



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 01 2013** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

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

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

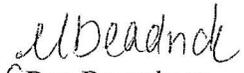
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


f Ron Rosenberg
Acting 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, the petitioner seeks employment as a “Special Education Teacher” for [REDACTED]. The petitioner has worked for [REDACTED] since 2007. At the time of filing, the petitioner was teaching at [REDACTED] in Bowie, 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 from counsel.

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

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

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

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

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

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

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

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

In re New York State Dept. of Transportation (NYSDOT), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term “prospective” is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

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

The petitioner has established that her work as a special educator is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner’s work would 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 alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien'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 alien 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 March 19, 2012. In a March 12, 2012 letter accompanying the petition, counsel stated that the petitioner merits the national interest waiver based on the petitioner's equivalent master's degree in special education, more than twenty (20) years of progressive teaching experience, awards and recognitions that she received as a teacher, impact on her special education students, improvement of United States education in the field of special education, and expertise in the [REDACTED] Program. Academic degrees, experience, and recognition such as awards 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 petitioner's awards, impact on her students, efforts in improving United States education in the field of special education, and expertise in the [REDACTED] Program will be further discussed later in this decision.

The petitioner submitted a "Narrative Resume" discussing her background, education, and teaching career. Referring to herself in the third person, the petitioner described her work as a special educator for [REDACTED] stating:

In February 2007, [the petitioner] signed a 5 year contract with [REDACTED] in Maryland as a Special Educator assigned in a [REDACTED], a program designed to manage the needs of 3rd grade students with moderate disabilities within a self-contained setting.

At first, she had to make adjustments to her new life at [REDACTED]. However, with the support of her administrators and colleagues she was able to flourish and grow. She was greatly encouraged by their improvements in their academic skills despite the existence of moderate Learning Disabilities and Emotional Disturbance. Her students demonstrated progress in reading as well as in mathematics.

Due to her school being overstaffed, she had to be placed at [REDACTED] as a Special Educator in the primary grades at their [REDACTED]. It was here that she was exposed to severely-disabled students with Multiple Disabilities, Autism, Down's syndrome, and those who were wheelchair-bound that not only needed academic instruction but taught functional skills as well. She was at first apprehensive in having to work with these kinds of children because she had no prior exposure to them. However, as time progressed she was able to find her

niche as she felt it to be very fulfilling to be able to help those who had the highest level of need.

* * *

She was displaced yet again due to overstaffing and is now teaching at [REDACTED] as a 3rd Grade Special Educator in their [REDACTED] program last school year until now. She was able to capitalize on her strengths and prior knowledge from her wealth of experience and was successful in making her students pass the Alternative Maryland School Assessment (Alt-MSA), three of whom got Advanced score. Because of this, she was able to make a positive contribution towards the school's improved overall performance and attaining Annual Yearly Progress (AYP). Her talents and skills were recognized by parents and the school administration as they saw how the students under her care made substantive improvements. Because of this, she had been assigned as a Chairperson for [REDACTED] since August of last year.

In her statement, the petitioner did not mention the *NYS DOT* guidelines or explain how she meets them. In addition, the petitioner did not indicate that her expertise in the [REDACTED] program and teaching methodologies had an influence beyond [REDACTED]. With regard to the petitioner's special education work for [REDACTED] there is no evidence establishing that the benefits of her work would extend beyond the classroom such that they might have a national impact. *NYS DOT*, 22 I&N Dec. at 217, n.3. 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.

In the present matter, the benefits of the petitioner's impact as a special educator would be limited to students at her school and, therefore, so attenuated at the national level as to be negligible. In addition, the record lacks specific examples of how the petitioner's work as a special education teacher has influenced the education field on a national level. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above 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, teachers, and parents discussing her work as a special education teacher for [REDACTED]. As some of the letters contain

redundant claims already 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 an excellent teacher at [REDACTED] and without her services, our students would suffer. She is a fine Special Education teacher, a supportive peer, and truly has the best interest of children at heart. I need her to continue serving the children with special needs at [REDACTED]. Her students have scored well on standardized tests as well.

Her contributions to [REDACTED] and [REDACTED] in particular are greatly valued.

[REDACTED] describes the petitioner as "an excellent teacher" and comments on the need for her services at [REDACTED], but [REDACTED] does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under her tutelage and the local school system that employed her.

[REDACTED], Assistant Principal, [REDACTED] stated:

[The petitioner] is a community Reference Instruction [REDACTED] teacher who works in the Special Education Department at [REDACTED] where she serves as chairperson. [The petitioner] has many attributes that contribute to her being a good teacher. The first attribute consists of her personal qualities. She has excellent communication skills which allow her to communicate with her students, and build a home school connection with her parents. Her interpersonal skills allow her to plan collaboratively with the teachers on her grade level, and follow the rules to stay in compliance with the regulation of Special Education. Patience is a must when working with [REDACTED] students, and [the petitioner] has a lot of patience, and she cares about her students.

* * *

Although [the petitioner] exposes her students to the county curriculum, she knows how to pace and modify each lesson to meet each student's IEP [Individualized Education Plan] needs.

[The petitioner] is respected and held in high esteem by her colleagues as evident by their confidence in her ability to represent them as chairperson.

[REDACTED] comments on the petitioner personal qualities and teaching skills, but it cannot suffice to state that the alien possesses useful skills, or a "unique background." As previously discussed, 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.

Program Specialist, Special Education Department, stated:

[The petitioner] is currently assigned as a special educator in the Program at in Bowie, MD, to instruct and support students who have significant cognitive and academic challenges. In this role, [the petitioner] is utilizing a repertoire of instructional strategies to differentiate instruction for the students who are participating in the Program. She is using these instructional strategies to promote positive learning results in the special education setting and to appropriately modify learning environments for her students.

[The petitioner] is a knowledgeable, dedicated teacher. She is conscientious, responsible, and honest. More importantly, [the petitioner] has excellent human relations skills with her students, parents, and colleagues. As a special educator, [the petitioner] is truly a valuable resource to her students and their families.

In addition, [the petitioner] is the Chairperson for the. A few of her duties encompass ensuring that the staff meets various deadlines, assisting staff with improving instructional practices, and keeping staff abreast of professional development workshops and special education issues. She also works diligently to develop and maintain team rapport with all staff members to discuss academic planning, instructional strategies, Community Based Instruction, and modifications of materials.

[The petitioner] has been successful in assisting her students to obtain "Advanced" scores on the. She used the results of the to develop and implement individualized instruction and adjust instruction to address the needs of each student in her classroom.

discusses the petitioner's work as a special educator at but fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

Reading Specialist, Testing Coordinator, and Talented and Gifted Coordinator, stated:

It has been my pleasure to work with [the petitioner], who began her teaching at with confidence, knowledge and a natural ability to connect with and teach students.

* * *

Working with [the petitioner] throughout the school years, it quickly became apparent that she planned each lesson, differentiating her teaching across the curriculum. [The petitioner]

administered formal and informal assessments analyzing the data to guide her instruction. She used the county's curriculum framework and cross referenced it with the state curriculum flawlessly to present her students with the on grade level material needed as well as back mapping to reteach skills and strategies stated on the IEPs. Documented accommodations were implemented in daily instruction and assessments. [The petitioner] uses technology effectively with her teaching and gives her students opportunities to use instructional computer programs for reinforcement. Her ability to work with co-workers has proved beneficial to both staff and students. When recommendations are made based on learning walk observations and dialogue, the recommendations are always implemented and apparent in her class immediately.

comments on the petitioner's activities as a special educator and effective use of technology with her students at , but does not indicate how the petitioner's impact or influence as a teacher is national in scope.

In her second letter, stated:

As the School Test Coordinator, I have worked closely with [the petitioner] throughout the year with the

Her students for the 2010-2011 school year scored well due to [the petitioner's] instruction and thoroughness of putting the students' assessment portfolios together. Three out of her six students scored advanced. The others [sic] three students passed. These scores contributed positively to the school's AYP (Annual Yearly Progress).

asserts that three out of the petitioner's six students scored advanced and her other three students passed the , but comments do not set the petitioner apart from other competent and qualified teachers, or explain how the petitioner's work has impacted the field beyond her students at

Special Education Teacher at and President of the , stated:

[The petitioner's] rich experience in the field of education and further studies intensified the kind of a teacher she is. [The petitioner] is not only efficient, she is also an effective teacher. As a special education teacher, [the petitioner] has a whole arsenal of strategies, strategies that would be appropriate for each child's unique needs. This is something that only an expert teacher can do. She utilizes technology, and uses variety of approaches such as TEACHH Method, Applied Behavior Modification, Floor Time Approach and Sensory Integration in teaching as she seriously believes that she is accountable for the learning that takes place in her class.

Last year, all her students showed significant gains as evidenced by their performance in the Alternate Assessment given annually to the population that [the petitioner] works with.

Furthermore, [the petitioner] is an active member of [redacted] Maryland chapter since 2011 up to the present. [The petitioner] is also active in the community [redacted] at [redacted]. She volunteers to conduct free tutorial class in Math to students who are preparing for a state-wide assessment which will take place this coming March.

[redacted] comments on the petitioner's teaching expertise and work as a special educator at [redacted] within the [redacted] system, but [redacted] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

[redacted] Chairperson, [redacted] stated:

[The petitioner] is not only efficient, she is also an effective teacher. Special education teachers, especially those who are called to serve those who are severely handicapped, have numerous challenges every single day, from toilet training, to interacting with other people, to coping with the academic demands of school life. [The petitioner] has a whole arsenal of strategies, strategies that would be appropriate for each child's unique needs. . . . She utilizes technology, uses manipulatives and other materials to engage her children at their level as she seriously believes that she is accountable for the learning that takes place in her class. Part of her duties is to make artifacts that will meet set of objectives and will allow her students to show what they know. This is a tedious task, and [the petitioner] has been able to demonstrate effective teaching and efficient use of time and resources to accomplish this herculean task. . . . Last year, all her students showed significant gains as evidenced by their performance in the Alternate Assessment given annually to the population that [the petitioner] works with. Parents who come to drop off their kids, feel that they are leaving their children with not only a competent teacher, but one who truly cares for their children.

While [redacted] describes the petitioner as an efficient, effective, and competent special education teacher, [redacted] comments do not indicate how the petitioner's impact or influence as a special educator is national in scope.

[redacted] Special Education Teacher, [redacted] stated:

I have known [the petitioner] for almost 2 years. She came to [redacted] in a later time, but prior to her assignment to our school, she teaches at other different schools. Her experiences and education intensified the kind of a teacher she is. Her excellent ideas and skills in developing her everyday lessons for the children made her students do great on their tests.

She is also the Chairman of [redacted]. As the chairman, she showed genuine concern to the other staffs and thoughtful in making decisions in any matters

that concern the group. Under her guidance, she articulates programs which are beneficial to students. Furthermore, she monitors these programs to assure their usefulness to students and to the teachers.

comments on the petitioner's teaching experience, skills in developing lessons, and work as Chairman at , but fails to explain how the petitioner work's has impacted the field beyond her school. Regardless of the petitioner's particular experience or skills, even assuming they are unique, the benefit that her skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYS DOT* at 221.

, parents, stated:

We are proud parents of a 7 year old girl . was born with Trisomy 21 (Down Syndrome). As her advocate, we have sought out the best for her. This brings us to her current teacher [the petitioner], we had thought about withdrawing from due to the fact that there was no improvement in our daughter's learning.... But upon meeting [the petitioner], who is now teacher, we love her approach to teaching. She is very involved, compared to her previous teacher.

So we decided to try [the petitioner] out and I must say that we are very glad that we did not follow through with the transfer process. All facets of learning increased exponentially. Thanks to [the petitioner's] efforts because without a doubt, she is an asset to any schools she finds herself in.

speak highly of the petitioner's interactions with their daughter and their comments demonstrate that the petitioner works in an area of substantial intrinsic merit. However, comments do not indicate how the petitioner's impact or influence as a teacher is national in scope.

, Teacher, , stated:

[The petitioner] joined our staff several years ago as a teacher in the program. She is always positive and effectively collaborates with teachers and specialists to meet the needs of her students. Children in the program have multiple, and often severe, disabilities which requires planning, modification of all materials, and alternative methods of assessment. In all instances, [the petitioner] goes above and beyond providing her students with the individualization that they need to be successful.

During this time she has also gained the respect of her colleagues by being elected to the faculty advisory council as representative for as a member of the school-based leadership for the

█ comments on the petitioner's work in the █ program and her election to the faculty advisory council as representative for █ in the █, but █ does not explain how the petitioner's work has influenced the special education field on a national level.

█ Special Education Teacher, █ stated:

In her capacity as department chair, [the petitioner] ensures that our classes have the most recent materials and advanced curriculum necessary to make sure no student is left behind. With her encouragement my peers and I continue to develop our knowledge base as well as attend workshops/seminars addressing the needs of students with special needs. [The petitioner] has proven herself to be an asset to the program, school and district.

While █ comments on the petitioner's activities and value as department chair of the █ program at █ fails to explain how the petitioner work's has impacted the field beyond █.

█, Special Education Teacher, █ stated:

For two years, I worked and collaborated with [the petitioner] and I witness her dedication to her profession. Her classroom is well-structured and she uses research and evidence-based teaching strategies. She has been very effective with her students and I had seen them progress both academically and socially.

As the designated █ Chairperson for this school year, 2011-2012, [the petitioner] has demonstrated good leadership towards her team members. She is very supportive and accommodating.

In addition to being an excellent teacher to students with special needs, [the petitioner] is active in her own neighborhood and church. She is a volunteer in the █, a free tutorial program spearheaded by the PTA (Parent-Teacher Association).

█ praises the petitioner's skills as a special educator and comments on her community service work, but █ fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

█, 4th Grade Special Education Teacher of █ stated:

[The petitioner] has a wonderful rapport with people of all ages, especially children. Her ability to connect with her students and her talent at teaching simple concepts, as well as more advanced topics, are both truly superior. She has excellent written and verbal communication skills, is extremely organized, reliable and computer literate. [The petitioner]

achievements. Nothing in the two articles sets the petitioner apart from other competent and qualified teachers, or explains how the petitioner's work has impacted the field beyond [REDACTED]

The petitioner submitted the following:

1. A Certificate of Membership for the [REDACTED]
2. A [REDACTED] Certificate;
3. A [REDACTED] "Certification of Good Standing" from the [REDACTED], Manila;
4. A [REDACTED] Certificate of Excellence from the [REDACTED] [REDACTED] "for sharing her expertise in [REDACTED]";
5. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Outstanding Homeroom Adviser";
6. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Best in Teaching Strategies";
7. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Most Resourceful";
8. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Best in Classroom Management";
9. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Best in Art of Asking Questions";
10. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Best in Teaching Strategies";
11. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Classroom Management";
12. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Most Creative in Teaching";
13. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Best in Teaching Strategy";
14. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Best in Classroom Management";
15. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Best in Art of Asking Questions";
16. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Most Appropriate Use of Visual Materials";
17. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Most Promising Grade Level Coordinator";
18. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Outstanding Grade Level Coordinator";
19. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for "Best in Student-Teacher Rapport";

20. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for “Outstanding Homeroom Adviser”;
21. A Certificate of Recognition [REDACTED] from the principal of the [REDACTED] for “Outstanding Grade Level Teacher”;
22. A [REDACTED] membership card; and
23. Employment verifications from various schools where the petitioner has taught.

Occupational experience, licenses, professional memberships, and recognition for achievements are all elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(B), (C), (E) and (F), respectively. As noted previously, exceptional ability in the sciences, the arts or business is not sufficient to warrant 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 have more than local or institutional significance. For instance, the petitioner’s Certificate of Excellence from the [REDACTED] [REDACTED] reflects institutional recognition from the local chapter for giving a [REDACTED] presentation rather than a nationally significant award in the field of education. There is no documentary evidence showing that items 1 – 23 are indicative of the petitioner’s influence on the field of education at the national level.

The petitioner submitted a copy of her [REDACTED] presentation and photographs of her giving the presentation at a [REDACTED] meeting, but there is no documentary evidence showing that the petitioner originated the [REDACTED] that the petitioner’s original methodologies were implemented outside of Maryland, or that her work otherwise notably influenced the field.

The petitioner submitted copies of her “satisfactory” teacher evaluations and classroom observations from [REDACTED]. The petitioner, however, did not submit documentary evidence indicating that she has impacted the field to a substantially greater degree than other similarly qualified special education teachers. Moreover, there is no evidence showing that the petitioner’s specific work has had significant impact outside of the schools where she has taught.

The petitioner submitted numerous certificates of participation, completion, and attendance for training courses, seminars, and workshops relating to her professional development. While taking courses and attending seminars and workshops 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.

The director issued a request for evidence on September 20, 2012, instructing the petitioner to “submit evidence to establish that the beneficiary’s past record justifies projections of future benefit to the nation.”

In response, the petitioner submitted a November 30, 2012 letter in which she stated:

In this 21st Century global economy, where jobs can be shipped to any place with an internet connection and children here in America will be competing with children around the world for the same jobs, a good education is no longer just one road to opportunity . . . it is the only road! Good teachers aren't just critical for the success of our students. We are the key to success of our economy. With the shortage of teachers is critical to our children's future, our leadership in our classroom is the key to a successful economy. My knowledge about technology through the incorporation of the Universal Design of Learning in my daily instructions provides my students the opportunity to explore the different strategies and skills with Reading, Math and Science.

* * *

We, teachers are considered backbone to the nation. There would be no doctors, engineers, scientists, accountant, businessmen, nurses, farmers and salesladies without teachers. We can change the future of the society with our well-being, courageous behavior and special skills.

* * *

I have taught students in public schools, who have varied disabilities from mild to severe. Most have been displaying poor in language and number literacy, poor in receptive and expressive language. With my unique teaching skill and my exemplary connectivity in their classrooms and possessing a sense of purpose, I have expectations of success for all my students. I have seen them progressing tremendously, hence parents sent me their commendation and appreciation letters of what I have accomplished for their children.

* * *

With the new generation of outstanding leaders in the classroom like me, I can make a lasting impact in the lives of our young people of this nation . . . America.

The petitioner comments on "the shortage of teachers" in her field, but assuming the petitioner's teaching skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *NYSDOT* at 221. The petitioner also discusses the importance to the nation of having qualified teachers. General assertions 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 alien benefits the national interest by virtue of engaging in the field. *Id.* at 217. Such assertions address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test.

The petitioner also submitted a letter from [REDACTED], a [REDACTED] parent, stating:

My family and I have been very fortunate enough to be working with and have [the petitioner] as a Special Education Teacher for our daughter, [REDACTED] who is a special needs child with an intellectual delay at [REDACTED] in Bowie, Maryland.

As a Special Education teacher to my daughter who is currently in the first grade, [the petitioner] through her dedication, patience, and efforts has made tremendous strides in both academics and social situations with my daughter in a very short time period.

* * *

My daughter has been with [the petitioner] since August 2012. Since that time and being under [the petitioner's] care, my daughter is now able to recognize the numbers one through five, she has a desire to participate in classroom activities, she now tries to imitate sounds upon request, she completes classroom activities and our family continues to see progress and growth in so many areas. [The petitioner] has used strategies and techniques that are effective such as hand over hand, verbal prompts, picture prompts, and touch match for academics. In social situations [the petitioner] exercises extreme patience and a positive rewarding system in order to correct the behavior issues with our daughter.

[The petitioner] communicates daily with us in regards to [REDACTED] progress and suggests ways to help assist [REDACTED] at home and in the community. I am so appreciative and thankful for [the petitioner]. . . . We need more teachers, special education teachers like [the petitioner]; she has made difference in our child and our lives.

[REDACTED] speaks highly of the petitioner's interactions with her daughter and her comments demonstrate that the petitioner works in an area of substantial intrinsic merit. However, [REDACTED] comments do not indicate 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 qualified special education teachers.

In a December 10, 2012 letter accompanying the petitioner's response to the director's request for evidence, counsel cited the No Child Left Behind Act (NCLBA) and other government initiatives to reform and improve public education. Counsel asserts that section 203(b)(2)(B)(i) of the Act does not contain clear guidance on eligibility for the waiver, and claims that Congress subsequently filled that gap with the passage of the NCLBA. Counsel noted 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. Counsel, however, identified no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

Counsel did not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. 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, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA indirectly implies a similar legislative change.

Counsel asserted that the benefit arising from the petitioner's work is national in scope because of the "national priority goal of closing the achievement gap." The record, however, contains no evidence that the petitioner's efforts have significantly closed that gap. 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 continued:

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 [REDACTED]. The 2012 MSA [Maryland State 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 targets

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 did 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 stated that the petitioner "is an effective teacher in raising student achievement in STEM" (science, technology, engineering and mathematics), but he cited no documentary evidence to support that claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, counsel asserted that the petitioner

has “proven success in raising proficiency of her students.” While the January 20, 2012 letter from [REDACTED] indicates that three out of the petitioner’s six students scored advanced and her other three students passed the ALT-MSA, there is no documentation demonstrating that the petitioner’s work has had an impact or influence outside of [REDACTED] or [REDACTED].

Counsel asserted that providing “legal immigrant status for ‘Highly Qualified Special Education Teachers’ like [the petitioner] . . . will not only help improve the Education in the country but more importantly serve as ‘key to the nation’s economic prosperity.’” Counsel did not explain how the actions of one teacher would contribute significantly to improving the national educational system or the U.S. economy. Congress could have created a blanket waiver for special education teachers, but did not do so. Instead, the job offer requirement applies to members of the professions (such as public school teachers) and to aliens of exceptional ability (*i.e.*, foreign national workers who show a degree of expertise significantly above that ordinarily encountered in a given field).

Counsel stated that the labor certification requirement is deficient because, for labor certification purposes, the U.S. Department of Labor considers a bachelor’s degree, rather than a master’s degree and experience, to be the minimum educational requirement for a special education teacher. The petitioner submitted information from the *Occupational Outlook Handbook* describing what the U.S. Department of Labor considers to be 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.

* * *

Education

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.

* * *

Some states require special education teachers to earn a master’s degree in special education after earning their teaching certification.

* * *

Licenses

All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.

* * *

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.

All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification. Some alternative certification programs allow candidates to begin teaching immediately, under the close supervision of an experienced teacher.

Counsel emphasized "the critical timeline" and "time-sensitive obligation" for hiring "Highly Qualified Teachers," and claimed that the labor certification process cannot accommodate this need because "[t]he United States Department of Labor minimum education requirement for Special Education Teacher is just a bachelor's degree."

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.

Section 9101(23)(A)(ii) of the NCLBA further indicates that a teacher is not “Highly Qualified” if he or she has “had certification or licensure requirements waived on an emergency, temporary, or provisional basis.”

The petitioner has not established that the “Highly Qualified” standard involves requirements that are significantly 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 level of education and experience are not required for “highly qualified” status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA’s mandate for schools to employ “highly qualified teachers.”

Counsel stated that a waiver would ultimately serve the interests of United States teachers, because if schools “fail to meet the high standard required under the No Child Left Behind (NCLB) Law,” the result would be “not only . . . closure of these schools but [also] loss of work for those working in those schools.” Counsel does not document “closure of . . . schools” for failing to meet NCLBA requirements, and the record does not show that the petitioner’s work has brought [REDACTED] schools closer to meeting the NCLBA requirements.

Counsel further stated:

[The petitioner] is firmly committed to teaching at [REDACTED]. However, [REDACTED] is currently barred for a two-year period . . . from filing any employment-based immigrant and/or nonimmigrant petition pursuant to the terms of a settlement agreement it had entered into with the United States Department of Labor arising from [REDACTED] willful violations of the H-1B regulations at 20 C.F.R. Part 655, subparts H and I.

The U.S. Department of Labor invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act 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].¹ This debarment means that [REDACTED] is, temporarily, unable to file its own petition on the alien’s behalf, 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 the alien 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.

Counsel stated that another [REDACTED] teacher received a national interest waiver, and asked that the present petition “be treated in the same light.” Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS

¹ 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 July 26, 2013, copy incorporated into the record of proceeding.

is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. Without such evidence, the assertion that both cases merit the same outcome is unwarranted. The only stated similarity is that the beneficiary of the approved petition is “also a teacher in [REDACTED].”

The petitioner submitted public school progress reports for [REDACTED] MSA Reading results for [REDACTED] public schools; President George H.W. Bush’s “Remarks on Signing the Immigration Act of 1990”; information about Public Law 94-142; a copy the Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954); a copy of Section 1119 of the NCLBA; a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; a September 26, 2011 article in *Education Week* entitled “Shortage of Special Education Teachers Includes Their Teachers”; an article entitled “STEM Sell: Are Math and Science Really More Important Than Other Subjects?”; “Barack Obama on Education” questions and answers posted at www.ontheissues.org; information about STEM fields printed from the online encyclopedia *Wikipedia*; an article entitled “Special Education Teacher Retention and Attrition: A Critical Analysis of the Literature”; an abstract for a report entitled “SPeNSE: Study of Personnel Needs in Special Education”; 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 alien benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. While such arguments and information address 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 special educator has influenced the field as a whole.

The director denied the petition on January 14, 2013. The director found 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. The director indicated that the petitioner had not shown that her work as a special education teacher would be national in scope. In addition, the director stated the petitioner had not demonstrated any contributions of such unusual significance that she merits the special benefit of a national interest waiver.

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 as the guiding principle rather than the precedent case” *NYSDOT*. Counsel, however, does not point to any specific legislative or regulatory provisions in the NCLBA that exempt foreign school teachers from *NYSDOT* or reduce its impact on them. It is within Congress’s power to establish a blanket waiver

for teachers, “highly qualified” or otherwise, but contrary to counsel’s assertions, that waiver does not yet exist. With regard to following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to reject published precedent. See 8 C.F.R. § 103.3(c), which indicates that precedent decisions are binding on all USCIS officers.

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.” Counsel has, thus, directly quoted the statute that supports the director’s conclusion. 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.” Neither the Immigration and Nationality Act nor the NCLBA, separately or in combination, create or imply any blanket waiver for foreign teachers.

Counsel states that the director’s “decision did not present even one comparative candidate having at least the equivalent accomplishment as that of [the petitioner] to supports its determination.” Counsel’s assertion rests on the incorrect assumption that the *NYSDOT* guidelines amount to an item-by-item comparison of an alien’s credentials with those of qualified United States workers. The key provision, however, is that the petitioner must establish a record of influence on the field as a whole. There is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify other equally qualified special educators. 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 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 overall importance of closing the achievement gap between minority and nonminority students does not imply that any one teacher will play a nationally significant role by educating her students in subject areas where performance deficiencies exist. Again, general arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, address only the “substantial intrinsic merit” prong of *NYSDOT*’s national interest test. *NYSDOT* at 217. Regardless, as previously discussed, there is no documentary evidence showing that the petitioner has played an effective role in “closing the achievement gap” in [redacted] or nationally.

Counsel points to the petitioner's Certificate of Excellence from the [REDACTED] [REDACTED] "for sharing her expertise in [REDACTED] [REDACTED]" and her Certificates of Recognition from [REDACTED] as evidence of her "past history of achievement." The petitioner's award from the [REDACTED] is limited geographically to Filipino teachers in state of Maryland. In addition, the petitioner's awards from the principal at [REDACTED] are local or institutional in nature and not indicative of an impact outside of that particular school. None of the preceding awards shows that the petitioner's work has had a wider impact on the field of special education. There is no documentary evidence demonstrating that any of the awards received by the petitioner are national in scope and indicative of her influence on the field as a whole.

Counsel contends that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers. Once again, counsel's contention rests on the incorrect assumption that the *NYSDOT* guidelines amount to an item-by-item comparison of an alien's credentials with those of qualified United States workers. The pertinent eligibility factor set forth in *NYSDOT*, however, is that the petitioner must demonstrate a record of influence on the field as a whole. Such a requirement does not necessitate a review of other special education teachers' credentials.

Counsel claims that "the Immigration Service is requiring more from the beneficiary's credentials and tantamount to having exceptional ability," even though one need not qualify as an alien of exceptional ability in order to receive the waiver. As previously discussed, the threshold for exceptional ability is separate from the threshold for the national interest waiver. It remains that the petitioner's evidence does not facially establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director observed that the petitioner's evidence does not show that the petitioner's work has had an influence beyond the schools where she has worked.

Counsel states that the labor certification guidelines "require only a bachelor's degree," and therefore "may not meet the objective of employers to hire highly qualified teachers pursuant to No Child Left Behind." On page 15 of the appellate brief, however, counsel acknowledges that the statutory definition of a "Highly Qualified Teacher" requires only a bachelor's degree. Counsel does not reconcile these contradictory claims.

Counsel cites to several studies pointing to a high turnover rate among special education teachers. As previously discussed, a shortage of qualified workers in a given field is an issue that falls under the jurisdiction of the Department of Labor through the alien employment certification process. *Id.* at 221.

Much of the appellate brief consists of general statements about educational reform and discussion of perceived flaws in the labor certification process. The petitioner, however, has not established that Congress intended the national interest waiver to serve as a blanket waiver for special education

teachers. It is the position of USCIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217.

It is evident from a plain reading of the statute 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 that would justify a waiver of 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.