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U.S. Department of Justice  
Immigration and Naturalization Service

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

[REDACTED]

File: EAC 00 244 52437 Office: VERMONT SERVICE CENTER Date: 4 - APR 2002

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

[REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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

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

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

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Weimann*  
Robert P. Weimann, Director  
Administrative Appeals Office

APR0402-0135703

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a beauty shop. It seeks to employ the beneficiary permanently in the United States as a hairstylist. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director determined the petitioner had not established that it had the financial ability to pay the beneficiary's proffered wage as of the filing date of the visa petition.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's filing date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is December 24, 1997. The beneficiary's salary as stated on the labor certification is [REDACTED] per hour or [REDACTED] per annum.

Counsel submitted copies of the beneficiary's W-2 Wage and Tax Statement which showed he was paid \$10,000 in 1997 and \$21,320.00 in 1998, and a copy of the petitioner's Form 1120 U.S. Corporation Income Tax Return for fiscal year October 1, 1997 through September 30, 1998. The federal tax return reflected gross receipts of \$74,332, gross profit of \$74,332, compensation of officers of \$8,190; salaries and wages paid of \$18,990; depreciation of \$5,086; and a taxable income before net operating loss deduction and special deductions of \$1,898. Schedule L reflected total current

assets of \$3,923 in cash and total current liabilities of \$1,981.

The director noted that the evidence submitted was insufficient to establish the petitioner's ability to pay the proffered wage at the time of filing and continuing until the present. The petition was denied accordingly.

On appeal, counsel submits a copy of the petitioner's Form 1120 U.S. Corporate Income Tax Return for fiscal year October 1, 1998 through September 30, 1999 which reflects gross receipts of \$81,607; gross profit of \$81,607; compensation of officers of \$10,920; salaries and wages paid of \$21,320; depreciation of \$5,086; and a taxable income before net operating loss deduction and special deductions of \$4,856. Schedule L reflected total current assets of \$510 in cash and total current liabilities of \$2,580.

On appeal, counsel argues that "[i]t must be considered that the beneficiary only earned \$10,000 over a three (3) month period because of the fiscal year of the petitioner begins October 1. If one prorates that figure are over a full year there is enough money to pay the salary in question."

A review of the federal tax return for fiscal year October 1, 1997 through September 30, 1998, shows that when one adds the depreciation, the taxable income, and the cash on hand at the end of the year (to the extent that assets exceeded liabilities), the result is \$10,907. This amount along with the wages earned by the beneficiary in 1997 of \$10,000 are enough to pay the proffered wage from the priority date of 12/24/97 through the end of that year.

A review of the federal tax return for fiscal year October 1, 1998 through September 30, 1999, shows that when one adds the depreciation and the taxable income, the result is \$9,942. This amount along with the wages earned by the beneficiary of \$21,320, is more than enough to pay the proffered wage.

Accordingly, after a review of the federal tax return, it is concluded that the petitioner has established that it had sufficient available funds to pay the salary offered at the time of filing of the petition and continuing to present.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

**ORDER:** The appeal is sustained.

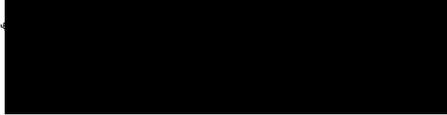


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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: [Redacted] Office: Vermont Service Center

Date: 4 - APR 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

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FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center. On the basis of further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on July 27, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner serves as a project director for Excel Technologies and as a project manager/computer specialist for the Mel McLaughlin Company. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director has not disputed that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In accordance with the above, the benefit that the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). The labor certification process exists because protecting the jobs and job opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. An alien seeking an exemption from the job offer requirement must present a national benefit so great as to outweigh the national interest inherent in the labor certification process.

In a letter accompanying the initial petition, counsel states that the petitioner serves the national interest through "his highly-trained and accomplished expertise in the always-changing and fast-growing world of computers."

Along with documentation pertaining to various projects, the petitioner submits several witness letters. Mel McLaughlin, President of the Mel McLaughlin Company, indicates that the petitioner is responsible for the company's computer technology infrastructure. Mel McLaughlin describes the nature of his business and the petitioner's role in the company's projects:

The company is currently engaged in the construction and modernization of several low cost housing, schools, buildings and hospital projects, both public and private ventures, throughout the states of Maryland, Virginia and the District of Columbia. Mel McLaughlin Co. uses state-of-the-art computerized estimating and project management systems to enhance its supervision of projects and service capabilities.

As the company's backlog of work grew, McLaughlin Co. expanded into other fields, including structural repairs to the eastbound span of the Bay Bridge in Maryland, and the repair and restoration of the Pentagon North Formal Parade Ground in Washington, D.C. The company was also able to obtain and successfully execute contracts for several governmental agencies including the U.S. Postal Service, Department of Housing and Urban Development, and Veterans Administration.

In all these projects [the petitioner's] role is vital. He is the one who designs, develops implements and executes the high-tech computer infrastructure. Since he joined our company in April 1997, he has already shown his knowledge and ability to solve complex technical situations. His constant desire of searching and acquiring the newest computer

device is also known. Thanks to him, most of our projects involving high-tech work are considered state-of-the-art ventures.

The most recent projects in which [the petitioner] has participated are:

**Smart Housing:** It is a total solution concept to information system, construction design and computer integration. This includes a high speed Internet access allowing users research information in less time, while digital data transfers lets users send files, photos, designs, videos, voice and faxes anywhere in the world without transmission errors. This is the house of the future.

**Modernization of Schools:** Towson High School in Baltimore, MD is one example how modern computer technology is working in the benefit of education. It is estimated that the faculty and staff members, and more than 4,000 students have benefited from this and other projects. Teachers and students can simultaneously log onto the Internet and surf all the knowledge of the world.

**From Welfare to Work:** Mel McLaughlin Co., in joint venture with other five companies, is committed to providing training to welfare recipients from the Empowerment Zones and placing them in appropriate jobs. This program is also designed to benefit the unemployed, underemployed, unskilled, uneducated and individuals with obsolete training.

The letter describes the petitioner's "participation" in the projects, but offers no specific information detailing the petitioner's own individual contributions. Nothing in Mel McLaughlin's letter suggests that the petitioner, as an individual, has made a significant contribution to his field of endeavor. The petitioner may have benefited various projects undertaken by his employer, but his ability to impact the field beyond his company's projects has not been demonstrated.

In his letter, Perry Carter, Project Leader for NiTEL Corporation, describes consulting services that the petitioner provided to NiTEL. NiTEL is the prime contractor for Telework.net, a telecommuting program designed for public, private and non-profit organizations. NiTEL sets up Telework.net centers throughout the country, allowing individuals to work closer to their homes. Perry Carter describes the petitioner's knowledge as a tremendous asset during NiTEL's launch of its prototype telecommuting center in Prince George's County, Maryland. He states that the petitioner coordinated "research and development activities for deployment of local and wide area network infrastructures." He also notes that the petitioner's expertise in computers and networking allowed NiTEL to demonstrate competency to its clients. While the petitioner has participated to some degree in NiTEL's success, it has not been demonstrated how his role as a consultant for a telecommuting site contractor significantly impacted the nation's economy or telecommunications field.

Henry Harris, President of Spirit Communications, describes the petitioner as a "highly skilled

technical specialist.” The petitioner assists Spirit Communications in integrating computer telephony equipment together. Henry Harris states that the petitioner “understands the complex processes involved integrating voice and data, video and audio and document imaging.” He adds that the petitioner’s expertise has allowed the company to “complete work in a timely manner.” He also states: “Computer telephony, when applied to healthcare, improves the delivery of healthcare.” Henry Harris then discusses how telemonitoring hospital patients and videoconferencing surgical operations benefit the national economy. It has not been established, what role, if any, the petitioner played in introducing these technologies. It is not even clear that the petitioner has worked on these specific projects. Mere association with a given project hardly demonstrates that an individual’s contributions warrant the special benefit of a national interest waiver.

Lawrence Alli, the petitioner’s colleague at Excel Technologies, has worked with the petitioner over the last five years in the area of hardware and software integration. He credits the petitioner with developing Healthcare Telematics, a project supporting the information and exchange between medical and health units. Lawrence Alli alleges that this system provides improved healthcare delivery and reduces transportation costs. He also speculates that the system reduces the cost of malpractice insurance and could save “\$150 million yearly.” However, there is no evidence to support these claims. The petitioner has not provided financial statements or letters from healthcare providers confirming these assertions from his fellow colleague.

Atcerera, Inc. is “a wholly owned company of the NiTEL Corporation.” Roland Liverpool, Site Manager for Atcerera, describes his company as “a telecommuting work center and neighborhood computer and information technology center providing computer training, products and services to residential customers and the small office/home office business community.” Roland Liverpool indicates that the petitioner’s expertise in computers and telecommunications has assisted Atcerera in developing smart housing for Federal Empowerment Zones, Welfare to Work Program training, and basic computer training. He then discusses the various benefits of these programs such as improved economic development in distressed city neighborhoods and increasing the tax base through helping individuals on public assistance obtain employment. These benefits, which impact the users of Atcerera’s services, are a result of the company’s efforts. It appears that the petitioner’s function was limited to providing computer and networking advice for company operations.

The petitioner also provides letters from his former employer, Cooperative Investment Corporation, and a former client. These letters affirm the petitioner’s competence in telecommunications, computer technologies and software applications, but limit the petitioner’s impact to the services he performed for their businesses.

In regards to the petitioner’s ability to serve the national interest, the above witness letters focus not on the petitioner’s own contributions, but the overall importance and potential of the various projects for which he provides computer and telecommunication services. The implication is that, because these projects such as smart housing and Welfare to Work training programs improve the economy, anyone well-qualified to work on any aspect of these projects

automatically serves the national interest. The above letters do not indicate that the petitioner is responsible for any significant advances in the telecommunications field, or that his work is viewed as particularly important outside of his employers.

The letters submitted by the petitioner are all from his colleagues, employers, or customers. These individuals describe the petitioner's skills as a telecommunications/computer specialist, but offer no evidence of his specific achievements and contributions having a potential to impact the United States. The witness letters essentially limit the petitioner's benefit to telecommunications projects involving his employers and clients. The petitioner has failed to demonstrate how his influence as a project manager/director, which appears limited to the various local projects in which he participates, benefits the national interest.

We note that the record reflects little formal recognition or awards for the petitioner's work in his field, arising from various groups taking the initiative to recognize the petitioner's contributions, as opposed to private letters solicited from selected witnesses expressly for the purpose of supporting the visa petition. Independent evidence from outside the petitioner's employers and clients which would have existed whether or not this petition was filed is more persuasive than subjective statements from individuals with an expressed interest in the petitioner's continued employment and involvement in various projects.

The director determined that the petition had been approved in error. On September 22, 1998, the director advised the petitioner of the Service's intent to revoke the approval of the petition. In response, counsel argues that the petitioner's work does not merely benefit his employer, but, rather benefits multiple areas of the national interest of the United States. Counsel submits a speech from the Secretary of Commerce discussing the nation's need for 1.3 million new information technology workers, a letter from computer industry leaders to the Speaker of the House of Representatives addressing the shortage of high-technology workers, an article from the *Wall Street Journal* indicating the difficulty in filling high-tech jobs, and a report from the U.S. Department of Commerce predicting an increase in demand for information technology workers over the next decade. It should be noted that a shortage of qualified workers is an argument for obtaining, rather than waiving, a labor certification.

On July 27, 1999, the director revoked the approval of the petition, stating that the benefits of the petitioner's endeavors directly effect only a "very small portion of the population of the United States." The director also noted a lack of supporting documentation from well-known experts, established institutions and appropriate U.S. government agencies addressing the petitioner's personal endeavors and their impact on the United States.

On appeal, counsel argues: "This revocation is directly contrary to the position taken by the INS in its April 7, 1999 Memorandum from Michael D. Cronin, Acting Associate Commissioner, Office of Programs, which gave field guidance on national interest waiver cases." We note that the revocation proceedings began almost seven months prior to the issuance of this memorandum.



The April 7, 1999 memorandum states:

Under the employment-based second preference category, members of the professions holding advanced degrees or aliens of exceptional ability must have a job offer and thus, labor certification. INA §203(b)(2)(A). The job offer requirement may be waived, however, when the Attorney General “deems it to be in the national interest.” INA §203(b)(2)(B).

Congress has not defined the term “national interest.” As a result, the Service published NYSDOT [Matter of New York State Dept. of Transportation I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998)], the first precedent decision to examine the national interest waiver. This decision lists several factors that must be considered when evaluating a request for a national interest waiver. NYSDOT has caused some confusion, however, within §245 proceedings.

All national interest waivers approved prior to NYSDOT should be honored in §245 or immigrant visa proceedings provided that beneficiaries continue to seek employment or are employed in the professional activity which provided the basis of the approval. In other words, petitions should not be reopened for rescinding approval of the national interest waiver or for requiring the petitioner to now prove entitlement under NYSDOT.

Counsel argues that the director “reopened the matter and required [the petitioner] to prove his entitlement under post-NYSDOT standards.” However, counsel’s argument is completely untenable. The director’s notice of intent to revoke and final revocation make absolutely no mention of Matter of New York State Dept. of Transportation. This published precedent has set forth three factors that must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

Neither the notice of intent to revoke nor the final revocation mention the three factors set forth in Matter of New York State Dept. of Transportation. We also note that the published precedent was simply a clarification of the statute. We find that the director properly issued the notice of intent to revoke after reviewing the evidence and realizing that the petition had been approved in error.

In Matter of Ho, 19 I&N Dec. 582 (BIA 1988), the Board found that approval of a visa petition vests no rights in the beneficiary of the petition but is only a preliminary step in the visa or adjustment of status application process, and the beneficiary is not, by mere approval of the petition, entitled to an immigrant visa or to adjustment of status. The board further found that because “there is no right or entitlement to be lost, the burden of proof in visa petition revocation proceedings properly rests with the petitioner, just as it does in visa petition proceedings.”

The decision also notes that, pursuant to section 205 of the Act, the Service may revoke the approval of a petition “at any time for good cause shown.” The Board also found in Matter of Ho

that a revocation need not be based on "a showing of new evidence, fraud, or error of law"; the Board affirmed that "mere error in judgment" in initially approving the petition can suffice as "good cause" for revocation of an immigrant visa petition. We are not persuaded by counsel's argument that the initial approval demonstrates that the petitioner had met his burden of proof; by this logic, revocation would be impossible because revocation only ever occurs after the approval of a petition. If the director determines that the approval was in error, then that error represents good and sufficient cause for revocation.

Counsel further states:

Even under the NY State Dept of Transportation standards, however, the petitioner has met his burden that he is eligible for the benefit sought. His employment, in the computer field, is in an area of substantial intrinsic merit. His past and prospective work, as noted by the INS, is as a computer specialist in the human services area. The proposed benefit by his work is also national in scope. The INS incorrectly found that his work would be limited geographically and thus not national in scope. According to the INS, the work done by the petitioner in New York State Dept. of Transportation was also limited to a particular geographical area, but that the roads and bridges which the petitioner worked on connected to the national transportation system and thus the work had a national, as opposed to local, interest.

In the same way, [the petitioner's] work is national in scope. He has worked to implement the modernization and computerization system in high schools in Maryland. While these efforts are, on their face, regional, in fact the scope or impact of this work is national. The computerization of the high schools in Maryland opened up these schools to Internet access and thus nationally. In addition, the work which the petitioner has done in work training and implementing public housing projects is of national interest because not only are the local residents served but also communities throughout the nation who look to these projects as successful models.

On appeal, counsel raises arguments related to the guidelines set forth in Matter of New York State Dept. of Transportation. It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel argues persuasively that the petitioner's field possesses substantial intrinsic merit. However, counsel's discussion regarding the overall importance of the computerization of high schools, work training, and public housing projects is insufficient to demonstrate eligibility for the national interest waiver. While the Service acknowledges the importance of computerizing schools, training those on welfare, and implementing public housing, eligibility for the waiver must rest with

the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. Listing various projects to which the petitioner has made a contribution through providing computer and networking services cannot suffice to establish his eligibility. Here, an important distinction needs to be made regarding the petitioner's role in these various projects. The petitioner does not "implement public housing" or "train welfare recipients," he provides computer and networking services to the companies performing these functions.

It does not follow that every individual who performs such services satisfies the national interest threshold. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); Sutton v. United States, 819 F.2d 1289, 1295 (5<sup>th</sup> Cir. 1987). By asserting that the petitioner's skills as "a computer specialist in the human services area" inherently serve the national interest, counsel for the petitioner essentially contends that the job offer requirement should never be enforced for these occupations, and thus this section of the statute would have no meaningful effect.

The petitioner has provided a speech from the Secretary of Commerce, a letter from computer industry leaders to the Speaker of the House of Representatives, an article from the *Wall Street Journal*, and a report from the U.S. Department of Commerce all reflecting a shortage of information technology workers. In regards to the unavailability of qualified U.S. information technology workers, the labor certification process is already in place to address such shortages. The Department of Labor allows a prospective U.S. employer to specify the minimum education, training, experience, and other special requirements needed to qualify for the position in question. Therefore, these qualifications, taken alone, do not justify a waiver of the certification process which takes these elements into account. Pursuant to Matter of New York State Dept. of Transportation, a shortage of qualified workers is grounds for obtaining, rather than waiving, a labor certification.

We note Congress' recent creation of a blanket national interest waiver for certain physicians. The creation of Section 203(b)(2)(B)(ii) of the Act demonstrates Congress' willingness to grant such blanket waivers. We cannot ignore, the absence, to date, of such a blanket waiver for information technology/computer specialists. Furthermore, the creation of the blanket waiver for certain physicians demonstrates that no such blanket waiver for any given occupation is implied in the statute. Otherwise, the blanket waiver for certain physicians would be superfluous.

Counsel argues that the scope of petitioner's work at high schools in Maryland is national. We disagree and note that Towson High School is the only school specifically mentioned in the record. Counsel states that "the computerization of Maryland high schools opened up these schools to Internet access and thus nationally." This argument could be made regarding the installation of any computer having internet access and does not single out the petitioner for the special benefit of a national interest waiver. Simply providing internet infrastructure at a local

school hardly reflects a significant achievement or contribution in the computer/telecommunication field. Furthermore, the petitioner's impact on the national interest as an installer of internet access at even a dozen schools would be so attenuated at the national level as to be negligible.

Counsel states that the petitioner's Welfare to Work training and public housing projects serve as successful models to communities throughout the nation. However, the petitioner seeks employment not as vocational trainer or public housing developer, but as a project manager/specialist in the computer field. The central issue of this proceeding is whether the petitioner's computer and telecommunications efforts within his various projects warrant a national interest waiver. In regards to the petitioner's specific efforts, the evidence submitted essentially limits the petitioner's impact to his clients and employers, and to a much lesser extent, the students they serve. The petitioner has failed to demonstrate sufficient evidence of achievements and significant contributions in his field of endeavor. We do not dispute that the petitioner's efforts have yielded positive results for his clients and employers, but his work has not been shown to have attracted significant attention from prominent experts in the computer field outside of his own circle of colleagues.

Counsel's claim that the petitioner's projects serve as "successful models" to communities throughout the nation is not supported by evidence. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The record does not establish the extent to which others in the field have relied upon the petitioner's methods as a model, or that the petitioner has developed an original breakthrough representing a significant improvement upon existing computer/telecommunication technology. The petitioner has failed to demonstrate that his work has attracted the attention of computer/information technology associations or comparable bodies, or major trade publications which, one would expect, report the development of valuable new innovations. In sum, the petitioner has not submitted sufficient evidence to set himself apart from other computer consultants/project managers in his field of specification. The petitioner must clearly establish, in some capacity, the ability to serve the national interest to a substantially greater extent than the majority of his colleagues. The Service here does not seek a qualified threshold of experience or education, but rather a past history of demonstrable achievement with some degree of influence on the field as a whole.

At issue is whether this petitioner's contributions to his profession are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. Without evidence that the petitioner has been responsible for specific significant achievements in the computer/telecommunications field, we must find that the petitioner's assertion of prospective national benefit is speculative at best.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of