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 2 9 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 Special Educator and Individualized Education Program (IEP) Chair. 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 Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on June 12, 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 [redacted] filed a Form I-140 petition, with an approved labor certification, on her behalf on February 16, 2011, to classify her as a professional under section 203(b)(3)(A)(ii) of the Act. The Texas Service Center denied the previous petition for abandonment on January 4, 2012.

In a June 7, 2012 letter accompanying the petition, counsel stated that the petitioner's national interest waiver "is premised on her Master's Degree in Special Education, over twenty (20) years of dedicated and progressive teaching experience in Special Education, [and] the awards and recognitions received by her." 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. 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 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.

Id. 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 support from administrators, school staff, and parents 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] stated:

> In my role as principal, I have had the opportunity to work with [the petitioner] for the past 4 years. She is an extremely gifted educator who has contributed greatly to the development of the students and the organization of the special education program of [redacted] Her knowledge of special education law, sound reading instruction, and early childhood development has made her a valuable educator.
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> [The petitioner] far exceeds my expectations as a quality educator. [The petitioner] is a participant in our [redacted] program. Through this program [the petitioner] is observed formally two times annually. In her summative observation for the 2010-2011 school year, she earned a rating of distinguished in 24 of 26 areas for: planning for effective instruction, executing effective instruction and professional responsibilities. [The petitioner] is passionate about her work and is able to articulate her ideas very effectively. She also is a patient and understanding person who constantly makes decisions based on the best interest of children.
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> [The petitioner] is an active member of our learning community and offers many ideas and strategies for meeting the needs of our special education students. She participates in numerous professional development opportunities and pursues resources for increasing her teaching practice. She eagerly serves on numerous committees and is the chairperson for our special education committee. Additionally [the petitioner] mentors our new teachers in the area of special education. She is a self-starter and requires little supervision to produce excellent results.

[redacted] comments on the petitioner's knowledge as a special educator, her participation in the [redacted], distinguished summative observation rating, ability to articulate ideas, patience, understanding, participation in professional development, service as special education committee chairperson, mentorship of new teachers, and independence as an educator, but does not indicate how the petitioner's impact or influence as a special education teacher is national in scope. In addition, [redacted] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

, stated:

> I have known [the petitioner] for the past two and a half years as her assistant principal. She is a special education resource teacher at our school where she provides services to over 35 students. [The petitioner] also serves as the IEP . . . chair for where she conducts IEP meetings for over 100 students with a disability. I have worked very closely with her and have witnessed first-hand tremendous professional growth and incredible dedication and commitment to her students and
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> [The petitioner] always strives to make a difference in her students' lives and in the lives of her colleagues. Her mission to ensure that her students receive the best education she has to offer is demonstrated in her commitment and professionalism. She is a leader in the school and is always willing to assist her colleagues in lesson development, disability awareness, and meeting the needs of students with disabilities and students who do not have a disability but struggle academically. In my opinion, [the petitioner] is the perfect model for a teacher in the elementary school setting. She is highly dedicated and possesses a gift of being able to make complex subjects understandable. She is a humble person who loves to share her extensive knowledge with others.

points to the petitioner's work as a special education resource teacher, service as the IEP chairperson, positive interactions with students and colleagues, and professional qualities, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond

, stated:

> In her role as a Special Educator, [the petitioner] provides education for students with special needs both within the classroom as well as within a more individualized small group setting. She works with children with a myriad of disabilities ranging from Orthopedic Impairments to Autism and Intellectual Disabilities. I have had the opportunity to observe her teaching the students and it is evident that [the petitioner] does an exemplary job modifying her teaching techniques and utilizing scientific research based intervention strategies in order to educate students with such diversity of needs. Without her dedication and hard work, the quality of individualized education for these students would be greatly impacted.
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> As a Special Education Chairperson, [the petitioner] is responsible for scheduling, organizing and leading IEP meetings. . . . [The petitioner] has shown proficiency in leading meetings that are often of a sensitive nature and has demonstrated an understanding of the wide variety of information presented at the meetings from a diverse group of professionals. In addition, she has adhered to the ever changing standards in the realm of special education as it applies to Maryland State Regulations and Federal Guidelines. She is one of the most efficient and

> thorough Special Education Chairpersons that I have had the opportunity to work with here in
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> In addition to the roles outlined by [the petitioner's] position in the county, she has also gone above and beyond her job title as she has taken on several roles and activities within the school to help extend awareness and sensitivity about individuals with disabilities. [The petitioner] spent disabilities awareness month preparing informational packets to distribute to teachers as well as age appropriate information to be read to students each day on the intercom regarding disability awareness. In addition, she led an after school activity for all students and parents within the community to help increase awareness and understanding of disabilities as well as to promote inclusion and understanding of differences. She also spends tremendous amounts of time educating and training other special educators within the school building about effective teaching and behavior management strategies to use with students as well as updating them on new guidelines imposed by the county.

comments on the petitioner's job responsibilities and activities at but her 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 special education teachers.

The petitioner's references praise her abilities as a special educator and personal character, 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. An award ceremony program, photographs, and a certificate indicating that petitioner was among 36 recipients of an " from the Supervisor of the Office of Psychological Services, in recognition of "excellence and valuable contributions to the " (April 15, 2011);
2. A Certificate of Recognition stating that the petitioner "won 1st place in Extemporaneous Speech Contest (Regional Level)" during the 2nd Regional Association of Secondary School English Teachers Conference, (June 6, 2002);
3. A Certificate of Recognition from the Schools Division Superintendent, Division of Department of Education, Culture and Sports, Republic of the Philippines "for having won Teacher" for the 2000-2001 school year;
4. A Certificate of Recognition from the Schools Division Superintendent, Division of Department of Education, Republic of the Philippines "for having served as Demonstration Teacher during the Joint School Based Training on Technology Integration and Computer Assisted Instruction held on September 6 and 13, 2003 at
5. A Certificate of Appreciation from the for the petitioner's service "as Quiz Master in the Spelling Contest, held at III Meet" (October 29, 2002);
6. A Certificate of Recognition from the Schools Division Superintendent, Division of Department of Education, Republic of the Philippines "for having served as Resource Speaker in the Division Seminar/Workshop on " (June 6, 2003);
7. A Certificate of Recognition from the Schools Division Superintendent, Division of "for dedicated and meritorious services as Trainer and Resource Speaker in the Seminar/Workshop on BEC [Basic Education Curriculum] Empowered Exemplars in the Teaching of High School English" (July 26, 2002);
8. A Certificate of Recognition from the Schools Division Superintendent, Division of Department of Education, Republic of the Philippines "for having served as Trainer during the Division Seminar for Untrained Secondary School Teachers on the Implementation of the 2002 Restructured Basic Education Curriculum" (June 2002);
9. A Certificate of Recognition from the Schools Division Superintendent, Division of Department of Education, Republic of the Philippines "for serving as trainer in the school based training of teachers on the implementation of the 2002 Basic Education Curriculum Reform held at (April 2002);

10. A Certificate of Merit from the Schools Division Superintendent, Division of [redacted] Region III, Department of Education, Republic of the Philippines for serving "as a Reading Trainer in the Division [ ] Seminar/Workshop on Higher Order Thinking Skills for the Reading Education Training Program" (July 2001);
11. A Certificate of Recognition from the Schools Division Superintendent, Division of [redacted] Region III, Department of Education, Republic of the Philippines "for having won 2nd Place in Readers' Theater Contest during the 2nd Division English Olympics held at [redacted] Teachers' Training Center" (January 11, 2002);
12. A Certificate of Merit from the Schools Division Superintendent, Division of [redacted] Region III, Department of Education "for having won 4th place in Readathon category during the [ ] English Olympics held at [redacted] on December 11, 2001";
13. A Certificate of Merit from the Schools Division Superintendent, Division of [redacted] Region III, Department of Education "for having won [redacted] during the [ ] English Olympics held at [redacted] on December 11, 2001";
14. A Certificate of Participation from the Department of Education, Culture and Sports, National Capital Region – Division of City Schools, Private School Services, [redacted] "for having been a Trainer at the inter-private schools Elocution Contest conducted on September 8, 1994 at [redacted]
15. A Certificate of Recognition from the Division of City Schools, [redacted] "for having served as Trainer in the District Level Oratorical Contest on Drug Abuse Prevention" (November 17, 1992);
16. A Certificate of Appreciation from the Department of Special Education, [redacted] "in recognition of valuable contributions to the Special Education Department" (May 20, 2011);
17. A Certificate of Appreciation "in recognition of her valuable contributions to: The [redacted] 'Think Tank'" September 15, 2009;
18. A "Certificate of Seussational Achievement" for participating in the National Education Association's "Read Across America Day" (March 2, 2009);
19. A "World Record Reader [ ] certificate presented to [the petitioner] on October 2, 2008 for joining in Jumpstart's Read for the Record";
20. A Certificate of Appreciation from the principal of [redacted] for "dedication to the students of [redacted] (May 2008);
21. Employment verifications;
22. Earnings statements;
23. Academic records and transcripts; and
24. A Maryland Educator Certificate.

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 – 20) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 24 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 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 special educators and how her specific work has had significant impact outside of the schools where she has taught.

The petitioner also submitted evidence of her teaching material, organization of special programs at her school such as Disability Awareness Night, coordination of disability awareness workshops for educators at her school, and other educational activities, but the petitioner does not explain how the submitted documentation demonstrates her influence on the field as a whole.

Additionally, the petitioner submitted a "Master's Project Paper" that she completed for but there is no evidence demonstrating that the petitioner's findings were implemented by a number of schools, were frequently cited by independent educational scholars, or have otherwise influenced the field of special education as a whole.

The director issued a request for evidence on February 2, 2013, instructing the petitioner to submit evidence demonstrating "that the benefits of her future work in the U.S. 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 an April 11, 2013 letter from a parent whose daughters attend commenting on the petitioner's enthusiasm, caring manner, service as IEP chair, and coordination of Disability Awareness Night at the school, but the parent's observations fail to explain how the petitioner's impact or influence as a special educator is national in scope.

In addition, the petitioner submitted an April 16, 2013 letter from a student intern from the commenting on the petitioner's capabilities as a special education mentor, work as IEP chair, and coordination of Disability Awareness Night at Elementary School. However, fails to provide specific examples of how the petitioner's work has influenced the field of special education as a whole.

The petitioner also submitted additional "satisfactory" teacher evaluations, documentation of a second Disability Awareness Night coordinated by the petitioner at and a personal statement attesting to the importance of her work as a special education teacher with but the submitted documentation fails to demonstrate the petitioner's specific influence on the field as a whole.

Additionally, the petitioner submitted President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; information about Public Law 94-142; an article in *Encyclopedia of the Supreme Court of the United States* about *Brown v. Board of Education*, 347 U.S. 483 (1954); a copy of Section 1119 of the No Child Left Behind Act (NCLBA); a September 26, 2011 article in *Education Week* entitled "Shortage of Special Education Teachers Includes Their Teachers"; 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; a report entitled "Special Education Teacher Retention and Attrition: A Critical Analysis of the Literature"; information about STEM (science, technology, engineering and mathematics) fields printed from the online encyclopedia *Wikipedia*; 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 an elementary school special education teacher has influenced the field as a whole.

The director denied the petition on May 4, 2013. The director stated that the petitioner had not shown "that the benefits of her intended work will be national in scope, or that [the] petitioner has a record of achievement with some degree of influence on her field as a whole." 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.'" 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*, 2012-13 Edition, describes the minimum qualifications necessary to become a special education teacher:

> Public school teachers are required to have a least a bachelor's degree and a state-issued certification or license.
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> * * *
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> Education
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> All states require public special education teachers to have at least a bachelor's degree. Some of these teachers major in elementary education or a content area, such as math or chemistry, and minor in special education. Others get a degree specifically in special education.
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> * * *
>
> Some states require special education teachers to earn a master's degree in special education after earning their teaching certification.
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> * * *
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> Licenses
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> All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.
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> * * *
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> Requirements for certification vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, which is typically gained through student teaching. Some states require a minimum grade point average.
>
> Many states offer general special education licenses that allow teachers to work with students across a variety of disability categories. Others license different specialties within special education.

> Teachers are often required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.
>
> Some states allow special education teachers to transfer their licenses from another state. However, some states require even an experienced teacher to pass their own licensing requirements.

See http://www.bls.gov/ooh/Education-Training-and-Library/Special-education-teachers.htm#tab-4, accessed on January 2, 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." Thus, the petitioner's specific qualifications and experience are not required for "highly qualified" status under the NCLBA.

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 record, however, contains no evidence that the petitioner's efforts have significantly closed that gap in [redacted] 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 [redacted] and [the petitioner's] assigned school. The 2012 MSA [Maryland School Assessment] Reading results show that out of the 24

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

The petitioner has worked for [redacted] 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 MSA results for [redacted] (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 contends that the "director erred in his appreciation of petitioner's past achievement," but counsel fails to point to specific evidence in the record showing that the petitioner's work has had a national impact or 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," but 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 asserts that 59% of special educators in the nation hold a Master's degree and that 92% of special educators have full certification. These numbers indicate that nearly three out of five special educators in the United States possess professional credentials comparable to those of the petitioner. According to counsel's statistics, the petitioner's credentials do not readily stand apart from those of most others in her field.

Counsel cites to studies pointing to high turnover rates and inexperience among special education teachers. 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. *NYSDOT* at 218. Again, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221. The studies mentioned by counsel show that there is a demand for credentialed special education 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 labor certification that PGCPS filed on her behalf on June 29, 2010.

Counsel asserts 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." Counsel's assertion, however, is not supported by the evidence in the record. As previously noted, the petitioner is the beneficiary of an approved labor certification filed in her behalf by [redacted] Moreover, 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. 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. *Id.* at 218, n.5.

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.