACTED] whose instructional materials won the division level of the Regional Science Quest and Festival.

In the denial, the director determined that the evidence was insufficient to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). With respect to the beneficiary's participation in school science fairs, the director determined that the beneficiary was not "evaluating the work of others in her field but rather the work of students." The director acknowledged the beneficiary's Master Teacher I designation, but determined that it was not evidence of outstanding accomplishments.

On appeal, the petitioner emphasizes that the beneficiary has participated as a judge of the work of other teachers because she has been sought out to consult, advise, and act as a coach of other teachers.

Upon review of the record, the AAO finds that the petitioner failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). Although the petitioner emphasizes the beneficiary's role as a mentor, advisor, and coach of other teachers, the AAO cannot conclude that the term "judge" includes informal instances of mentorship, consultation, and advice among colleagues. The petitioner provided no legal authority to support this broad interpretation of the term "judge." As the petitioner does not contest or address the director's finding regarding the beneficiary's participation as a panelist in student science fairs on appeal, the AAO finds this particular claim to be abandoned. *Id.*

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), the petitioner asserted that the beneficiary has significantly contributed to the field "by being a resource speaker, organizer, coordinator, director, facilitator or member of the working committee of several seminar workshops to help new educators learn new thrusts

and strategies in teaching and in laying the foundation for the future of young educators in the Philippines.” In addition, the petitioner asserted that the beneficiary’s instructional materials constitute original contributions to the field, including an Algebra 1 lesson plan module that was distributed to teachers in [REDACTED]. The director determined that the submitted evidence was insufficient to establish eligibility under this criterion.

On appeal, the petitioner does not contest or even address the director’s finding with respect to this criterion. Therefore, the AAO considers the petitioner’s claim of eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) to be abandoned. *Id.*

Evidence of the alien’s authorship of scholarly articles in the field, in professional journals, or other major media

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6), the petitioner submitted copies of instructional materials the beneficiary has created and used by local school districts. In the denial, the director determined that these instructional materials do not constitute evidence of scholarly articles in the field, in professional journals, major trade publications, or other major media.

On appeal, the petitioner does not contest or even address the director’s finding with respect to this criterion. Therefore, the AAO considers the petitioner’s claim of eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(6) to be abandoned. *Id.*

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), the petitioner asserted that the beneficiary performed in an essential and critical role at [REDACTED], by elevating the school’s standing in Algebra 1 in the District. The petitioner also asserted that the beneficiary “will continue to perform at such a level” with the petitioning school. The petitioner made no assertions regarding the beneficiary’s capacity or role in any other organizations or establishments.

In the denial, the director observed that the petitioner failed to establish how the beneficiary’s development of lesson plans establishes that she has risen to a more critical or essential capacity than other teachers performing in the same field in other school districts. Furthermore, the director determined that the petitioner did not submit evidence establishing the beneficiary was employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

On appeal, the petitioner emphasizes that the beneficiary “has been employed in a critical or essential capacity at [REDACTED] an established organization that is considered as a low performing school.”

Based on the evidence in the record, the petitioner has failed to establish the beneficiary’s eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The plain language of the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) requires the beneficiary to have been employed in a critical or essential capacity for “organizations and establishments that have a *distinguished reputation* (emphasis added).” The petitioner has conceded, and the evidence in the

record affirms, that [REDACTED] is a “low performing school.” In this light, the petitioner has not explained or established how [REDACTED] can be considered an establishment with a “distinguished reputation.” Because the petitioner has failed to establish this element, the AAO need not reach the issue of whether the beneficiary’s role at [REDACTED] was in a critical or essential capacity.

The petitioner’s speculation as to the beneficiary’s future capacity for the petitioning school is insufficient to meet the plain language of the criterion, which requires evidence that the beneficiary “*has been employed* in a critical or essential capacity for organizations and establishments that have a distinguished reputation (emphasis added).” Overall, the petitioner failed to establish eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8), the petitioner initially asserted that the beneficiary’s position as Master Teacher I “commands a high salary as compared to other teachers in the Philippines.” The petitioner provided evidence that the beneficiary’s salary as Master Teacher I was PHP 169,176. The petitioner has not asserted that its proffered wage to the beneficiary of \$38,465 per year is high.

In the denial, the director noted that PHP 169,176 equates to USD \$3,926, and noted the petitioner’s failure to submit documentation establishing that the beneficiary’s salary is considered high.

On appeal, the petitioner states that the beneficiary’s salary of PHP 169,176 “is comparably high for teachers and even other occupations in the Philippines” and is “one of the highest” within the payroll of teachers at [REDACTED]. The petitioner asserts that the director erred by considering the beneficiary’s salary in U.S. standards, and asserts that “remuneration [*sic*] must be compared to others similarly situated in the alien’s home country and should not be analyzed on the international scale.” In support of the appeal, the petitioner submits a document from the Philippines Department of Budget and Management listing the 2006 salary of all personnel at [REDACTED]. This document reflects, with respect to teacher salaries at [REDACTED] that the salary of the Head Teacher VI was the highest at PHP 190,092, followed by five Master Teachers II at PHP 179,328, thirteen Master Teachers I (including the beneficiary) at PHP 169,176, seven Head Teachers III at PHP 159,500, one Head Teacher I at PHP 142,044, thirty-seven Teachers III at 134,004, one Teacher II at PHP 124,420, and sixty-three Teachers I at PHP 119,268.

Upon review of the record, the petitioner failed to establish that the beneficiary’s salary of PHP 169,176 can be considered a high salary. While the petitioner submitted evidence establishing that the beneficiary’s salary of PHP 169,176 was above average compared to all teacher salaries at [REDACTED], the petitioner provided no evidence to establish that the beneficiary’s salary was considered high beyond this particular high school. Notably, the petitioner’s salary at [REDACTED] was exceeded by the salaries of a Head Teacher VI and five Master Teachers II.

The petitioner asserted that PHP 169,176 is “comparably high for teachers and even other occupations in the Philippines,” but provided no evidence of the average salary of teachers and other occupations in the Philippines to corroborate its assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec.

158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The AAO observes the evidence in the record reflecting that, by an 1978 executive order of the President of the Republic of Philippines, 15,000 Master Teacher I positions were initially created for elementary school teachers. For Master Teachers II, III, and IV positions for elementary schools, and all Master Teachers positions for secondary schools, an unidentified number of positions would be subsequently created. The evidence also reflects the four different levels of Master Teachers as Master Teacher I, II, III, and IV, in order of lowest to highest level. The evidence indicates that Master Teachers in each different level are compensated uniformly at a rate corresponding to the different levels of Principals I, II, III, and IV. Additionally, the AAO observes that the beneficiary's salary at [REDACTED] was exceeded by a Head Teacher VI. Based on this evidence, the record suggests that the beneficiary's salary was, at the minimum, equal to the salaries of 15,000 other Master Teachers I in the country, and was exceeded by the salaries of all Master Teachers II, III, and IV, and all Head Teachers VI in the country. Thus, in the absence of other evidence, the record does not support the conclusion that the beneficiary's salary of PHP 169,176 received as Master Teacher I can be considered a high salary.

Furthermore, the AAO observes the article "Literacy Training for Elementary Teachers Sought," published in *The Manila Times*, which discusses the "meager salary of schoolteachers" in the Philippines. This article undermines the petitioner's claim that the beneficiary's salary was "high" when compared to other occupations in the Philippines."

In light of the above, the petitioner has not established that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

B. Summary

The petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that she meets at least three of the eight categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 214.2(o)(3)(iii). Therefore, the proper conclusion is that petitioner has failed to satisfy the regulatory requirement of three types of evidence.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under at least three of the criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Therefore, the AAO will not conduct a final merits determination.³

³ The AAO maintains *de novo* review. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding on motion or as a result of litigation, the AAO maintains the jurisdiction to conduct a final merits determination as the official who made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). See also Section 103(a)(1) of the Act; Section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii)(2003); *Matter of Aurelio*, 19 I & N Dec. 458, 460

III. Conclusion

The petitioner has shown that the beneficiary is a talented teacher who has won the respect of her employers, colleagues, and students. The record, however, stops short of elevating the beneficiary to the level of an alien who has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 101(a)(15)(O)(i) of the Act. The petition may not be approved.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

(BIA 1987)(holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).