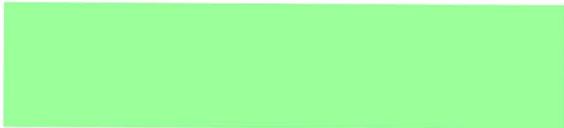


(b)(6)

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



U.S. Citizenship
and Immigration
Services



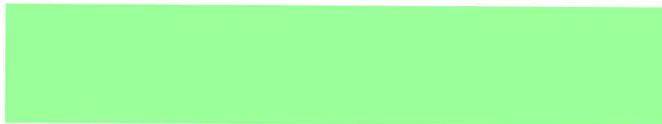
DATE: **DEC 03 2013** OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

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. The petitioner seeks employment as an elementary school teacher for [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 from counsel and an affidavit from a publisher, discussing the petitioner's co-authorship of three social studies textbooks.

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, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 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 Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYS DOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here 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. *Id.*

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 filed Form I-140, Immigrant Petition for Alien Worker, on May 4, 2012. Part 4, line 6 of that form asked: “Has any immigrant visa petition ever been filed by or on behalf of this person?” The petitioner answered “Yes.” [REDACTED] filed a Form I-140 petition on her behalf on October 21, 2008, with an approved labor certification. The director approved that petition on February 11, 2009, classifying the petitioner as a professional under section 203(b)(3)(A)(ii) of the Act with a priority date of April 28, 2008. That petition indicated that the petitioner would teach at [REDACTED] Maryland.

In an introductory statement that accompanied the petition, counsel stated that the petitioner's "petition for waiver of the labor certification is premised on her Master[']s Degree in Education and more than twenty (20) years of dedicated and progressive teaching experience in both the United States and the Philippines." Academic degrees and experience can provide partial support for a claim of exceptional ability under the regulations at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (B), respectively, but exceptional ability does not establish eligibility for the waiver. Under section 203(b)(2)(A) of the Act, aliens of exceptional ability are subject to the job offer requirement.

In her own accompanying statement, the petitioner stated:

In the six previous years I have been an [redacted] staff member, our school has met AYP (Adequate Yearly Progress) every year, except in school year 2006-2007. . . . Since 2010, I have been assigned to teach sixth grade Science and Reading/Language Arts and serve as point person for sixth grade Science. This relatively new assignment has placed me at the forefront of [redacted] effort to meet the NCLB [No Child Left Behind] proficiency goals. The fact that our school met AYP last year signifies that I have successfully implemented the sixth grade curriculum.

Even as I await the MSA [Maryland School Assessment] results for 2012, I am reasonably optimistic of our sixth graders' performance. My confidence is buoyed by their progress in reading proficiency as measured by the Scholastic Reading Inventory (SRI) and the Formative Assessment System Test (FAST), which are given twice before the MSA is administered. Specifically, SRI results for Fall 2011 show that 84% of sixth graders were proficient, while SRI results for Winter 2012 yield 88% proficient. Similarly, FAST 1 reading scores indicate that 77% were proficient, whereas by FAST 2 it became 85%.

The petitioner documented the increase in test scores, but provided no other evidence to show how these results compare with other schools, or with [redacted] students in years before the petitioner's arrival. Furthermore, these figures show only the petitioner's impact on her own students. 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. *NYS DOT* at 217 n.3.

Regarding her previous experience in the Philippines, the petitioner stated:

Immediately prior to becoming a [redacted] teacher, I was a high school teacher for nine years at [redacted] which is an exclusive high school for boys run by the Jesuits and highly regarded as one of the premiere high schools in the Philippines. At [redacted] I taught Social Studies to freshmen (Philippine History), sophomore (Asian History), and junior (World History) classes. . . .

I consider as a singular achievement my co-authorship of a three-part textbook series for high school Social Studies. My co-authors and I wrote three textbooks to address the dearth of quality social studies textbooks written for Filipino students, namely: [REDACTED]

[REDACTED] . . . for second year high school; and [REDACTED] . . . for third year high school. The second book in the series received the [REDACTED], Special Citation in 2002 from the Book Development Association of the Philippines. As social studies is primarily taught in the vernacular, we wrote the books in Filipino (or Tagalog), but English editions of the last two books were subsequently published: [REDACTED]

The record shows that Anvil Publishing published the petitioner's textbooks in Filipino between 2000 and 2006, and in English translations between 2007 and 2013. Following the petitioner's statement, the next exhibits in the record appear under the heading "Textbook Cited." Most of these exhibits, however, are not scholarly citations. Several of the exhibits are printouts from the online catalogs of libraries, booksellers, and the publisher, indicating that the books are available to borrow or purchase.

A review of the play *Imelda* from the web magazine [REDACTED] published at the time by the [REDACTED] includes a footnote identifying [REDACTED] but the context for this reference is not evident. The text of the review does not show any superscript numerals corresponding to the five numbered footnotes at the end.

The only exhibit to include a scholarly discussion of the petitioner's books appears to be a proof copy of [REDACTED]'s essay from [REDACTED] (English title: [REDACTED]). The article analyzed several textbooks, including two of the petitioner's volumes, to compare how textbooks in the United States and in the Philippines treated "[t]he American occupation of the Philippines from 1898 to 1946."

A printout from [REDACTED] web site indicated that [REDACTED] "[r]eceived the 2002 [REDACTED]" A table, attributed to [REDACTED] bears the title [REDACTED] List of Winners." The table contains two sections, [REDACTED] and [REDACTED]. The petitioner's book is in the [REDACTED] section. The petitioner submitted background information about the [REDACTED] awards, but the information does not explain the distinction between an "Awardee" and a [REDACTED]. Entry guidelines for the 2008 awards stated: "Grand Winner and Runner Up awards may be given in each category."

A printout from the web site of the [REDACTED] of the Philippines described two "Types of Awards" – the [REDACTED]. The latter type of award "is conferred biennially by the [REDACTED] to the best books judged for all-around excellence."

The above exhibits demonstrate that the petitioner contributed to well-received textbooks while she taught social studies in the Philippines. The petitioner did not establish her involvement in comparable activities since she began teaching elementary school students in the United States in October 2005, six and a half years before she filed the petition. Neither of the Forms I-140 filed on her behalf included textbook writing among the petitioner's intended duties, and the petitioner did not claim that she intended to write any future books.

The petitioner submitted copies of six certificates. In chronological order:

- Officials of [REDACTED] issued the petitioner two "Certificates of Achievement," both on June 12, 2006. One certificate called her "A Member of the Fabulous Second Grade Team," and the other was "for Surviving the First Year of Teaching."
- A "Certificate of Achievement" from the Office of the [REDACTED] Executive acknowledged the petitioner's "service as an educator in the Prince [REDACTED]" "during American Education Week 2006."
- A June 5, 2007 "Certificate of Appreciation" from the principal of [REDACTED] and the president of its Parent Teacher Association thanked the petitioner "[f]or [her] support of [REDACTED] first Parent Move-up night."
- A May 29, 2009 "Certificate of Recognition" from [REDACTED] extended "[c]ongratulations . . . [f]or outstanding team facilitation" in the "2008-2009 Program for International Educators."
- On January 17, 2012, the [REDACTED] named the petitioner an "[REDACTED]" in grateful appreciation of [her] mentoring efforts."

All of the above certificates are from local entities, except for the most recent one. The record contains no further information about the [REDACTED] or the criteria for selection as an "Honorary Member" of its [REDACTED] and does not indicate whether the "honorary" title conveyed any rights or powers of a member of that committee.

The petitioner submitted ten letters from teachers, administrators, and relatives of students at schools where she has taught. These witnesses praised the petitioner's dedication and the quality of her work, but did not indicate that her efforts in the United States have had more than a local impact or influence.

One witness, [REDACTED] is now principal of [REDACTED] Maryland. She stated that the petitioner is a member of the [REDACTED] team. One of that team's tasks is "to examine what is happening to cause a decline in student achievement" when they move from elementary school to middle school. Regarding the petitioner's specific contributions to the team, Ms. [REDACTED] stated:

The work that [the petitioner] has done includes participating in lesson planning with middle school teachers in order for them to begin fusing activities that will engage

students more as well as increase the rigor. She also participated in Learning Walks to observe the lessons planned in order to provide feedback to the middle school teachers and have open discussion about work that could be done in elementary school to better prepare students for the curriculum. Lastly, [the petitioner] modeled for middle school teachers the three group reading rotation. This was important because many of the middle school teachers did not know how to manage their time in order to have groups rotate to them for small group reading instruction. . . .

The impact of [the petitioner's] work is that the middle school now regularly practices a three group rotation on a daily basis. This is a research based practice that has proven to improve student reading levels.

Documentation of the petitioner's evaluations and credentials establish that the petitioner is well qualified to teach at [redacted] but professional competence is not the threshold for the waiver. Samples of lesson plans likewise do not set the petitioner apart from others in a profession that, by law, is subject to the job offer requirement.

On July 21, 2012, the director issued a request for evidence (RFE), stating: "The petitioner must establish that she has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, counsel asserted that Congress passed the No Child Left Behind Act of 2001 (NCLBA), Pub.L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), "to help our present generation of students recover from their dismal performance as compared to their peers from other nations." Counsel stated: "the NCLB requires all public elementary, middle, and high schools in the United States to have 'Highly Qualified' teachers teaching core academic subjects," and that "President Barack Obama's principal education initiatives build upon the NCLB, including the emphasis on the urgent need for Highly Qualified and effective teachers." Counsel contended:

given the bureaucratic collaboration by the above Government institutions . . . the beneficiary's proposed employment as a 'Highly Qualified Elementary School Educator' transcends the restrictive confines of physical and geographical limitation that normally applies [*sic*] to other kinds of employment such as Bridge Engineer, Marine Scientist and the like. . . .

[E]ven if [the petitioner] would be fulfilling her duties and responsibilities within the geographical limitation of the State of Maryland, the benefits that would be conferred spreads [*sic*] to the entire nation's economy and security.

The existence of federal statutes and initiatives relating to education do not lend national scope to the work of individual educators; the national scope is collective.

Counsel asserted that the petitioner meets the definition of the term “highly qualified” from section 9101(23) of the NCLBA, which requires that “the teacher has obtained full State certification . . . or passed the State teacher licensing examination,” “holds at least a bachelor’s degree,” and “demonstrates competence in all the academic subjects in which the teacher teaches.” Counsel asserts that the need for highly qualified teachers is particularly acute with regard to science, technology, engineering and mathematics (STEM) fields. These assertions, attest only to the intrinsic merit of the petitioner’s occupation.

Counsel claimed: “Retaining [the petitioner] in her current employment ensures that future U.S. workers would have a competitive edge because of her proven track record of being an effective Highly Qualified teacher as envisioned by the NCLB and the Obama administration’s education initiatives.” Counsel did not establish that the petitioner’s work would have this effect on “future U.S. workers” other than her own students.

Counsel stated:

[T]he employer is required by NCLB and other pronouncements . . . to employ highly qualified teachers. . . .

Doing a labor certification process for the beneficiary . . . requiring only a bachelor’s degree, would not meet the objective of the employer to hire Highly Qualified Teachers . . . as intended by the NCLB. . . .

[T]he labor certification process would not in any way yield an effective elementary school teacher in the mold of [the petitioner]. . . .

[T]he American work force will directly benefit from her waiver, because federally funded schools will continue to meet the standards required under the NCLB and, thereby, foreclose the possibility of school closures.

The petitioner is already the beneficiary of an approved petition with an approved labor certification. This approval outweighs any speculation about factors that might have prevented the approval. Also, the record does not support counsel’s assertion that the labor certification process is at odds with the hiring of highly qualified teachers. The ETA Form 9089 Application for Permanent Employment Certification that accompanied [redacted] approved petition indicated that a candidate for the position must hold a bachelor’s degree in elementary education, and “[m]ust have or be immediately eligible for Maryland Teaching Certificate.” These requirements appear to be compatible with the NCLBA’s definition of “highly qualified,” discussed above. Counsel did not establish that the labor certification process has prevented school districts from hiring highly qualified teachers.

Counsel likewise did not establish that the job offer requirement has led to “school closures” after schools were unable to employ highly qualified teachers. In stating that “her waiver” would allow “federally funded schools [to] continue to meet the standards required under the NCLB,” counsel

claimed that a single waiver would benefit multiple schools, but counsel did not explain how this is the case.

Counsel stated that the petitioner “has established her influence in the field of Basic Education based on her authorship, awards, honors and distinctions which cannot be ignored.” Counsel listed several previously submitted exhibits. Many of these exhibits concerned the petitioner’s authorship of the three high school social studies textbooks discussed earlier. The RFE response included copies of the English translations of all three of the petitioner’s textbooks. The petitioner has not written any textbooks since arriving in the United States in 2005, and there is no evidence that any U.S. textbook publisher has sought further contributions from the petitioner in that area.

Counsel’s discussion of the textbook-related evidence included the following description:

Professional Citation for Book One of Textbook Series [REDACTED]
[REDACTED] for article entitled [REDACTED]
[REDACTED]’ evidencing [the petitioner’s] renown and influence not only in education but in other fields, such as the arts, as well.

The article identified above does not support counsel’s description of it. The text of the review does not mention the petitioner or her textbook at all, and there is no evidence that the authors of the play “Imelda” used the textbook as a source. Because the text of the review, as printed, provides no context for the footnoted reference to the textbook, there is not sufficient evidence to support counsel’s assertions. Furthermore, a mention of the textbook as a footnote in a theatrical review does not appear to constitute a “professional citation.”

Aside from the textbooks, the listed “awards, honors and distinctions” are local in nature, apart from the certificate naming the petitioner an “[REDACTED]” The petitioner has submitted no other information or evidence about this certificate, without which it is not possible to draw conclusions about its significance. The certificate’s reference to the petitioner’s “mentoring efforts” indicate recognition of work performed at a local level.

Counsel stated that another [REDACTED] teacher received a national interest waiver, and asked that the present petition “be treated in the same light.” While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. Furthermore, counsel has furnished no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision.

In her own statement submitted in response to the RFE, the petitioner discussed the NCLBA and other federal initiatives established with the “goal of bridging the achievement gap.” The petitioner cited statistics showing a “glaring disparity in MSA Reading results between” [REDACTED] [REDACTED] “the top-ranked district in MSA Grade 6 Reading.” Citing 2012 test results, the petitioner stated: “The sixth graders’ 89.7% proficient percentage is the best MSA Reading result in the

entire school across the four tested grade levels. . . . Evidently, the outstanding performance of the sixth graders was instrumental in helping [redacted] meet its 2012 AMO [Annual Measurable Objectives] target.”

The cited results indicate that the petitioner’s students outperform others at the same school, but these same results demonstrate the limited scope of the petitioner’s impact. The petitioner acknowledged: “In 2012, out of the 24 Maryland school districts [redacted] ranked near the bottom in Reading proficiency across all MSA-covered grade levels.” This continued low ranking, more than six years after the petitioner began working for [redacted] in 2005, indicates that the petitioner’s work has not significantly improved overall student achievement at the countywide level or at a national level. The cited statistics therefore do not support the claim that the petitioner’s work is national in scope.

The petitioner stated that her “role in implementing the NCLB Act goal transcends [redacted] because the petitioner represents [redacted] “in the Area Middle School Transition team” and “actively participated in the implementation of Maryland’s Race to the Top initiatives through the MSDE [Maryland State Department of Education] Educator Effectiveness Academies and the MSDE Teacher Evaluation Pilot Programs.” Whatever the petitioner’s specific role in these programs, their impact remains local. The petitioner’s observation that she is “an effective teacher” does not show that a waiver of the job offer requirement would be in the interest not only of [redacted] but the United States.

The petitioner stated: “The national interest embodied in the NCLB Act would not be served if I am required to obtain a labor certificate for my continued employment with [redacted].” The petitioner did not explain why she would be “required to obtain a labor certificate” when [redacted] has already obtained one, along with an approved immigrant petition, on her behalf.

[redacted] assistant general manager and publishing manager of [redacted] repeated previous claims about the petitioner’s textbooks and stated that they “are used in [nine named] Philippine educational institutions. . . . [Their] publication . . . has decreased the reliance of Philippine schools on imported textbooks.” Ms. [redacted] deemed the petitioner’s “authorship of these textbooks as a singular achievement that has had and continues to have a positive impact on Philippine education.”

The director denied the petition on November 1, 2012. The director discussed evidence such as witness letters, certificates, and the petitioner’s textbooks. The director acknowledged the substantial intrinsic merit of the petitioner’s profession, but found that “it cannot be established that her proposed benefit is national in scope . . . [H]er impact has been limited to the schools where she has been employed.”

The petitioner filed a motion to reopen and reconsider the director’s decision on December 3, 2012. Counsel asserted: “the NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application.” The bulk of counsel’s brief on motion consisted of variations on the basic claim that the NCLBA, rather than *NYSDOT*, should form the basis for a decision in the petitioner’s favor. Counsel stated that the petitioner had

played a “front-line role in accomplishing the NCLB Act’s goal and in implementing the Obama Education Programs as these apply to the state of Maryland.”

Counsel cited previously submitted statistics indicating that, while [REDACTED] continues to perform poorly in relation to other Maryland county school systems, [REDACTED] had met proficiency goals. Counsel did not explain why these limited results support the claim that the petitioner’s work has national rather than local impact.

Counsel stated: “USICS did not give sufficient weight, if it gave any consideration at all, to the [REDACTED] citation” and other evidence relating to the petitioner’s textbooks. Counsel did not explain how these materials established the petitioner’s ongoing impact as a teacher (as opposed to an author of textbooks).

Counsel cited, as an “equitable consideration,” a Department of Labor debarment order against [REDACTED] [REDACTED] is currently barred for a two-year period (i.e., from March 16, 2012 to March 15, 2014) from filing any employment-based immigrant and/or non-immigrant petition.” This order does not invalidate petitions that were already approved before March 16, 2012, including [REDACTED] 2008 petition on the petitioner’s behalf.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The director dismissed the petitioner’s motion on January 14, 2013, stating that the motion did not introduce new facts or evidence, as required for a motion to reopen, and did not show error in the original decision, as required for a motion to reconsider. The director stated: “Although the benefits of the NCLB Act and the Obama Education Programs are national in scope . . . , the impact of a single school teacher in one elementary school would not be in the national interest.”

Turning to the petitioner’s textbooks and the Gintong Aklat award, the director found: “The evidence did not discuss the significance of the award, or how winning the award establishes [the petitioner] would benefit the U.S. to a greater extent than a U.S. worker in the field of education.” The director acknowledged [REDACTED] letter, but found that the petitioner had not submitted documentary evidence to support the claims in that letter.

The petitioner appealed the director’s decision on February 15, 2013. On appeal, the petitioner submits a photocopied affidavit from Ms. [REDACTED] repeating and expanding upon her earlier claims. Ms. [REDACTED] stated: “The textbook project was conceived to address the lack of quality history textbooks that are suited for Filipino high school students. Prior to *Lupang Hinirang*, Philippine history textbooks

used in high school carried vestiges of colonial biases and/or were written for college. In addition, textbooks on Asian History and World History were foreign publications.” The petitioner has not claimed or established that comparable problems affect U.S. textbooks, or that her existing textbooks have had a significant impact in the United States. The books’ presence in certain U.S. academic libraries is evidence of availability, rather than evidence of impact. The petitioner has not established that her past experience co-writing social studies textbooks is a reflection on her potential to benefit the United States as an elementary school science teacher.

Authorship of published material, such as textbooks, can demonstrate national scope (if the published material is distributed nationally), but national scope satisfies only one prong of the *NYS DOT* national interest test. One must still establish the impact and influence necessary to qualify for the national interest waiver. The assertion that the petitioner’s work “has decreased the reliance of Philippine schools on imported textbooks” does not show that the petitioner’s work has had, or will have, a comparable impact or effect in the United States, where the petitioner has not demonstrated a similar “reliance . . . on imported textbooks.” Furthermore, there is no evidence that the petitioner has published anything in the United States. The petitioner’s best evidence of work that is national in scope, therefore, concerns an activity that she has apparently not pursued in the United States.

In a supplemental brief, counsel states that sections 203(b)(2)(A) and (B)(i) of the Act “constitute the statutory basis for the national interest waiver.” Counsel, adding emphasis, quotes a portion of section 203(b)(2)(A) of the Act:

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.

(Counsel’s emphasis). Counsel then quotes various elements from the legislative history of IMMACT 90, showing that Congress intended the legislation as a means to increase the immigration of “educators” and other professional workers.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984). In the case of section 203(b)(2)(A) of the Act, the plain wording of the statute indicates that the services of professionals with advanced degrees must be “sought by an employer in the United States,” even when those services “will substantially benefit prospectively the national . . . educational interests . . . of the United States.” This clause implements the job offer requirement; it does not waive it.

Counsel contends that *NYSDOT* contains “ambiguity as to the precise parameters for implementing the job offer waiver. . . . By contrast, Congress has unequivocally spelled out in the NCLB Act the national interest underpinning public elementary and secondary education.” Counsel quotes several passages from the NCLBA and related policy communications, but none of these materials mentions the national interest waiver. The NCLBA does not contain any immigration provisions, and it does not mention the national interest waiver or the phrase “national interest” in any context.

The petitioner has submitted no evidence to show that Congress intended the NCLBA to provide “clear-cut parameters” regarding the “waiver of the job offer requirement.” After Congress first created with waiver with IMMACT 90, Congress has twice amended the Act to change or clarify the waiver provisions. The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102-232, 105 Stat. 1733 (Dec. 12, 1991) made the national interest waiver available to members of the professions holding advanced degrees, where previously it was available only to aliens of exceptional ability.

With the publication of *NYSDOT*, the Immigration and Naturalization Service held: “It is the position of the Service 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. In response to this provision, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95, 113 Stat. 1312 (Nov. 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Thus, Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so on two occasions, first to correct an omission of language, and later to create a blanket waiver in direct response to *NYSDOT*. Counsel has identified no other legislation that directly addresses the national interest waiver in this way. In the absence of a comparable provision in the NCLBA or any other education-related legislation, there is no basis to conclude that the legislation directly created or indirectly implied a blanket waiver for teachers.

Counsel contends that the petitioner’s “effective frontline role in serving the national educational interest of closing the achievement gap is national in scope,” and that the director’s contrary finding was therefore in error. Counsel asserts: “it is in the national interest of the United States that all children have the opportunity to obtain a high-quality education.” It does not follow, however, that the petitioner’s work at [redacted] directly affects “all children” or improves their education. The importance of teachers to national educational efforts is collective rather than individual. Section 101(a)(32) of the Act defines teachers as members of the professions, and section 203(b)(2)(A) of the Act subjects professionals to the job offer requirement. The NCLBA did not amend or alter these provisions; they remain in full effect.

Counsel cites statistics, submitted previously, showing that [redacted] performed poorly overall in the 2012 MSA reading test, but the petitioner’s students performed well. Counsel states that, from these results, it is “apparent that [the petitioner] has been effectively serving the national educational interest of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children.” These same statistics, however, limit the results to the petitioner’s own classroom, showing that other schools within [redacted] continue to underperform.

Counsel states: “As Ms. [REDACTED] explained, [the petitioner] was a pioneer representative of [REDACTED] in the Area Middle School transition team.” Counsel cites no evidence to show the impact of this work outside some [REDACTED] middle schools. Counsel, instead, states that the petitioner’s “success in raising student achievement . . . , however seemingly localized in scope, has a ripple effect on the nation at large. . . . [REDACTED] success implies that [REDACTED] is progressing in narrowing the Reading proficiency gap.” Test results from one school, for one academic year, do not establish that the petitioner’s work is having “a ripple effect on the nation at large.”

Counsel claims that the petitioner’s “proven success in raising her students’ Reading proficiency . . . signifies that she is serving the national educational interest to a substantially greater degree than an available U.S. worker.” The figures cited by counsel compare the petitioner (or rather, [REDACTED] sixth grade class in 2012) with [REDACTED] as a whole. They do not provide enough information to show that the petitioner’s performance is significant not only in [REDACTED] but in comparison with other jurisdictions as well. The available information is too narrowly focused to justify the broader conclusions that counsel seeks to draw.

Counsel points to the petitioner’s textbooks to show that she “has demonstrated a past history of achievement with some degree of influence on the field of basic education as a whole.” The record does not establish the impact of these books on education in the United States, or demonstrate the books’ relevance to the petitioner’s current work at [REDACTED]

Counsel states: “contrary to the Director[’]s assertion, the submitted evidence shows the significance of the [REDACTED]” Counsel asserts that the NBDP printout called the [REDACTED] “one of two major book awards in the country. . . . Thus, the [REDACTED] citation conferred upon the Asian History textbook recognizes [the petitioner’s] excellence as a textbook author.” The petitioner, however, seeks immigration benefits as a teacher, not “as a textbook author.” The petitioner’s past success in a given field can help to justify predictions of future success, but only if the petitioner has shown that she will continue in that field. The petitioner has not shown that she will continue writing textbooks, or demonstrated that her textbooks have had a greater impact and influence than U.S. textbooks in U.S. schools.

Counsel has asserted that *NYS DOT* is of limited applicability to the present proceeding, in part because the beneficiary in *NYS DOT* was an engineer rather than a teacher. In the present proceeding, the director gave the petitioner’s witness letters little weight because the witnesses comprised “her immediate circle of collaborators and colleagues.” Counsel states that the petitioner’s “true impact . . . is best determined by her immediate circle of collaborators and colleagues,” and supports this by quoting an unpublished AAO decision from 2003, indicating that the director “must consider the circumstances of the beneficiary’s employment” when evaluating witness letters. Counsel contends that the same practice “should analogously apply to [the petitioner’s] case” here.

The cited appellate decisions is not a published precedent decision, and therefore it is not binding authority under the regulation at 8 C.F.R. § 103.3(c). The publication of an appellate decision in a

private, third-party journal or bulletin does not lend the decision precedential authority. Furthermore, the cited decision involved an engineer, not a teacher. Therefore, “the circumstances of the beneficiary’s employment” are very different in the two proceedings. The following passage provides further context for the quotation that counsel provided:

The director states that many of the witnesses who have provided letters are the beneficiary’s “professors, employers, former and current coworkers, [and] collaborators,” and that “their knowledge of the beneficiary’s work appears to derive from this association, rather than from the beneficiary’s general acclaim.” Some witnesses have minimal connections to the beneficiary. Also, we must consider the circumstances of the beneficiary’s employment. The beneficiary is not a researcher who is expected to produce a significant volume of published research (by which his name would be disseminated throughout the field). Rather, he is an engineer who provides gear machinery to a high-profile clientele, and several witnesses have attested that the beneficiary’s specialty is a rather narrow one, with only a small number of experts. . . . In this context, it is not surprising that many other experts in the specialty have had some contact with the beneficiary.

The petitioner does not claim or demonstrate that the fact pattern described above closely mirrors the fact pattern of her own petition.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. 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. *NYS DOT* 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.”).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States (such as teaching) should be exempt from the requirement of a job offer based on national interest. Likewise, Congress has established no blanket national interest waiver for teachers. 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.

The AAO will dismiss the appeal for the above stated reasons. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.