U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 18 2014 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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)

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 Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under 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 seeks employment as an elementary school teacher for in Maryland, where she has worked since 2007. 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 has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

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

> (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 –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements 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 did not dispute 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 the pertinent 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 regulations implementing the Immigration Act of 1990 (IMMACT 90), P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] 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 re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* 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. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included 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. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 26, 2012. In an accompanying statement, counsel stated that the petitioner seeks the national interest waiver, but counsel did not address the guidelines set forth in *NYSDOT*. Instead, counsel listed the evidence submitted, and cited the petitioner's "Master's Degree in Education [and] thirteen (13) years of post-baccalaureate progressive work experience as an educator both in the Philippines and in the United States of America." Counsel also listed "Recognitions and Merits" such as a "Science Fair Certificate" and a "Certificate of Perfect Attendance . . . for the month of April 2007."

Degrees, experience, and recognition for achievements and contributions are all elements of a claim of exceptional ability. *See* 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B) and (F), respectively. The plain wording of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are, by default, subject to the job offer requirement (including labor certification). Therefore, evidence of exceptional ability is not sufficient to warrant the national interest waiver. Furthermore, the petitioner did show that her various certificates reflect impact or influence on the field of education as a whole, rather than on a particular school or district.

Counsel stated:

> Her accomplished dedication . . . has not only theoretically helped improve the education in the country but most importantly has in the process completely and realistically re-created the young lives of students worth living as evidenced by the testimonials from her students. And as we know, these heartfelt testimonials are as powerful as any award or citation from recognizing bodies.
>
> In addition, the merit of [the petitioner's] request for National Interest Waiver is based on the improvement to the United States Education more particularly in the field of Elementary Education, which she has actually already been fulfilling as in the State of Maryland since 2007. Notwithstanding this, [the petitioner] is determined to continue her selfless service to the nation of improving the Elementary Education in the United States of America by challenging other public schools in the country to equal at least or better yet surpass the progress obtained by her students in Maryland.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no documentary evidence to show that the petitioner's students have made unusual progress, or that teachers in schools across the nation consciously and actively emulate the petitioner's methods in order to achieve similar results.

Letters from school administrators, teachers, students, and parents of students showed appreciation for the petitioner's diligent efforts on behalf of her students, but do not show the broader impact and influence, both in the past and prospectively, that the *NYSDOT* guidelines enumerate. Other materials submitted with the petition show that the petitioner has been an active and successful teacher with her students, but do not demonstrate impact beyond the local level.

The director issued a request for evidence on November 15, 2012. The director instructed the petitioner to "submit evidence that [her] contributions will impart national-level benefits" and that her "past record justifies projections of future benefit to the nation." In response, counsel stated that the director "has discretion to enforce" *NYSDOT*, but that "legal and factual premises [exist] upon which . . . the Service can issue affirmative decisions without deviating from said precedent case." The director's adherence to *NYSDOT* is not a matter of "discretion." As a published precedent, *NYSDOT* is binding on all USCIS employees in the administration of the Act. 8 C.F.R. § 103.3(c).

Counsel quoted remarks made by then-President George H.W. Bush when he signed IMMACT 90: "This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas." Counsel interpreted this passage to mean that Congress created the national interest waiver for educators, but the job offer requirement for which the petitioner seeks a waiver was, itself, an integral provision of IMMACT 90. President Bush's quoted remarks did not specifically mention the national interest waiver, and there is no evidence that the remarks referred particularly to the waiver, rather than to IMMACT 90 as a whole. The national importance of "education" as a concept, or "educators" as a class, does not lend national scope to the work of a single schoolteacher.

Counsel asserted that section 203(b)(2)(B)(i) of the Act does not contain clear guidance on eligibility for the waiver, and claimed that Congress subsequently filled that gap with the passage of the No Child Left Behind Act of 2001 (NCLBA), Pub.L. 107-110, 115 Stat. 1425 (Jan. 8, 2002):

> Congress has in effect remarkably engraved the missing definition upon the concept of 'in the national interest,' centered on the 'Best Interest of American School Children.' More importantly, U.S. Congress also provided the means to achieve this now defined 'in the national interest,' i.e., 'Hiring and Retaining Highly Qualified Teachers.' Interestingly, "NCLB Act" also specified the 'Standard of a Highly Qualified Teacher.'
>
> Indeed, the "NCLB Act" has elucidated the previously dark avenue for educator-national interest waivers.
>
> With this, the Service now has a definite working took in defining what is 'in the national interest' including the clear standard on what qualifications must be required from NIW [national interest waiver] teacher self-petitioners, as mandated by No Child Left Behind Act of 2001. There is no longer vagueness or obscurity like what happened in the New York State Department of Transportation case, which left the Immigration Service with over-reaching discretion in imposing even the impossible from NIW teacher self-petitioners.

Counsel acknowledged that the NCLBA "is not an immigration law per se," but asserted that the "law applies to 'Highly Qualified International Educators.'" It applies to such teachers in the general sense that the NCLBA makes no distinction between U.S. teachers and immigrant teachers, but the NCLBA does not contain any specific references to foreign teachers.

Most of counsel's statement consists of variations on the claim that the NCLBA amounts to a legislative mandate for a blanket waiver for highly qualified teachers. The NCLBA contains no mention of the national interest waiver or any immigration benefits for foreign teachers, and it did not amend section 203(b)(2)(B) of the Act (which created the waiver).

Here, the petitioner has not established that Congress intended to exempt teachers from the job offer requirement, either through section 203(b)(2) of the Act, the NCLBA, or any other federal legislation. The phrase "national interest" does not appear in the text of the NCLBA. The term "best interest,"

with respect to children, appears only in provisions relating to homeless students. Therefore, there is no support for counsel's claim that the NCLBA "defined [the phrase] 'in the national interest'" with respect to education.

The NCLBA did not amend section 203(b)(2) of the Act or otherwise mention the national interest waiver. In contrast, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. 102-232, 105 Stat. 1733 (Dec. 12, 1991) made the national interest waiver available to members of the professions holding advanced degrees, where previously it was available only to aliens of exceptional ability. Following the publication of *NYSDOT*, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95, 113 Stat. 1312 (Nov. 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Thus, Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so on two occasions, first to correct an omission of language, and later in direct response to *NYSDOT*. Counsel identified no other legislation that directly addresses the national interest waiver in this way. In the absence of a comparable provision in the NCLBA or any other education-related legislation, there is no basis to conclude that the legislation indirectly implied a blanket waiver for teachers. Without clearly expressed Congressional authority, USCIS will not designate blanket waivers on the basis of occupation. *See NYSDOT* at 217.

The NCLBA and other federal initiatives establish that the federal government places a priority on improving the quality of education, but counsel did not establish that any of these programs had the express or implied result of changing immigration policy toward teachers. Section 203(b)(2)(A) of the Act remains in effect, and therefore teachers, "highly qualified" or otherwise, remain subject to the job offer requirement.

In an effort to establish that the benefit from the petitioner's work will be national in scope, counsel discussed national educational initiatives intended to "clos[e] the achievement gap" and improve student performance. Counsel did not explain how the efforts of one teacher at one elementary school would produce nationally significant results toward these goals. As explained in *NYSDOT*, specifically using elementary school teachers as an example, the national scope of an overall problem or goal does not lend national scope to the efforts of every affected worker operating at the local level: "[W]hile education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act." *Id.* at 217 n.3. The collective importance of all teachers does not qualify individual teachers for the waiver.

Turning to the petitioner individually, counsel stated: "the impact of [the petitioner's] proven success in raising proficiency of her students transcends the classroom and imparts national-level benefits." Counsel identified no evidence in the record to establish that the petitioner has improved student proficiency. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 534 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506. Furthermore, counsel did not explain how the local impact of the petitioner's classroom work "imparts national-level benefits."

Counsel listed the five previously submitted certificates as "evidences of [the petitioner's] achievements," but did not explain how these documents establish the petitioner's impact and influence on the field of elementary education as a whole.

Noting that the petitioner has "over 12 years of dedicated service in [her] profession," counsel stated that it is "economically wholesome" to take advantage of the petitioner's experience "instead of waiting for over 12 years until U.S. workers become as highly qualified as she is." This assertion presumes that there are no experienced elementary school teachers in the United States, and therefore it will take 12 years before any U.S. teacher reaches the level of experience that the petitioner has already attained. Counsel provided no evidence to support this assertion. *See Matter of Obaigbena*, 19 I&N Dec. 534 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506. Also, length of experience, by itself, does not convey influence on the field or benefit that is national in scope.

Counsel claimed that the labor certification process would pose a "dilemma" because the petitioner's qualifications exceed the minimum requirements for the position, and "the employer is required by No Child Left Behind (NCLB) Law . . . to employ highly qualified teachers." Counsel did not show that these two considerations are incompatible. Section 9101(23) of the NCLBA defines the term "highly qualified teacher." By the statutory definition, a "highly qualified" school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- demonstrates competence in the academic subjects he or she teaches.

Counsel did not explain how the above requirements are incompatible with the existing labor certification process, and the petitioner submitted no evidence that the labor certification process has resulted in the widespread employment of teachers who are less than "highly qualified." The minimum degree requirement is the same for labor certification as it is for a highly qualified teacher (*i.e.*, a bachelor's degree).

As an "equitable consideration," counsel stated that the petitioner

> is firmly commited to continue teaching at [redacted] However, [redacted] is currently barred for a two-year period (i.e. from March 16, 2012 to March 15, 2014) from filing any employment-based immigrant and/or nonimmigrant petition . . . arising from [redacted] willful violations of the H-1B regulations at 20 C.F.R. Part 655, subparts H and I. . . . Thus, through no fault of her own, [the petitioner] would not be able to continue teaching in [redacted] unless her E21 visa petition is approved, not to mention the fact that she has already firmly established a life here in the United States.

The standard for the waiver of the job offer requirement is not the petitioner's desire to remain in the United States or her prospective employer's temporary inability to petition on her behalf. The temporary debarment order is not grounds for granting a permanent immigration benefit.

The petitioner submitted documentation relating to federal education policy, but no evidence to show that she, individually, stands out from her peers to an extent that would warrant an exemption from the job offer requirement that, by law, ordinarily applies to teachers.

The director denied the petition on July 2, 2013, stating that the petitioner had met only the first prong of the *NYSDOT* national interest test, pertaining to the substantial intrinsic merit of her occupation. The director discussed the petitioner's evidence and determined that it does not show that the petitioner's work has had a significant impact beyond the districts where she has worked, and "[t]here is little evidence to suggest that the petitioner's contributions will impart national-level benefits."

On appeal, counsel repeats the assertion that federal education policy, including the NCLBA, implies an unstated blanket waiver for teachers who meet the NCLBA's definition of "highly qualified." Counsel states that the director erred by giving *NYSDOT*, "which involved an engineer," more weight than "the national educational interests enunciated in the No Child Left Behind Act of 2001."

Counsel asserts that *NYSDOT* offers little specific guidance as to what, exactly, serves the national interest. Counsel contends that "[t]he obscurity in the law that NYSDOT sought to address has been clarified":

> [T]he United States Congress has spelled out the national interest with respect to public elementary and secondary school education through the No Child Left Behind Act of 2001 . . . which came into effect upon its enactment in 2001 – that is, more than a decade after IMMACT 90 and MTINA were enacted and three years after NYSDOT was designated as a precedent decision. . . .
>
> Accordingly, the NCLBA and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public elementary education sector. . . .
>
> In effect, therefore, the United States Congress, with the enactment of the NCLB Act, has preempted the USCIS with respect to the parameters that should guide its determination whether a waiver of the job offer requirement based on national educational interests is warranted. . . .
>
> [I]n the instant case, USCIS gave insufficient weight to the NCLB Act because it confined its consideration of that law to the first NYSDOT factors.

The NCLBA, however, did not amend the Act or mention the national interest waiver. Counsel identifies no statute, regulation, or case law that would give the NCLBA force as an immigration statute or otherwise create a blanket waiver for teachers.

After quoting from the Act and other statutes, counsel states: "Based on these statutory provisions, the requirement of a job offer or labor certificate for the occupation of Highly Qualified Mathematics [*sic*]

Teacher that [the petitioner] is seeking may be waived if it is established that she will substantially benefit prospectively the national educational interests of the United States." The statute, however, states that an alien who "will substantially benefit prospectively the national . . . educational interests . . . of the United States" must also show that his or her "services . . . are sought by an employer in the United States." The latter phrase embodies the job offer requirement. Thus, the statute acknowledges that every foreign worker who qualifies for classification under section 203(b)(2) of the Act "will substantially benefit prospectively the . . . United States," and imposes the job offer requirement on all those individuals, including educators with advanced degrees.

When the regulation at 8 C.F.R. § 204.5(k) and its subsections were promulgated, the preamble to the regulation addressed the above issues:

> Some commenters also asked that the phrase "in the national interest" be defined. One commenter suggested that the phrase should apply to any alien who would substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. The Act itself requires this showing of all aliens seeking to qualify as "exceptional," but adds the "national interest" test to permit a job offer waiver for certain aliens who have already satisfied the "prospective national benefit" test. The Service, therefore, cannot equate the two standards. Congress has not provided a more particular definition of the phrase in the national interest. The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the standard must make a showing significantly above that necessary to prove "prospective national benefit." 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 will be judged on its own merits.

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991). A condensed version of the above passage appeared in *NYSDOT* at 216-17. The quoted passage rebuts counsel's contention on appeal that the "prospective national benefit" test is identical to the "national interest" test.

Counsel contends that, in addition to setting forth a legal basis for the waiver claim "within the context of not only the NCLB Act, but also the Obama administration's current initiatives," the petitioner also established her "detailed qualifications and achievements. However, the decision did not present even one comparable candidate having at least the equivalent accomplishment as that of [the petitioner] to support its determination." Counsel further contends that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers, and asserts: "the USCIS-Texas Service Center should have presented its own comparable worker, if there be any at all," as a basis for comparison against the petitioner.

The *NYSDOT* guidelines are not an item-by-item comparison of an alien's credentials with those of qualified United States workers. That decision indicated that the petitioner must establish a record of influence on the field as a whole. *Id.* at 219, n.6. To do so does not require an invasive review or comparison of other teachers' credentials. Counsel does not explain how the petitioner's "detailed qualifications and achievements" meet the *NYSDOT* threshold for the waiver. The burden is on the

petitioner to establish eligibility, not on the director to locate and identify a "comparable candidate." 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.

Counsel claims: "a new thought process must be designed by USCIS with respect to NIW petitions by 'Highly Qualified Teachers' instead of routinely applying the *Matter of New York State Dept. of Transportation* generically." As a precedent decision, *NYSDOT* is binding on all USCIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Counsel claims that *NYSDOT*, which concerned a bridge engineer, "obviously is good in far as NIW cases filed by Engineers are concerned but does not give justice to other professionals especially since the facts are definitely distinct from each other." The three-part national interest test in *NYSDOT* is, by design, broad and flexible. It does not include specific evidentiary requirements that only an engineer could satisfy, and its application is not, and was not intended to be, limited to engineers.

Counsel claims that *NYSDOT* "requires overly burdensome evidence on the qualification [*sic*] of the self-petitioner, identical to EB-1 extraordinary requirements when the law makes it available to those either 'with advanced degree' or 'exceptional ability.'" The evidentiary requirements to establish extraordinary ability, listed in the regulations at 8 C.F.R. § 204.5(h)(3), are neither identical nor similar to the guidelines in *NYSDOT*. Concerning counsel's assertion that the waiver is "available to those either 'with an advanced degree' or 'exceptional ability,'" those qualifications make one eligible to apply for the waiver, but do not guarantee the approval of that application.

Counsel asserts that "the Director failed to explain why NCLB[A] was undermined," but counsel has not established that the NCLBA has any relevance to this proceeding. Counsel has relied extensively on the NCLBA, but in doing so counsel has imposed no presumption of eligibility that the director must rebut. Counsel devotes several pages of the appellate brief to a discussion of details of the NCLBA and related federal initiatives, but these passages are all general assertions about education and education policy in general with no bearing on the specific qualifications of the petitioner. As such, they amount to another attempt to establish a blanket waiver for teachers, or at least "highly qualified teachers." While Congress has the authority to create such a blanket waiver, it has not done so, through passage of the NCLBA or any other legislation.

Improving public education would serve the national interest, and a foreign worker who had made demonstrable progress in that area, at a nationally significant level, could have a strong claim for the waiver. The petitioner, however, has not shown that her work has had or is likely to have a national impact on educational achievement. The petitioner has not shown direct influence beyond the students in her own classroom.

Counsel claims that the petitioner "is an effective teacher in raising student achievement in STEM" (science, technology, engineering and mathematics), but the record contains no documentary evidence to support this claim. Counsel's assertion is not sufficient. *See Matter of Obaigbena*, 19 I&N Dec. 534 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506. Also, high student achievement would not suffice to qualify the petitioner for the waiver without evidence showing that other jurisdictions are

adopting original methods devised by the petitioner, thereby improving performance outside of her own classroom.

Counsel states: "USCIS-Texas Service Center has not specified what it meant by 'any contributions of unusual significance that would warrant a national interest waiver.'" The quoted phrase does not appear in the director's decision. Counsel continues:

> There is no clarity on this particular requirement and yet, the Director has easily dismissed the incomparable accomplishments of [the petitioner] as submitted in her Case File. By requiring the petitioner to submit evidence of ambiguous nature is 'unduly burdensome' and in effect tantamount to requiring 'impossible evidence' for being extremely subjective.
>
> The lack of clear standard on this particular requirement leaves the finding of insufficiency by USCIS-Texas Service Center highly speculative, without factual basis and rather drawn in thin air.
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> The mandate for 'flexibility in the adjudication of NIW cases' . . . must be construed liberally rather than strictly compared to the New York State Department of Transportation case. USCIS is now required by United States Congress through the No Child Left Behind Act of 2001 . . . to make it "flexible["] and thus possible rather than impossible in favor of the 'Best Interest of the School Children,' by granting waivers to 'Highly Qualified Teachers' who have already been serving the cause instead of requiring labor certification which may only reveal uncommitted U.S. workers with minimum education qualification.

Counsel repeats the list of the petitioner's certificates, acknowledging her participation at an "Environmental Education Center" and at a "STEM Fair"; her "perfect attendance" for April 2007; and her general diligence as an educator. Counsel does not explain how any of these documents establishes that the petitioner's accomplishments are "incomparable" or that she has had any effect on public education beyond the local level.

Counsel asserts that the NCLBA did not merely imply that USCIS should grant the waiver to "highly qualified teachers," it "required" USCIS to do so. The text of the statute does not mention immigrant teachers, labor certification, the national interest waiver, or the phrase "national interest." The NCLBA does not establish or imply a blanket waiver for teachers. Congress has directly established a blanket waiver for certain physicians, as described at section 203(b)(2)(B)(ii) of the Act; Congress has taken no comparable action on behalf of teachers.

Counsel asserts that the petitioner "has submitted overwhelming evidence" of eligibility, and that "the Director is requiring more from the beneficiary's credentials tantamount to having exceptional ability," even though one need not qualify as an alien of exceptional ability in order to receive the waiver. It is evident from the statute that the threshold for exceptional ability is below, not above, the threshold for the national interest waiver; it is possible to establish exceptional ability but still not qualify for the

waiver. Also, the director did not require the petitioner to establish exceptional ability in her field. Instead, the director found that the petitioner's evidence failed to establish that her work has had an influence beyond the school districts where she has worked.

Counsel asserts that schools that fail to meet the NCLBA's standards will lose federal funding, and therefore risk "not only . . . closure of these schools but loss of work for those working in those schools." Counsel provides no evidence regarding school closures under the NCLBA, and no explanation as to how the petitioner's efforts at one elementary school would prevent multiple school closures. The claim, therefore, is unsupported. *See Matter of Obaigbena*, 19 I&N Dec. 534 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.").

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 Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.