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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 10 2014 Office: TEXAS SERVICE CENTER FILE: [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:

SELF-REPRESENTED

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.[1] 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.[2] According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as an elementary school teacher. The petitioner has taught for since 2006. At the time of filing, the petitioner was working for Maryland. 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.

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 record reflects that the petitioner received a Bachelor of Arts degree in Psychology from in 1987 and that she has more than five years of progressive post-

[1] The petitioner simultaneously filed two Forms I-290B, Notice of Appeal or Motion, on June 3, 2013 and In Part 2 of both forms, the petitioner checked box B, indicating that she was "filing an appeal." This decision addresses A separate decision has been issued on

[2] The petitioner was initially represented by attorney In this decision, the term "previous counsel" shall refer to Mr.

baccalaureate experience as a teacher. Accordingly, the record reflects that the petitioner qualifies as a member of the professions with progressive post-baccalaureate experience equivalent to an advanced degree under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). 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 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 Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on June 28, 2012. In Part 4 of the Form I-140, the petitioner answered "no" to whether any immigrant visa petitions had previously been filed on her behalf. The record, however, reflects that filed a Form I-140 petition, with an approved labor certification, on her behalf on April 8, 2011, to classify her as a professional under section 203(b)(3)(A)(ii) of the Act. The Texas Service Center approved the petition on February 1, 2012, with a priority date of April 22, 2010.

In a June 28, 2012 letter accompanying the petition, previous counsel stated that the petitioner's national interest waiver is "based on her Equivalent advanced degree" and "almost 25 years of post-baccalaureate progressive work experience as an educator both in the Philippines and in the United States of America." Academic degrees and occupational experience are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. 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 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, previous 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 With regard to the petitioner's teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her elementary school 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.

NYSDOT at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as a special education teacher 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 special educator 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 recommendation from administrators and teachers discussing her work as an educator. 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.

[redacted] Principal, [redacted] stated:

> [The petitioner] is currently a kindergarten teacher at [redacted] She has taught pre-kindergarten students and has completed her second year as a teacher in this school. [The petitioner] has taught in the [redacted] system for six years.
>
> [The petitioner] currently teaches English Speakers of Other Languages students. More than 90% of her class consists of ESOL kindergarteners. She has provided satisfactory service to the students and parents of [redacted] She has met the instructional needs of students by planning and preparing lessons, administering assessments to determine instructional strengths and weaknesses and nurtured her students to success.
>
> [The petitioner] is cooperative, nurturing, and soft spoken. She participated in the MSDE [Maryland State Department of Education] Validation effort to make the early childhood program at [redacted] a superb one.

Ms. [redacted] comments on the petitioner's duties and responsibilities at [redacted] and describes the petitioner's personal qualities, but does not indicate how the petitioner's impact or influence as a teacher is national in scope. In addition, Ms. [redacted] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

[redacted] Kindergarten Team Leader, [redacted] stated:

I have known [the petitioner] for 3 years, and since August 2011, I have had the pleasure of working closely with her as a member of our Kindergarten team. In August 2011, she moved from the Prekindergarten team to the Kindergarten team at

[The petitioner] is a valuable member of our Kindergarten team. services students in an urban area. We are a Title 1 school and 90% of our students come from homes that speak a language other than English. [The petitioner] meets the needs of these students in a calm and nurturing way. Her instruction of students who are English Speakers of Other Languages (ESOL) has assisted them in acquiring both academic and English language skills. Based on end of the year assessments, her students made significant progress in all academic areas.

[The petitioner] was punctual, reliable, and completed all tasks required of her during the 2011-2012 school year. In the upcoming school year, we will be preparing for state validation of our Kindergarten program through the Maryland State Department of Education. [The petitioner] has experience with this process and I have no doubt that her expertise in this area will assist us in receiving state validation for our Kindergarten program.

Mr. comments on the petitioner's activities and effectiveness as a member of the Kindergarten team at but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond her students and

Principal, , stated:

I supervised [the petitioner] for approximately three years at where I was the assistant principal. I have found her to be a highly effective teacher. She has demonstrated the ability to plan and prepare coherent lessons that are suitable for diverse learners. She engages students in the learning process by using appropriate activities, assignments, questioning and discussion techniques. She has availed herself of many professional learning opportunities in the form of peer coaching, workshops, and collaborative planning. [The petitioner] is open to suggestions and reflects on her teaching.

She is punctual, dependable and hard working. She maintains accurate records, works cooperatively with her team members, and follows policies and procedures.

Ms. asserts that the petitioner is a "highly effective teacher" and points to the petitioner's suitable lesson plans, techniques for engaging students, professional development, openness to suggestions, punctuality, dependability, work ethic, accuracy in maintaining records, cooperativeness, and compliance with policies and procedures, but Ms. observations fail to demonstrate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified elementary school teachers.

The petitioner's references praise her abilities as a teacher and personal qualities, 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).

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 from the Maryland State Department of Education "for completing the Validation Process of the . . . *Standards for Implementing Quality Early Childhood Programs* and to recognize . . . dedication to maintaining educational excellence in the early learning years" (June 30, 2011);
2. A Certificate of Appreciation from the administration of [redacted] "for commitment, dedication, and outstanding contributions to the students and families of [redacted]" (June 18, 2010);
3. A Certificate of Appreciation from the principal of [redacted] "for dedication and service" to the school (June 19, 2009);
4. A Certificate of Achievement (2006) from the County Executive of [redacted] during American Education Week in honor of the petitioner's "service as an educator" in the [redacted] system;
5. A Certificate of Recognition from the [redacted] Board of Education wishing the petitioner "a successful and productive educational experience in the [redacted]" (September 27, 2006);
6. A Certificate of Appreciation from the administration of [redacted] (the petitioner's employer from June 1995 - March 2006) "for invaluable services and cooperation as Critic Teacher during the On-Campus Training of the [redacted]

at the mainstream – Pre- and Elementary Department, (October 10, 2005);

7. A Certificate of Appreciation from the administration of "for invaluable services and cooperation as Cooperating-Teacher during the On-Campus Training of the College of Education Student-Teacher, at Department" (October 13, 2004);
8. A Certificate of Appreciation from the administration of for "invaluable services and cooperation as Cooperating Teacher during the On-Campus Training of the College of Education Student-Teacher, at Elementary Department of (October 14, 2003);
9. A Certificate of Appreciation from the administration of for "invaluable services and cooperation as Cooperating Teacher during the On-Campus Training of the College of Education Student-Teacher, at Elementary Department of (October 9, 2002);
10. A Certificate of Appreciation from the administration of for "invaluable services and cooperation as Cooperating Teacher during the On-Campus Training of the Student Teachers" (October 15, 1998);
11. A Certificate of Appreciation from the administration of for "invaluable services and cooperation as Cooperating Teacher during the On-Campus Training of the Student Teachers" (March 13, 1998);
12. A Certificate of Appreciation from the administration of for "invaluable services and cooperation as Cooperating Teacher during the . . . On-Campus Teaching of the . . . College of Education" (October 17, 1997);
13. A Certificate of Appreciation from the administration of for "her invaluable services and cooperation as Cooperating Teacher during the On-Campus Training of the . . . Student Teacher" (October 4, 1996);
14. A Certificate of Appreciation from the administration of for "her invaluable services and cooperation as Cooperating Teacher during the On-Campus Training of the On-Campus Students" (September 30, 1993);
15. A Certificate of Appreciation from the Colleges and Universities Accrediting Agency, Inc. for "efforts and dedication in serving the Agency as an Accreditor and partner in promoting quality Christian Education through Voluntary Accreditation" (May 26, 2005);
16. A Certificate of Appreciation from the for her "efforts and dedication in serving the Agency as an Accreditor and partner in promoting quality Christian Education through Voluntary Accreditation" (May 9, 2002);
17. Employment verifications;
18. Earnings statements;
19. Academic records and transcripts; and
20. Two Maryland Educator Certificates with validity periods of "7/1/2006 - 6/30/2011" and "7/1/2011 – 6/30/2016."

Again, academic records, occupational experience, professional certifications, salary information, 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 alien employment 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 – 16) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 20 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 from [redacted] The petitioner, however, failed to demonstrate how the evaluations reflect that she has impacted the field to a substantially greater degree than other similary qualified 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 7, 2013, instructing the petitioner to submit evidence demonstrating that the benefits of her proposed employment would 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 February 28, 2013 letter from [redacted] Vice-Principal, [redacted] asserting that the petitioner is a "highly qualified" member of the school's kindergarten team and that "her students made [ ] significant progress in all academic areas." Mr. [redacted] observations, however, fail to explain how the petitioner's impact or influence as a kindergarten teacher is national in scope.

The petitioner also submitted a February 25, 2013 letter from [redacted] Assistant Principal, [redacted] commenting on the petitioner's effectiveness as a kindergarten teacher, ability to provide appropriate instruction according to students' developmental needs, improvement of her students' reading proficiency, and value to the school. However, Ms. [redacted] fails to provide specific examples of how the petitioner's work has influenced the field of early childhood education as a whole.

In addition, the petitioner submitted student performance assessment data for her kindergarteners at [redacted], a March 2011 press release and data summary from [redacted] pointing to the county's improved Maryland Model for School Readiness assessment results, and additional

"satisfactory" teacher evaluations, but the petitioner does not explain how the submitted documentation demonstrates her influence on the field as a whole.

The petitioner also 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"; and 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). 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 an elementary school teacher has influenced the field as a whole.

The director denied the petition on April 30, 2013. The director indicated that the petitioner had not shown that the proposed benefits of her work as a school teacher will be national in scope. The director also determined that the petitioner had failed to demonstrate she "would specifically benefit the national interest of the United States to a substantially greater degree than a similarly qualified U.S. worker." The director noted that the recommendation letters submitted by the petitioner failed to provide specific examples of how her teaching contributions have influenced the field. 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, the petitioner asserts that her "proposed employment as an early childhood educator will be national in scope." The petitioner states:

> Although [the petitioner's] continued employment is restricted within one locality, which is the number of young children she has taught and will continue to teach cannot be overlooked. In her six years of teaching, approximately 210 children have been trained and provided with the basic skills of reading and writing.

As previously discussed, *NYSDOT* 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 record contains no evidence

differentiating the petitioner's work from that of other competent early childhood educators or showing that the petitioner's efforts have national impact such as significantly effecting national literacy rates.

The petitioner expresses her disagreement with *NYSDOT* stating: "One cannot simply undermine the impact a school teacher has. The results of the work of a teacher does [sic] not remain in the classroom, the same way students do not remain in one grade level or school for their entire life." 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). The petitioner does not point to any evidence in the record showing that her specific work has produced substantial national benefits in the field of education. The national importance of "education" as a concept, or "early childhood 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 to improve student literacy does not meet the *NYSDOT* threshold. There are no blanket waivers for experienced foreign school teachers. USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *Id.* at 217.

The petitioner asserts that her proposed employment would benefit the national interest of the United States at a level above that of similarly qualified U.S. worker. The petitioner first points out that [redacted] "has expressed the need for her teaching services," but due to an "unfortunate predicament" is "prohibited to file a petition on her behalf." The petitioner refers to the debarment provisions of section 212(n)(2)(C)(i) of the Act invoked by the U.S. Department of Labor against [redacted] owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS cannot approve any employment-based immigrant or nonimmigrant petitions filed by [redacted][3] This debarment means that [redacted] is, temporarily, unable to file its own petition on the petitioner's behalf for a classification other than the one for which he was already approved, and thus explains why labor certification is not an option in the short term. 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 he will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT* at 218, n.5. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent [redacted] from filing a petition on her behalf.

In addition, the petitioner cites to various articles pointing to a shortage and high turnover rates among teachers and English as a Second Language educators. The unavailability of qualified U.S. workers or the amelioration of local labor shortages are not considerations in national interest waiver determinations because the alien employment certification process is already in place to address such shortages. *Id.* at 218. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor through the alien employment certification process. *Id.* at 221. The articles mentioned by the petitioner show that there is a demand for

[3] The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. *See* http://www.dol.gov/whd/immigration/H1BDebarment.htm, accessed on December 23, 2013, copy incorporated into the record of proceeding.

qualified teachers, a demand that the alien employment certification process can and, in this instance, did address. Specifically, the petitioner is the beneficiary of an approved I-140 petition classifying her as a professional under section 203(b)(3)(A)(ii) of the Act.

The petitioner contends that the recommendation letters and student progress assessment data for her kindergarteners at also demonstrate her eligibility for the national interest waiver. As previously discussed, the aforementioned documents do not show that the petitioner's 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.

Additionally, the petitioner points to her first-hand experience in learning and using a second language as a non-native-English-speaking teacher. Again, 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 Department of Labor. *NYSDOT* at 221. Any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification. *Id.* at 220-221.

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*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.