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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: FEB 2 6 2014 Office: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a pre-kindergarten teacher. The petitioner has taught for since 2007. At the time of filing, the petitioner was working for 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. –
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> > (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 record reflects 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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> 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 re New York State Dept 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 she 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 she 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 her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that she 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 petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The petitioner has established that her work as an elementary school special education teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. Moreover, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221.

The petitioner filed the Form I-140 petition on June 28, 2012. In a June 27, 2012 letter accompanying the petition, counsel stated that the petitioner's national interest waiver is based on her fourteen years of progressive work experience in teaching early childhood education in both the United States and the Philippines, her master's degree in Early Childhood Education, her bachelor's degree in Elementary Education, testimonials discussing her work experience, and recognition that she received for her achievements. Academic degrees, occupational experience, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The U.S. Citizenship and Immigration Services (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. *NYSDOT* at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver.

In his letter accompanying the petition, counsel did not mention the *NYSDOT* guidelines or explain how the petitioner meets them. The record does not show how the petitioner's work will impact the field beyond [redacted]. With regard to the petitioner's teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her students such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while 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. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as an early childhood educator beyond the students at her school and, therefore, that her proposed benefits are national in scope. In addition, the record lacks specific examples of how the petitioner's work as a teacher has influenced the field on a national level. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted various letters of support from administrators, school staff, and parents discussing her work as a teacher. As some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

> I worked with [the petitioner] for the past three years, as she is a teacher at my school. [The petitioner] is an exemplary teacher and has done an excellent job in that position. She is an asset to our school and to the
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> [The petitioner] has superior classroom management and leadership skills. Her ability to lead is demonstrated by a high level of experience and dedication. During her tenure at [the petitioner] has served as a Pre-Kindergarten teacher as well as Department Chair for her grade level. Her responsibilities included monthly newsletters, field trips, weekly grade level meetings and most importantly she served as a mentor to our new Pre-K teacher and paraprofessionals. [The petitioner] is a leader in our building and is always willing to do everything asked of her and more.

comments on the petitioner's effectiveness as a teacher, leadership skills, and job responsibilities at , but does not indicate how the petitioner's impact or influence as a school teacher is national in scope. In addition, fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

, stated:

> I've had the privilege of working with [the petitioner] this past year. She is a warm, trusting, passionate, caring individual. She has displayed a great deal of interest and dedication in the education of our students in
>
> As the leader of our grade level (Pre-K), she never fails to assist when needed. [The petitioner] has proven great leadership qualities and continues to seek professional developments to enhance her career. She takes her career very seriously, and demonstrates much strength and dedication to her work. Her actions deem success and prove her loyalty for the benefit of the students. I have worked with many over the years, and [the petitioner] is one of the few educators sincere and interested in ensuring all students learn.
>
> She puts extra effort and energy into her work. I have observed her over time and witnessed her deep commitment to her profession. She maintains a great level of communication with staff, students and parents building positive relationships.

points to the petitioner's dedication, leadership, communication skills, and other personal qualities, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond

stated:

> [The petitioner] is an awesome teacher. She plays an important role in the lives of her students by building self-esteem, allowing them to use various learning styles, and creating an atmosphere for learning. [The petitioner] is very knowledgeable in her subject area. This allows her the ability to create developmentally appropriate lessons for each student. She has also trained a new Pre-kindergarten teacher this year.
>
> I have worked with [the petitioner] for over 4 years. The children love her. She greets them at the door and they run to her with open arms. She has a good relationship with her students and parents. She has not only become an asset to she plays an integral part to all the staff. She uses her artistic ability to help with all school-wide programs. She works with parents in workshops giving them skills needed to work with their children. She is always on time for work, coming in early to prepare and staying late to prepare for her students.
>
> As a mentor teacher, I have noticed how her verbal directions are followed by demonstrations. In her multiethnic classroom, she observes and determines the students learning styles and plans accordingly. The students respond to questions with confidence because they know they have received information needed to answer them from [the petitioner].
>
> As a kindergarten teacher, I receive students taught by [the petitioner]. The students come to me above grade level, with not only pre-k skills mastered but most of them can read when they enter kindergarten.

comments on the petitioner's effectiveness as an educator, mentorship of a new teacher, school activities, and promptness, but her observations fail to demonstrate that the petitioner's work has influenced the field as a whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified pre-kindergarten teachers.

The petitioner's references praise her personal character and abilities as an early childhood educator, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the schools where she has taught. They also do not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217, n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions 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 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

In addition to the reference letters, the petitioner submitted the following:

1. A Certificate of Appreciation from the administration of School during "Teacher Appreciation Week 2007" for "going above and beyond in always making a difference in the life of a child";
2. A Certificate of Participation from the Coordinating Supervisor of Early Childhood and the Early Childhood Resource Teacher at for involvement with " Workshop" (October 13, 2009);
3. A Certificate of Appreciation (2011) for support of the
4. A Certificate of Support (2012) "in gratitude for . . . support of the 2012 Road to London and Commitment to Team USA";
5. A Maryland Educator Certificate;
6. Praxis Series Examinee Score Reports;
7. A "Certification of Good Standing" dated December 7, 2006 from the Republic of the
8. A "Certification of Good Standing" dated January 2, 2007 from the Republic of the
9. A "Professional Elementary Teacher" certificate from the
10. A Certificate of Membership for the
11. A Certificate of Membership for the
12. A membership card for the Maryland State Education Association;
13. Employment verifications;

14. Earnings statements; and
15. Academic records and transcripts.

Again, academic records, occupational experience, professional certifications, salary information, membership in professional associations, and recognition for achievements are all elements that relate to a finding of exceptional ability, but exceptional ability is not sufficient to establish eligibility for the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including labor certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received (items 1 – 4) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 15 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner also submitted numerous certificates of participation, completion, and attendance for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

In addition, the petitioner submitted copies of her "satisfactory" teacher evaluations and teacher observation forms from [redacted] The petitioner, however, failed to demonstrate how the evaluations and observation forms reflect that she has impacted the field to a substantially greater degree than other similary qualified special educators and how her specific work has had significant impact outside of the schools where she has taught.

The director issued a request for evidence on January 2, 2013, instructing the petitioner to submit evidence demonstrating that her "contribution to the field of education will be national in scope" and that she "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted a March 24, 2003 letter from U.S. Secretary of Education Rod Paige providing information about "how school districts may continue to hire and employ visiting teachers from other countries while being consistent with the statutory requirements that define a highly qualified teacher"; President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; a copy of Section 1119 of the No Child Left Behind Act (NCLBA); a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; an article entitled "Supporting Science, Technology, Engineering, and Mathematics Education – Reauthorizing the Elementary and Secondary Education Act"; "Barack Obama on Education" questions and answers posted at www.ontheissues.org; an article in the *Wall Street Journal* entitled "The Importance of Math & Science in Education"; an article in *Computer Science Technology* entitled "Importance of Science and Math Education"; information about STEM (science, technology, engineering and mathematics) fields printed from the online encyclopedia *Wikipedia*; the written testimony of Microsoft's Bill Gates before the Committee on Science and

Technology of the United States House of Representatives (March 12, 2008); and an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?" As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the petitioner's specific work as a pre-kindergarten teacher has influenced the field as a whole.

The director denied the petition on April 13, 2013. The director stated that the petitioner had not shown "that the impact of [her] activities will be national in scope." The director also determined that the petitioner had not demonstrated that she "will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications." The director therefore concluded that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel asserts that "USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act of 2001 [NCLBA] as the guiding principle rather than the precedent case" *NYSDOT*. With regard to following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c).

Counsel argues that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and claims that "[t]he obscurity in the law that *NYSDOT* sought to address has been clarified," because "Congress has spelled out the national interest with respect to public elementary and secondary school education" through such legislation. In addition, counsel contends that "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 school sector."

Counsel does not support the assertion that the NCLBA modified or superseded *NYSDOT* and identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. 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). In contrast to counsel's claims regarding the NCLBA, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*. Counsel, however, has not shown that the NCLBA contains a similar legislative change.

Counsel further states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "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 . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Again, neither the Act nor the NCLBA create or imply any blanket waiver for highly qualified foreign teachers. As members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that includes the job offer requirement.

Counsel asserts that "Congress legislated [NCLBA] to serve as guidance to USCIS in granting legal residence to 'Highly Qualified Teachers'" and that the labor certification process poses a "dilemma" for the petitioner because she possesses qualifications that "could not be articulated in conformity with the process regulations." Section 9101(23) of the NCLBA defines the term "Highly Qualified Teacher." Briefly, by the statutory definition, a "Highly Qualified" elementary 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
- has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, or (in the case of experienced teachers not "new to the profession") demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation.

In addition, the U.S. Department of Labor's *Occupational Outlook Handbook*, 2014-15 Edition, describes the minimum qualifications necessary to become a public school preschool teacher:

> In public schools, preschool teachers are generally required to have at least a bachelor's degree in early childhood education or a related field. Bachelor's degree programs teach students about children's development, strategies to teach young children, and how to observe and document children's progress.

* * *

> In public schools, preschool teachers must be licensed to teach early childhood education, which covers preschool through third grade. Requirements vary by state, but they generally require a bachelor's degree and passing an exam to demonstrate competency. Most states require teachers to complete continuing education credits to maintain their license.

See http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4, accessed on February 3, 2014, copy incorporated into the record of proceeding. The petitioner has not established that the NCLBA's "Highly Qualified" standard involves requirements that are more stringent than those outlined in the *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "highly qualified teacher." The employment certification process outlines the minimum requirements for a job opportunity. It does not preclude the employer from hiring applicants that exceed the minimum qualifications for the position. Thus, the petitioner's specific qualifications and experience are not required for "highly qualified" status under the NCLBA. Regardless, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT* at 218, n.5.

Counsel quotes remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: "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 interprets this passage to mean that Congress created the national interest waiver for "highly qualified" educators. The Immigration Act of 1990, however, was not restricted to the creation of the waiver. It was, rather, an overhaul of the entire immigration structure, creating new employment-based immigrant classifications to replace the "third preference" and "sixth preference" classifications previously in place. "[S]cientists and engineers and educators" are all members of the professions who, under the terms dictated by Congress in the Immigration Act of 1990 (as it amended the Act), are all subject to the job offer requirement.

Counsel asserts that the director "erred in disregarding evidence demonstrating the national scope of the petitioner's proposed benefit through her effective role in serving the national educational interest of closing the achievement gap." The petitioner, however, has failed to establish that her efforts have significantly closed that gap in or nationally. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continues:

> The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of and [the petitioner's] assigned school. The

> Reading results show that out of the 24 s ranked near the bottom at the "All Student" level for each -covered grade level . . . .
>
> * * *
>
> Additionally, it is noteworthy that the updated 2012 Maryland Report Card shows that did not meet its Reading proficiency AMO [Annual Measurable Objectives] targets at the "All Student" level . . . .

The petitioner has worked for since 2007, and thus had been there for a number of years before the administration of the 2012 MSA tests. Counsel does not explain how the 2012 results for (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in "closing the achievement gap."

Counsel asserts that the petitioner "is an effective teacher in raising student achievement in STEM," but he cited no documentary evidence to support the claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506. In addition, while counsel asserts that the petitioner has "proven success in raising proficiency of her students," he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner's work has had an impact or influence outside of the school where she has taught.

Counsel points to the petitioner's awards (items 1 – 4) and professional development certificates as evidence of her "past history of achievement." As previously discussed, the petitioner's awards and professional development certificates do not show that her work has had a wider impact on the field of early childhood education, or that her work has otherwise influenced the field as a whole.

Counsel states that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers and that USCIS "should have presented its own comparable worker." The *NYSDOT* guidelines, however, do not require an item-by-item comparison of the petitioner's credentials with those of qualified United States workers. The key provision is that the petitioner must establish a record of influence on the field as a whole. Moreover, there is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify another equally qualified educator. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel contends that "the Immigration Service is requiring more from the beneficiary's credentials [ ] tantamount to having exceptional ability." However, an individual is not required to qualify as an alien of exceptional ability in order to receive the national interest waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest

waiver. It remains that the petitioner's evidence does not establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director determined that the petitioner had "not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States."

Counsel states that while the NCLBA "requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement." However, assertions regarding the need for educational reform in the United States only address the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. In addition, counsel quotes a study that concluded the "Teach For America" program "rarely had a positive impact on reading achievement." The record, however, does not include a copy of the study. Once again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506. Regardless, counsel does not show that the petitioner's individual teaching efforts, after several years in the United States, have set her apart from other educators with regard to raising student achievement in PGCPS or nationally.

Counsel acknowledges that the labor certification requirement exists to protect United States workers. Counsel contends that a waiver of that requirement would serve the same ultimate goal, by allowing highly qualified foreign teachers such as the petitioner to make "present school children more competitive in the job market by providing them the highest quality of education as possible." Citing the Teach For America study, counsel asserts that "U.S. workers in the teaching industry are not as competitive in the job market as . . . their foreign counterparts who have advanced degree or equivalent and fully certified [sic]." Again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506. Counsel does not explain how a study on a small subset of entry-level teachers is relevant to the competitiveness of U.S. teachers in general. Regardless, counsel essentially contends that highly qualified "foreign" teachers, as a class, are eligible for a blanket waiver of the job offer requirement. However, as members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that includes the job offer requirement.

Counsel contends that a waiver would ultimately serve the interests of United States teachers, because if schools "fail to meet the high standard required under the [NCLBA]," the result would be "not only . . . closure of these schools but [also] loss of work for those working in those schools." Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506. In addition, counsel asserts that by waiving the labor certification requirement for highly qualified teachers such as the petitioner, "more American teachers will have . . . employment opportunities" because standards will be met and schools will not be abolished. As previously discussed, there are no blanket waivers for highly qualified foreign teachers; USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *NYSDOT* at 217.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. 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. *Id.* 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"). 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.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.