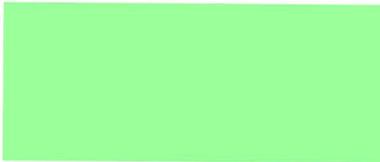




U.S. Citizenship  
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Services

(b)(6)

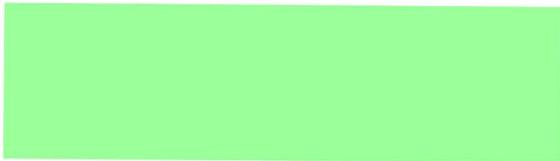


DATE: **SEP 08 2014** Office: VERMONT SERVICE CENTER FILE:

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 Acting Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office ("AAO") on appeal. We will dismiss the appeal.

The petitioner, a flight training school, filed this petition seeking to classify the beneficiary as an O-1B 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 arts. The petitioner seeks to employ the beneficiary in the position of Assistant Chief Flight Instructor for a period of three years.

After issuing a request for evidence (RFE) and then considering the evidence of record, the director denied the petition. First, the director determined that the beneficiary is not involved in a creative activity or endeavor that would qualify under the regulatory definition of arts. Second, the director found that the petitioner did not establish that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director determined that the petitioner did not establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), and submitted evidence to satisfy only one of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), of which three must be met to establish eligibility.

On appeal, the petitioner asserts that sufficient evidence establishes the beneficiary's distinction in the field and that the director erred in her application of the regulations and her analysis of the evidence in this case. The petitioner has not submitted further evidence in support of the appeal.

### I. The Law

Section 101(a)(15)(O)(i) of the Act provides classification to 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, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

In the case of the arts, the term "extraordinary ability" means "distinction" or "a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts." Section 101(a)(46) of the Act; 8 C.F.R. § 214.2(o)(3)(ii).

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

*Evidentiary criteria for an O-1 alien of extraordinary ability in the arts.* To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

- (A) Evidence that the alien has been nominated for, or the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- (B) At least three of the following forms of documentation:
  - (1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
  - (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
  - (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
  - (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
  - (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
  - (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or
- (C) If the criteria in paragraph (o)(3)(iv) 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.

## II. Discussion

### A. The Field of Arts.

The petitioner claimed eligibility under the evidentiary criteria for aliens of extraordinary ability in the "arts" at 8 C.F.R. § 214.2(o)(3)(iv), and asserted that the beneficiary meets the standard of "distinction," pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii). The director determined that the petitioner did not establish that the beneficiary is involved in a creative activity or endeavor, such that he might qualify under the "distinction" standard for the arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines the term arts:

*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

The regulations prescribe different evidentiary criteria and standards of review for aliens of extraordinary ability in the arts versus in education. 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 Fed. Reg. 41818, 41819 (Aug. 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the "distinction" standard for the arts).

Although the petitioner asserts that the beneficiary should be evaluated based upon the standard applicable to those engaged in a creative activity or endeavor, the petitioner's description of the beneficiary's job duties demonstrates that the beneficiary is engaged, as a flight instructor, in the field of education. The petitioner indicates on the Form I-129 that the beneficiary's duties will be to

“[p]repare students to achieve airline flight licenses.” In the petitioner’s letter dated January 6, 2014, the petitioner states it wishes to hire the beneficiary as an Assistant Flight Instructor to direct the flight instructor programs at its [REDACTED] Texas facility.

As discussed in more detail below, while flight instructors for stage, film, and television productions may be considered to be engaged in the field of the arts for the purposes of the O-1 classification, flight instructors at flight training schools are more appropriately classified as educators in the field of education. The petitioner has indirectly acknowledged this more appropriate classification when, in response to the director’s request for further evidence (RFE), it submitted salary information for Vocational Education Teachers, Postsecondary, as evidence in relation to others in the beneficiary’s field.

On appeal, the petitioner asserts that “the profession of flight instructing is in the field of the arts,” because “the federal regulation [at 8 C.F.R. § 214.2(o)(3)(ii)] explicitly lists the profession of flight master as well as other professions involving instruction and training.” While there may be instances in which a flight instructor seeks to enter the United States to provide services in the field of the arts, rather than in the field of education, the nature of the intended events or activities in the United States is critical in determining whether the beneficiary is entering the United States to provide services in the field of education or in the field of the arts. Notably, “flight masters” are included in a list of stagecraft and related occupations filled by “essential persons” supporting “principal creators and performers.” While the petitioner emphasizes the arts on appeal, the petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as an alien with extraordinary ability in the arts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). Where, as here, a petitioner seeks to employ a beneficiary as an instructor at a flight training school preparing students to obtain their airline flight licenses, extraordinary ability in the arts is not the applicable standard. Instead, based on the petitioner’s description of the job duties, the beneficiary is engaged, as a flight instructor, in the field of education.

#### B. Extraordinary Ability in the Arts.

Despite this finding that the beneficiary is not engaged in the field of arts, the director appropriately reviewed the petition according to the classification requested on the Form I-129. USCIS will only consider the visa classifications that the petitioner annotates on the petition. The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc. v. Chertoff*, 286 Fed. Appx. 963, 2008 WL 2743927 (9th Cir. July 10, 2008).

The issue to be addressed is whether the petitioner submitted evidence to establish that the beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). After careful review of the record on appeal, we conclude the petitioner has not established eligibility for the O-1 classification.

### 1. Consideration of the Evidentiary Criteria

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will have submitted the requisite initial evidence for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes. The petitioner asserts that the beneficiary received the Federal Aviation Administration's (FAA) [REDACTED], which it contends is a "significant national or international award or prize" comparable to an Academy Award or Grammy Award. Upon review, the evidence of record does not establish eligibility pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A).

First, although not discussed by the acting director, the submitted evidence is insufficient to establish the beneficiary's actual receipt of this award. Specifically, the petitioner did not submit primary evidence of the award, i.e., a copy of the actual award/certificate. 8 C.F.R. § 103.2(b)(2). The petitioner did not explain why it did not submit a copy of the award/certificate, or why such evidence was not available. *Id.* 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). While there is a logo on the photocopy of the beneficiary's license, it is not a color copy; thus, the color is not apparent. In addition, any words associated with the logo are not legible.

Second, even assuming the petitioner had submitted such primary evidence, the record contains insufficient evidence regarding the extent to which the nominees or winners of such awards are recognized beyond the issuing body. For example, the winners and nominees of Emmy and Grammy awards receive significant national and international media attention as the result of their recognition, and the awards themselves are considered among the highest achievements attainable in the performing arts.

In response to the RFE, the petitioner submitted an article titled "[REDACTED]" from the [REDACTED] 1965 issue of the [REDACTED]. The article states that "[a]ctive flight instructors with outstanding records are now being recognized by the Federal Aviation Agency with certificates bearing [REDACTED]" The article further states that, upon applying in person with documentation, the certificates are being "issued automatically upon request" to each flight instructor who:

- (1) Holds a commercial pilot certificate with an instrument rating.
- (2) Holds a ground instructor certificate with a (sic) least an advanced ground school rating.
- (3) Has attended a flight instructor clinic since the last time his flight instructor certificate was issued or reissued.

- (4) Has trained and recommended at least 10 successful applicants for certificates or ratings within the previous 24 months.

The article also states that the purpose of the [REDACTED] rating is, “both to identify instructors who have outstanding qualifications and to motivate others to improve their qualifications.”

The petitioner provided a written advisory opinion and four testimonial letters which, in part, discuss the significance of the [REDACTED] award. The petitioner provided a written advisory opinion from [REDACTED], who states that he has been awarded the [REDACTED] award. He discusses the qualifications for the [REDACTED] as follows:

To be awarded the [REDACTED], a Pilot must have accomplished 2 years of full time instructing and shown a superb command of flying procedures and techniques. The performance of the students has to be at least 80% “first time pass rate” at the final tests with more than 10 students per year.

He states that the beneficiary “exceeded this performance with over 92% pass rate and 20 students per year.”

In a letter, Mr. [REDACTED], who was the beneficiary’s supervisor at the petitioning company, states that the beneficiary received the [REDACTED] “[b]ecause of his exemplary record.” He notes that according to the FAA, “[f]light instructor certificates bearing [REDACTED] are issued to flight instructors who have maintained a high level of flight training activity and who meet special criteria.” In a letter, [REDACTED] the beneficiary’s acquaintance since 2005, states that the beneficiary “quickly obtained the FAA [REDACTED] . . . having a great number of US and International students getting their licenses without failing any flying test.”

Mr. [REDACTED] the petitioner’s chief flight instructor, states that the beneficiary’s [REDACTED] certificate “means that [the beneficiary’s] pass rate with students is exceptional.” In a letter, Mr. [REDACTED] the beneficiary’s acquaintance since 2006, calls the [REDACTED] flight instructor certificate, “the highest certificate for flight instructing.” He states that this “extraordinary achievement” makes the beneficiary “one of the best flight instructors in the U.S.”

The above testimonial evidence alone does not provide sufficient context in which to evaluate the significance of the award. The published material about the seal dates from 1965 and the petitioner did not document that the standards for the seal remain the same. Without documentation to provide additional context regarding the [REDACTED] within the scope of the beneficiary’s profession, the record does not establish that the beneficiary’s award in the field is regarded as comparable to, for example, an Academy or Grammy award in the performing arts. Rather, even assuming that the 1965 document represents current standards, the seal is a credential the beneficiary earned after meeting specific competency standards. It is the petitioner’s burden to establish how the submitted evidence establishes eligibility under the regulatory criterion. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. As such, the petitioner has not established that the beneficiary has won or been

nominated for a significant national or international prize or award that would qualify for him for O-1 status under 8 C.F.R. § 214.2(o)(3)(iv)(A).

Accordingly, the petitioner must establish the beneficiary's eligibility under at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), or, if these criteria do not readily apply to the beneficiary's occupation, submit comparable evidence under 8 C.F.R. § 214.2(o)(3)(iv)(C). The submission of evidence relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

At the time of filing, the petitioner claims to have met the criteria listed at 8 C.F.R. § 214.2(o)(3)(iv)(B) subparagraphs (3), (5), and (6).<sup>1</sup> In denying the petition, the acting director determined that the evidence submitted met one of the six evidentiary criteria. After careful review of the record and for the reasons discussed herein, the petitioner has not established eligibility under any of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B).

*Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.*

The acting director determined that the petitioner did not establish eligibility for this criterion. The petitioner did not contest the findings of the acting director for this criterion or offer additional arguments on appeal. Therefore, the petitioner abandoned this issue. *See 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) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Based on the foregoing, the petitioner has not established eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

*Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.*

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<sup>1</sup> We will not discuss the remaining criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), (2), (4) in this decision.

The acting director found in favor of the petitioner on this criterion. For the reasons discussed below, the evidence of record does not establish that the beneficiary has received significant recognition for achievements in the arts. Therefore, we will withdraw the acting director's finding. We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In a peer advisory letter, [REDACTED] president and owner of [REDACTED] states that the petitioner's qualifications are "very impressive." He notes that the beneficiary "successfully obtained all FAA licenses, which allow him to fly the Single and Multi-Engine airplanes in all weather conditions."

Mr. [REDACTED], captain for a cargo airline, was the beneficiary's supervisor at the petitioning company. He states that the beneficiary's background is unique in that the beneficiary holds both an FAA Flight Instructor certificate and a European Aviation Safety Agency (EASA) Airline Transport Certificate, and that the beneficiary was "instrumental in developing an EASA training course for the petitioner, while serving as senior flight instructor."

Mr. [REDACTED], FAA Master Pilot and FAA Designated Pilot Examiner, state that he has known the beneficiary "for at least four years while examining Flight Students at [the petitioning entity.] He states that he has examined many of the beneficiary's students, "ranging from a Private Pilot to Airline Transport Pilot." He says that the beneficiary's students were always very well prepared, "and therefore had a very low failure rate."

Mr. [REDACTED] an airline captain, states that he has known the beneficiary since 2005, and is "witness of the outstanding achievements in his aviation knowledge and career both as a pilot or flight instructor."

Mr. [REDACTED] the petitioning company's chief flight instructor, states that he has known the beneficiary since 2006 as a student, employee and friend. He describes the beneficiary as a "very accomplished young professional and had already received his Airline Transport License (ATP), which is the highest license a pilot can achieve." He also describes him as a "role model employee" and "inspiring pilot students."

Mr. [REDACTED] an acquaintance of the beneficiary's since 2006, states that the beneficiary's technical preparation is "impressive and outstanding." He describes the beneficiary as "an extraordinary flight instructor with an excellent reputation for achievements and safety in general." He also notes that the beneficiary "holds the highest flight certificate, the Airline Transport Pilot license."

All of the letters are authored by business associates, except for the peer advisory letter from Mr. [REDACTED] which does not state how he became aware of the petitioner's reputation. While the authors of the letters speak highly of the beneficiary, the letters do not recognize him for any specific or significant achievements in the arts.

These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert

testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of achievements in the field that one would expect of a flight instructor who has achieved a reputation as leading, well-known or outstanding in the field. Such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

Furthermore, regarding the [REDACTED] which the petitioner claims was received by the beneficiary, the petitioner has not provided confirmation of the beneficiary's receipt of the award, and has not provided a persuasive explanation or documentation with respect to the significance of this award in the beneficiary's field. As such, we have no basis on which to conclude that such award would constitute a "significant recognition for achievements." Based on the foregoing, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

*Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence*

The petitioner's employment contract with the beneficiary indicates he will receive an annual salary of \$75,000. In the request for evidence issued on February 18, 2014, the director observed that no evidence was submitted to establish that this is a high salary for an assistant chief flight instructor position in the United States. In response, the petitioner submitted national earnings data pertaining to seven assistant chief flight instructor positions for the period from 2007 to 2012, as reported on the website [www.salarylist.com](http://www.salarylist.com) (accessed on February 21, 2014).<sup>2</sup>

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<sup>2</sup> The petitioner also submitted salary information for Vocational Education Teachers, Postsecondary in the Arlington, Texas area, from the Foreign Labor Certification Online Wage Library, [www.flcdatcenter.com](http://www.flcdatcenter.com) (accessed on February 21, 2014.) However, this documentary evidence does not pertain to the beneficiary's occupation as a chief assistant flight instructor, and thus does not satisfy the plain language of the regulation at 8 C.F.R. 214.2(o)(3)(iv)(B)(6), which requires that the beneficiary has or will command a high salary "in relation to others in the field." Cf. *Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); cf. also *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The petitioner emphasized that the median salary of assistant chief flight instructors is \$53,695. The median salary, alone, is insufficient, as the petitioner must establish, through the submission of corroborating evidence, that the beneficiary will earn a “high salary” or “significantly high remuneration” in relation to others in the field. Upon review, the salaries relied upon by the petitioner as bases of comparison were several years old at the time of filing. According to this information, the highest salary paid for such position was \$62,400 annually in 2010. Assuming that the beneficiary’s salary will be \$75,000 per year as stated on the Form I-129, based on the data cited by the petitioner, the petitioner has not established that this salary is considered high in relation to others in the field during the same period. In the alternative, the petitioner has not provided any evidence of prior earnings received by the beneficiary and appropriate salary and wage data for comparison purposes. Accordingly, the petitioner has not established that the beneficiary meets the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iv)(B)(6).

*If the criteria in paragraph (o)(3)(iv) 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*

On appeal, for the first time, the petitioner asserts that the petitioner’s evidence under (iv)(A) should also be considered under the “comparable evidence” provision at 8 C.F.R. § 214.2(o)(3)(iv)(C). In particular, the petitioner asserts that the beneficiary’s claimed receipt of the FAA’s [REDACTED] should be considered comparable evidence.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) provides that an alien of extraordinary ability in the arts must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of receipt of a major internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), or by submitting evidence to satisfy at least three of the six forms of documentation set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides “[i]f the criteria in paragraph (o)(3)(iv) of the section do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence in order to establish the beneficiary’s eligibility.” It is clear from the use of the word “must” in 8 C.F.R. § 214.2(o)(3)(iv) that the rule, not the exception, is that the petitioner is required to submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner’s burden to explain why the regulatory criteria are not readily applicable to the beneficiary’s occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) through (6).

The petitioner does not specifically state that the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B) are not readily applicable to the beneficiary’s occupation. The petitioner states, “USCIS arbitrarily failed to consider the [REDACTED] as comparable evidence of prominence in the field.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for O-1 classification in the beneficiary’s occupation as a flight instructor cannot be established by submitting documentation relevant to at least three of the six criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). In fact, as indicated in this decision, the petitioner specifically indicated at filing that it was submitting evidence of receipt of a major internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), and relating to three of six criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B).

An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the beneficiary's occupation.

Where an alien is simply unable to meet or submit documentary evidence meeting three of these criteria, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) does not allow for the submission of comparable evidence. Moreover, the petitioner has not demonstrated that a credential that the FAA issues automatically upon application and documentation that the applicant meets certain competency standards is comparable to the other evidentiary criteria.

Based on the foregoing, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iv)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, the petitioner has not established that the beneficiary is eligible for classification as an alien with extraordinary ability in the arts. For this additional reason, the petition may not be approved.

### III. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he shows that we abused our discretion with respect to all of our enumerated grounds. *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).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.