



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **AUG 16 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:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

  
Ron Rosenberg  
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 “Music & Special Education Teacher.”<sup>1</sup> The petitioner has worked for [REDACTED] since 2005. At the time of filing, the petitioner was teaching music at [REDACTED] in Baltimore. The petitioner has also taught music at [REDACTED]. 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 and resubmits a research study that she authored entitled “A Study on ‘How Rhythm in Music can boost Student’s Achievement in Mathematics?’”

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.

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<sup>1</sup> The petitioner was initially represented by attorney [REDACTED]. In this decision, the term “previous counsel” shall refer to Mr. [REDACTED].

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, “[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.” The petitioner did not execute this required document for the petition, and therefore the petitioner has not properly applied for the national interest waiver. For this reason alone, the petitioner has failed to establish eligibility for the benefit sought.

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 an educator and performing artist 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.

The petitioner filed the Form I-140 petition on August 20, 2012. In an August 15, 2012 letter accompanying the petition, previous counsel stated:

The petitioner seeks to self-petition herself as a Professional Educator and Performing Artist, and to be classified as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2).

\* \* \*

Petitioner has established that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

The role that the Petitioner will perform is definitely superlative in degree than any U.S. worker, who would have the same minimum qualifications that she has. Petitioner has a unique line of expertise in Creative and Performing Musical Arts and Music Education; a Musician and Educator of exceptional and outstanding ability. She definitely possesses unique skills which could impact the educational system of the United States in the areas, namely: (1) Performing Musical Arts, (2) Arts Integration, and (3) Special Education.

Previous counsel states that the petitioner "possesses unique skills" and then his letter goes on to describe the petitioner's activities as a musical performer, a tutor of students with learning disabilities, a manager of various school clubs, a piano lessons teacher, an advocate of ' [REDACTED] ' an [REDACTED] and a certified Special Educator. However, pursuant to *NYSDOT*, 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.

Previous counsel further stated:

Petitioner holds: (a) a Bachelor's Degree of Arts major in Music Education (b) a Diploma in Creative and Performing Musical Arts major in Asian Music: (c) a "Certificate in Professional Education Courses in Special Education" (d) a "Post Baccalaureate Courses in Effective Instructional Practices (3) an Advance Professional Certificate for Music Education

and Special Education, as granted by the [REDACTED] (4) more than 10 years of continuous working experience in the area of specialization . . . .

Academic degrees, experience, and professional certifications are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (C), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act.

In addition, previous counsel asserted that the petitioner's work "is national in scope" and "will benefit the national interest" because it "offers an impact on improving student achievement or student's growth, closing achievement gaps, decreasing dropout rates, increasing graduation rates or increasing college enrollment and completion rates." The record, however, contains no documentary evidence demonstrating that the petitioner's specific efforts have significantly closed achievement gaps, decreased dropout rates, increased graduation rates, or increased college enrollment and completion rates in the United States. The assertions of counsel are not 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). With regard to the petitioner's work as a music teacher for [REDACTED] there is no evidence establishing that the benefits of her work as an educator would extend beyond her school such that they might have a national impact. *NYSDOT*, 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 music teacher or 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 teacher or performing artist 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 she 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.

Previous counsel continued:

Most people would agree that the arts should play a role in children's development and that students should have access to an array of arts experiences at school. . . . However, some

may not realize the extent to which the arts can impact the lives of every student in the classroom and enhance life-long characteristics such as confidence, curiosity and perseverance.

Arts integration is using the arts (music, visual art, dance, drama and creative writing) to teach non-arts standards (language arts, math, science and social studies. Students learn in different methods, especially with disabilities and second language learners . . . .

\* \* \*

One can think of many reasons why it benefits students to integrate the arts into the standard curriculum of reading, math, science or social studies. Some may think that involving students in hands-on art work, composing raps or song helps to engage them in the subject matter, thus reaching children that may be habitually distracted or uninterested when participating in more prescriptive instruction. However, there are many more “unseen” benefits of integrating the arts than meet the eye.

The 21st century economy will rely, more than ever, on workers creative capacity – the ability to think unconventionally, question established practices, imagine new scenarios and produce astonishing work.

Previous counsel stresses the importance of “integrating the arts” into the classroom, but general assertions regarding the overall importance of the petitioner’s area of expertise, 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 220. Such assertions address only the “substantial intrinsic merit” prong of *NYSDOT*’s national interest test.

The petitioner submitted various letters of support from administrators and teachers discussing her work as a music 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] stated:

[The petitioner] has been teaching general/vocal music at [REDACTED] for 7 years, 2005 to present.

[The petitioner] goes beyond the call of duty to seek out resources for students. As a matter of fact, since last school year 2010 she applied for two grants and through her diligent efforts our school received the Arts Every Day and Young Audiences Programs. Through these grants our students and staff attended five assemblies. Two assemblies were theatrical plays and the three assemblies were musical performances. These assemblies provided tremendous enrichment experiences for our students.

[The petitioner] is a dedicated teacher, who has an inviting classroom. She engages her students in musical activities and prepares and motivates students to perform in many school assemblies. The proof of her work shows in the growth of her students as they improve in the school performances. As she has motivated and encouraged more students to perform, many more parents have attended our school programs and assemblies.

[The petitioner] is our [REDACTED]. She acts as the primary arts integration resource for staff and serves as the main contact to [REDACTED]. Through her efforts, she has involved teachers in the [REDACTED] program and Arts is now infused in every classroom.

[The petitioner] is indeed an asset to [REDACTED].

Mr. [REDACTED] describes the petitioner's activities at [REDACTED] but he does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students and staff at that school.

[REDACTED] stated:

I have known [the petitioner] for a little over a year at [REDACTED] as one of her two supervisors. Within this year I have recognized her as a hard-working and dedicated employee who loves her job and her students. She is an outstanding music teacher who works very hard to provide instruction that leads to school programs and a school chorus. Even though her students are from diverse backgrounds, [the petitioner] challenges them to always work hard and to do their best.

[The petitioner] is respected by staff, students and parents. She takes her job seriously and dedicates herself to moving students forward in their learning. She assumes responsibility for making learning not just informative but also engaging. I find her to be kind, creative and sincere. She is an asset to our school and the community.

Having worked with teachers for the past eight years as an assistant principal, I can recognize an exceptional teacher who will make a lasting impression on students.

Ms. [REDACTED] praises the petitioner's work as a music teacher at [REDACTED] and comments on the petitioner's personal qualities, but Ms. [REDACTED] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

[REDACTED], Specials Lead and Art Teacher, [REDACTED] stated:

[The petitioner] has worked as the Music Teacher at [REDACTED] for the past 2 years. Her responsibilities have included music instruction, student management, and a member of the Specials Team.

During her time at [REDACTED] she has had an amazing impact on the students. He [sic] students have sung in the Holiday Programs and Morning Announcements. She takes great pride in her students. Always prepared, professional, and flexible, [the petitioner] is a wonderful teacher.

[The petitioner] is highly respected by her co-workers for her willingness to help anyone anytime she can. She has been instrumental in providing developing music activities for students. She is very well organized, diligent in her paperwork, easily reachable, and always on time.

Ms. [REDACTED] comments on the petitioner's activities as a music teacher at [REDACTED], but Ms. [REDACTED] does not indicate how the petitioner's impact or influence as a teacher is national in scope.

[REDACTED] stated:

[The petitioner] has consistently strived to improve her teaching abilities and as such, has attended citywide professional development sessions. One such session was the [REDACTED] offered during the 2010-2011 school year; I co-facilitated that session.

This year, I am the facilitator, and [the petitioner] continues to attend the sessions. At Music Works, teachers learn new strategies in areas such as classroom management, as well as ideas for better lessons.

Ms. [REDACTED] discusses professional development sessions attended by the petitioner, but as previously discussed, special or unusual knowledge or training does not inherently meet the national interest threshold. *NYSDOT* at 221.

[REDACTED] stated:

I have known [the petitioner] for 7 years during which time she and I have both been employed by the [REDACTED]

\* \* \*

[The petitioner] has been a welcome addition to our school community. Her work habits are excellent. She has good attendance, and completes her assignments in a timely manner. In addition she has performed her other, more clerical, teacher duties well. Her grades are always completed on time, and she has readily adapted to systemic changes such as an online grading system this year.

In addition to her professional duties [the petitioner] has exhibited a growing knowledge of, and appreciation for, the community in which she teaches. She consistently prepares musical presentations by the children which reflect U.S. customs: Veterans' Day and American Education Week to name only two thus far this year. In addition she has been instrumental in obtaining the [redacted] programs for our school. These programs have greatly increased our students' knowledge and appreciation of various art forms.

While Ms. [redacted] asserts that the petitioner has performed her teaching duties admirably and indicates that the petitioner has prepared student music presentations and obtained [redacted] programs for their school, Ms. [redacted] 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 the students at [redacted]

[redacted] stated:

[The petitioner] has been a great music teacher in the [redacted]. I have known [the petitioner] for a long time as a teacher in our after school programs as well. She has been a valuable and outstanding professional teacher. She possesses many quality traits that qualify her to be a great asset in the [redacted].

[The petitioner] exhibits dedication, loving and tremendous concern for her students. This is evident in the advocacy she shows for her students in her program as well as participation in school and community connection.

[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 music, as well as community relations, are truly superior. She has excellent written and verbal communication skills, extremely organized, reliable, and is computer literate. [The petitioner] can work independently and is able to follow through to ensure that job gets done. She accomplishes these tasks with great initiative and with a very positive attitude.

Ms. [redacted] comments favorably on the petitioner's teaching skills and work as a music teacher within the [redacted] system, but Ms. [redacted] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

[redacted] stated:

[The petitioner] possesses several traits that will serve her in the hopeful continuation here in City Schools.

The first trait, and perhaps most important to teachers, is a desire to continue her own learning. Evidence of this is found in the fact that [the petitioner] attends all of City Schools'

professional development offerings for music teachers, where she is an active participant in conversations and activities. Through these experiences, she develops collegial relationships with other music teaching colleagues.

Another characteristic that [the petitioner] exhibits is that of concern for and love of the children in her class. She shows this in many ways, including advocacy for her program, frequent performances to display their learning, and her students' participation in district Honors festivals, where they get to work not only with other children across the city, but also build a sense of community in the city at large.

Mr. [REDACTED] comments on the petitioner's professional development, advocacy for her arts program, and activities that she organizes for her students, but Mr. [REDACTED] fails to explain how the petitioner work's has impacted the field beyond [REDACTED] or the city of [REDACTED]. Regardless of the petitioner's particular experience or knowledge, 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.

[REDACTED] 1<sup>st</sup> Grade Chairperson and Lead Teacher for Individualized Education Program Tutoring, [REDACTED] stated:

I have worked with [the petitioner] for the past seven years.

\* \* \*

She has proven her love for our country and our children by her selfless devotion to her class. She came as a special education teacher but was placed in the school as a music teacher which was also qualified to teach. She has made a profound difference at our school. Our children now have music programs and sing all the time. They have special assemblies and even sing songs on the intercom in the morning. [The petitioner] is also partially responsible for our school becoming an Arts Integration school with special programs by [REDACTED] artists. She inspired my first grade team to bring dance, art and drama to our students in a special period on Fridays. She loves her work and it shows in her wide acceptance by students and staff. When our school budget was cut to a half day music teacher, she divided her services with another school but devotes many extra hours to our school and our programs.

She volunteers to do extra work and helps other teachers with organization skills and modeling lessons. She has worked in my after school program and other after school tutoring programs with 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> grade students. Her talents are many and her love of teaching is evident in all she does.

Ms. [redacted] describes the petitioner's activities at [redacted] and her impact on its students, but Ms. [redacted] fails to explain how the petitioner's impact or influence as a music or special education teacher is national in scope.

[redacted] stated:

This letter serves to recognize the work of [the petitioner] as [redacted] at [redacted] for the 2010-11 and 2011-12 school years.

As [redacted] [the petitioner] plays two major roles at her school (in addition to her everyday workload): 1) acting as the liaison between the school and [redacted] and 2) serving as the school's main expert and resource on the path to arts integration. Specifically, her responsibilities include:

- Serving as the main point of contact to [redacted] staff
- Attending the [redacted]
- Attending quarterly networking professional development meetings
- Facilitating arts integration professional development for staff
- Facilitating assessment of needs and interest survey at the school level
- Passing on relevant information from [redacted] to faculty and staff as needed
- Organizing and scheduling programming on the [redacted] website
- Acting as the primary arts integration resource for staff
- Timely responses to [redacted] phone calls, emails, and requests for information

\* \* \*

[The petitioner] was chosen by her principal as the staff member most qualified for the [redacted] position due to her strong work ethic, knowledge in the discipline of music, skill as a teacher, passion for arts integration, and genuine caring for her students.

Ms. [redacted] comments on the petitioner's work as an [redacted] at [redacted] [redacted] but Ms. [redacted] does not explain how the petitioner's work has influenced the field of education or the performing arts on a national level.

[redacted] stated:

[The petitioner], for whom this letter of recommendation is being accomplished, worked at the [redacted] for two years (SY 1999-2001). She served as a Music teacher to Grades One and Two students. She is competent in her area of specialization, which is Music, and showed capacity for new ideas, many of which were implemented with profitable results.

I have observed [the petitioner] to be a very talented person. She is skillful in handling and in the teaching of ethnic instruments. She has displayed this during school functions and school activities as she performed outstandingly.

Ms. [REDACTED] asserts that the petitioner is “skillful in handling and in the teaching of ethnic instruments,” but special or unusual knowledge or training does not inherently meet the national interest threshold. *NYS DOT* at 221. Ms. [REDACTED] fails to provide specific examples of how the petitioner’s work has influenced the field as a whole.

[REDACTED] stated: [The petitioner] rendered very satisfactory service as a kulintang teacher at the [REDACTED] [REDACTED] in School Year 2001 – 2002.” Ms. [REDACTED] does not explain how the petitioner’s service as a kulintang teacher had a significant influence beyond the school where she worked.

The preceding references praise the petitioner’s teaching abilities, musical skills, and personal character, but they did not demonstrate that the petitioner’s work has had an impact or influence outside of the schools where she has worked. They did not address the *NYS DOT* 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. *Id.* 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”).

The petitioner submitted the following:

1. A [REDACTED] Educator Certificate;

2. A June 2006 "Certification of Good Standing" from the Professional Regulation Commission, [REDACTED];
3. Membership in the National Association for Music Education;
4. Membership in the [REDACTED] Chapter of the Association of [REDACTED] Teachers in America;
5. Membership in the American Federation of Teachers;
6. Membership in [REDACTED] (a music education advisory group);
7. President's Award for Educational Excellence "in recognition of Outstanding Academic Excellence" issued by the principal at [REDACTED];
8. City of [REDACTED] Honorary Citizenship;
9. A Sound of Music Award from the administration at [REDACTED];
10. A Certificate of Appreciation from the administration at [REDACTED] School for "Being An Outstanding Teacher at [REDACTED]";
11. A Certificate of Appreciation from the [REDACTED] system for "participation in the [REDACTED]";
12. A June 7, 2012 Certificate of Appreciation issued "in recognition of valuable contributions";
13. A "Great Mom Award" dated April 22, 2006 and signed by [REDACTED];
14. A Certificate of Participation from the [REDACTED] Chapter of the Association of [REDACTED] Teachers in America for being "an active participant at the lecture forum in Professional Development and Information Session";
15. Perfect Attendance Certificates from [REDACTED] for February 2011, March 2011, April 2011, May 2011, September 2011, December 2011, January 2012, and February 2012;
16. A "College Scholar" Certificate of Recognition from [REDACTED] for the first semester 1996-1997;
17. A Certificate of Recognition from [REDACTED] honoring the petitioner as a "University Scholar" in the first semester and as a "College Scholar" in the second semester (1995-1996);
18. A Certificate of Recognition from [REDACTED] honoring the petitioner as a "University Scholar" in the first semester, as the student with the highest overall average in the first semester, and as a "College Scholar" in the second semester (1992-1993);
19. A Certificate of Recognition from [REDACTED] honoring the petitioner as a "College Scholar" in the first semester (1993-1994);
20. A Certificate of Recognition from [REDACTED] honoring the petitioner as a "College Scholar" in the second semester (1991-1992); and
21. Employment offers and employment verifications from various schools where the petitioner has taught.

Occupational experience, professional certifications, professional association 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 "College Scholar" and "University Scholar" awards from the [REDACTED] (items 16 – 20) reflect institutional recognition from her alma mater rather than nationally significant awards in the fields of music or education. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *NYS DOT* at 219, n.6. There is no documentary evidence showing that items 1 – 21 are indicative of the petitioner's influence on the fields of music or education at the national level.

The petitioner submitted copies of her "proficient" and "satisfactory" performance evaluations 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 music 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 petitioner submitted documentation of her music performances in [REDACTED] during the 1990s and her teaching activities in [REDACTED], but there is no documentary evidence demonstrating that the benefits of her work are national in scope or that she has influenced the field as a whole.

The director issued a request for evidence on September 21, 2012, instructing the petitioner to submit evidence that her "contributions will impart national-level benefits" and that she "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, previous counsel asserted that the petitioner "is an expert in the field of Creative and Performing Musical Arts" and "a composer/arranger of Asian Music called [REDACTED]" [REDACTED]. Once again, special or unusual knowledge or training does not inherently meet the national interest threshold. *Id.* at 221. There is no documentary evidence showing that the petitioner's musical work has influenced the field as a whole on a national level.

The petitioner submitted her research studies entitled [REDACTED] (1997) and [REDACTED] (2012). The latter study commenced in September

2012 and “continued through the month of December” 2012. Eligibility, however, must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). Further, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *Id.* at 176. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* Accordingly, the latter research study that continued through December 2012 cannot be considered as evidence to establish the petitioner’s eligibility. Regardless, there is no documentary evidence showing that petitioner’s findings from either study were implemented at a substantial number of schools nationally, were frequently cited by independent educational scholars, or otherwise influenced the field as a whole.

Previous counsel stated:

There is no doubt that Petitioner’s past record justifies projections of future benefit to the national interest. The benefit to the national interest is clear as a result of Petitioner’s prior achievements, and not merely speculative. Integrating the Arts (Performing and Visual) to non-arts subject (Math, Reading, Social Studies and Science) and Special Education (Inclusion) can improve students’ scores on standardized tests. Hence, the benefit that Petitioner’s skills and background will provide to the United States will considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process.

Previous counsel asserts that the petitioner’s past record justifies projections of future benefit to the national interest, but 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. There is no evidence showing that the petitioner was the first educator to propose integrating the arts into non-arts subjects and special education programs. In addition, there is no documentary evidence showing that the petitioner’s work as a music teacher has had a national impact on improving United States students’ scores on standardized tests.

In addition, previous counsel stated:

The national scope of Petitioner’s work and vision is anchored on the fact that it can be replicated as a model for adoption by all public and private schools throughout the United States for children and even adults with special needs and or with learning disabilities. Her studies, expertise and vision strengthen the Special Education Act especially the philosophy and concept of full inclusion and mainstreaming of students with special needs and disabilities. The end in view is for all students with learning disabilities from the spectrum of autism, pervasive developmental disorder, Down syndrome and others who are not high functional to discover their skills and talents so that they will become self-reliant and independent.

Previous counsel comments on the “national scope of the petitioner’s work,” but there is no evidence demonstrating that her specific work has been “replicated as a model for adoption” by schools throughout the United States, or by a significant number of organizations providing services to those with special needs or learning disabilities. The national importance of “Integrating the Arts” into the classroom as a concept, or special education teachers as a class, does not establish that the work of one teacher produces benefits that are national in scope. See *NYS DOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYS DOT* threshold.

Previous counsel further stated that the petitioner “developed and implemented in a national scale model programs and training modules for the academic and behavioral growth of children and young adults with learning disabilities,” but there is no evidence of their national scale implementation. As previously discussed, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 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. There is no documentary evidence showing the petitioner’s “model programs and training modules” have been implemented system-wide by [REDACTED] or by any other school systems in the United States, for educating students with learning disabilities.

The petitioner’s response included a December 4, 2012 letter in which she stated:

Among the many innovations of the U.S.A.’s system was the *No Child Left Behind Act of 2001* (NCLB) which was signed into law by President W. Bush on January 8, 2002. This became a flagship aid program for disadvantaged students, setting new standards and increased accountability among school districts, administrators and faculty members. The ripple effect of this elevated standard of accountability created a void and a soaring demand for highly qualified and competent Special Educators, to supplement the regular classroom teacher, as mandated by the NCLB Act. From that time when the law took effect, up to the present, the U.S. was not producing enough of these highly qualified Special Educators to fill the vacancies of thousands of district schools nationwide.

\* \* \*

The May 2008 report released by the Bureau of Labor and Statistics, on the National Industry Specific Occupational Employment and Wage Estimate for Special Education Teachers in the Elementary, Pre-K, show, that only a 0.027% of Special Educators employment nationwide. This industry profile makes the obvious clear, that there is a huge shortage of qualified Special Educator, more specifically with elementary teaching basic background. This statistical fact makes a compelling need for the United States hire foreign professionals who can fill-in the huge employment vacancies.

In the preceding paragraphs, the petitioner points to the shortage of qualified special educators, but assuming the petitioner’s teaching qualifications 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. *Id.* at 221. Regardless, there is no evidence showing that the petitioner has worked as a special education teacher since her employment with [REDACTED] commenced in 2005.

The petitioner's letter also discussed the importance of integrating the arts into the classroom to improve academic achievement. 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 *NYS DOT's* national interest test. *NYS DOT* at 221.

The petitioner submitted additional documentation of her performances, music arrangements, and teaching activities. Once again, there is no documentary evidence demonstrating that the benefits of her work are national in scope or that she has influenced the field as a whole.

The petitioner also submitted evidence of her various volunteer activities that included a November 5, 2012 letter from [REDACTED] stating:

I am writing this letter on behalf of [REDACTED] and [the petitioner]. Mr. [REDACTED] and [the petitioner] have been faithful volunteers in our Head Start program since September 2011. They have created and maintained a Parents' Bulletin Board, made writing booklets for the children and performed numerous activities as classroom volunteers.

Last year, Mr. [REDACTED] volunteered more than 500 hours in our program which earned him the title of being St. Jerome's Head Start's Top Volunteer. He was recognized by the [REDACTED] Head Start Association and Catholic Charities Child and Family Services Division for his outstanding contributions to our program. In addition, he received a special commendation from President Barack Obama congratulating him on his volunteer efforts.

Mr. [REDACTED] and [the petitioner] are tremendous assets to our program.

Ms. [REDACTED] states that the petitioner "created and maintained a Parents' Bulletin Board, made writing booklets for the children and performed numerous activities" as a classroom volunteer," but Ms. [REDACTED] fails to explain how the petitioner's volunteer work has impacted the field beyond the [REDACTED] or the city of [REDACTED]. Ms. [REDACTED] does not mention the *NYS DOT* guidelines or explain how the petitioner meets them. In addition, Ms. [REDACTED] letter focuses more on the volunteer efforts of Mr. [REDACTED]. There is no evidence showing that the petitioner's volunteer work has influenced the field as whole, or that she has or will benefit the United States to a greater extent than other qualified educators.

The director denied the petition on December 29, 2012. 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 in music and education would be national in scope. In addition, the director stated the petitioner had not

demonstrated that she would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

On appeal, the petitioner states:

The USCIS denied my immigrant petition on the grounds that my waiver request for labor certification allegedly did not impact my area of expertise on a national level, and does not benefit the United States to a greater degree than the work of others in the field.

These findings however are rebuttable, because the truth is, as a classical musician – [REDACTED] player and special education teacher, with more than 15 years of full-time experience, my work can be used to introduce an important musical tradition in the United States, to bridge the gap between normal children and children with learning disabilities, and to have an overall impact on the educational system of the United States.

The petitioner, however, has not submitted documentary evidence showing that her work as a [REDACTED] player and educator has had an influence beyond the schools where she has worked. As previously discussed, it cannot suffice for the petitioner to state that she possesses useful music skills or teaching experience. Pursuant to *NYS DOT*, the petitioner must establish a past record of influence on the field as a whole. *Id.* at 219, n.6.

The petitioner repeats earlier assertions that her work “is national in scope” and has “an impact on improving student achievement or student’s growth, closing achievement gaps, decreasing dropout rates, increasing graduation rates or increasing college enrollment and completion rates,” but there is no documentary evidence to support her claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). There is no documentation demonstrating that the petitioner’s work has had an impact or influence outside of the schools and local communities where she has taught and performed. In addition, the petitioner fails to explain how the actions of one teacher or performer would contribute significantly to improving the national educational system. Congress could have created a blanket waiver for music teachers, performers, or special educators, 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).

The petitioner points to her professional development, music performances, and awards, but none of the submitted documentation shows that the petitioner’s work has had a wider impact on the field of education or the performing arts. There is no documentary evidence demonstrating that the petitioner’s educational and musical achievements are national in scope and indicative of her influence on the field as a whole.

The petitioner again comments on the importance integrating the arts into the general school curriculum, but as previously discussed, general assertions regarding the importance of using the arts as a learning tool address only the “substantial intrinsic merit” prong of *NYSDOT*’s national interest test. *See NYSDOT* at 217.

The petitioner resubmits her research study that commenced in September 2012 entitled [REDACTED] but it is again noted that the study was undertaken and completed subsequent to the petition’s filing date. Eligibility, however, must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Therefore, the research study cannot be considered as evidence to establish the petitioner’s eligibility. Regardless, there is no documentary evidence showing that petitioner’s findings have influenced the field of education as a whole.

The petitioner asserts that employment-based second preference petitions filed in the mid-1990s have been approved for an Indian Classical Musician, an acrobat musician, and a secondary school teacher. The petitioner’s appellate submission, however, does not include documentation pertaining to the approved petitions. Regardless, 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 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, the petitioner has provided no supporting evidence to establish that the facts of the instant petition are similar to those in the unpublished decisions. Without such evidence, the petitioner’s assertion that her case merits the same outcome is unwarranted.

It is evident from a plain reading of the statute that engaging in a profession (such as teaching) or in the performing arts does not presumptively exempt professionals or artists of exceptional ability 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. *NYSDOT* at 217 n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”). 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.

(b)(6)

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In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.