

(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: **MAY 10 2013** OFFICE: TEXAS SERVICE CENTER

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

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (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] in Maryland. The petitioner has taught at [REDACTED] Suitland, Maryland, since her 2008 entry into the United States. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

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

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

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

(B) Waiver of Job Offer –

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

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

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

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

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

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

In re New York State Dept. of Transportation (NYSDOT), 22 I&N Dec. 215 (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 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 AAO also notes that 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 the Form I-140 petition on April 19, 2012. Counsel stated that the petitioner seeks the national interest waiver “as a STEM teacher based on her expertise in the said field.” STEM is an acronym for “science, technology, engineering and mathematics.” Counsel repeatedly emphasized the importance of STEM education, but the petitioner herself claimed no expertise or experience as a specialized STEM teacher. Rather, she began her career as an English teacher, and later moved to elementary and pre-kindergarten education, which incorporate basic math and science as part of the curriculum but do not focus on those fields.

In an accompanying nine-page statement, the petitioner stated that she is certified “in: 1) Early Childhood Education Pre Kindergarten to 3rd Grade, and 2) Elementary Education Teacher 1st Grade to 6th Grade, and Middle School.” The petitioner detailed her history as a teacher since 1987, when she taught high school English, through a number of administrative roles including elementary school principal. The petitioner described her work as principal of [REDACTED]:

I initiated and spearheaded a lot of educational programs, projects, services, and activities which provided diverse opportunities to all kinds of learners in the schools where I supervised. I conducted seminars and trainings to [sic] the teachers to update their teaching skills in order to in [sic] deliver effective instruction. I also encouraged the teachers to attend seminars and trainings conducted by other experts in the field of education. Most of my Saturdays were spent doing tutorial classes to [sic] the students. . . . The schools where I supervised had a happy, full of life and highly motivated environment. Students were expected to achieve highly in both curricular and extra-curricular activities. Thus, it was not surprising that the students had greatly increased their academic performance. My creative teaching and leadership skills earned an award for Outstanding Performance in the [REDACTED] [REDACTED] for School Year 2000-2001 during the [REDACTED] [REDACTED]

Regarding a subsequent administrative position, the petitioner stated:

On February 21, 2007, I was transferred to [REDACTED] and designated as the Officer In-Charge to the Office of the [REDACTED] I became the youngest [REDACTED] in the [REDACTED] which had 67 districts. I was so excited and very proud to be given such great trust and confidence by the Schools Division Superintendent had trust and confidence [sic]. With my promotion as [REDACTED] many were inspired to hone their craft as a teacher and as an administrator and decided to continue their graduate studies. . . . [T]he academic achievement of our school district soared high.

Regarding her most recent work, the petitioner stated:

[REDACTED] is the school where I teach Pre-Kindergarten since I arrived here in August 2008. . . .

Pre Kindergarten life is about going out into the world for the first time! My experience and imaginative leadership help both students and parents adjust to this transition. I have been having a great time providing my Pre K students fun, age-appropriate real life experiences, interactive, and explorative activities to give them opportunities to learn very important learning approaches skills and life long learning

skills like socializing, getting along with each other, taking turns, sharing, recognizing and adjusting to classroom discipline and routine. . . .

My principal and the staff of my school visited my classroom for a learning walk and observed my students . . . to be more adjusted, well behaved, and conscientious of their learning than expected. Towards the end of the school year my students had been showing progress in their performance. Their positive behavior was always significantly observed.

The petitioner submitted copies of numerous documents arising from her work, including copies of photographs, evaluations, and certificates recognizing various achievements and her participation in various activities. These materials exhaustively document the petitioner's past career as an educator, but they do not show that her work in the Philippines or in the United States has had an impact beyond the districts where she served at any given time.

The petitioner submitted 54 letters or other messages from teachers, administrators, parents, and others familiar with her work as a teacher. These messages range from witness letters addressed to USCIS to a Valentine's Day card from two of the petitioner's students. Roughly half of the materials concern her work at [REDACTED]. Some of the letters exist specifically to support the petition.

Many of the petitioner's colleagues and parents of her students praised the petitioner's work in enthusiastic but general terms. Some school officials provided more specific information but did not show that the petitioner's work has been particularly influential beyond the local level. For instance, [REDACTED] described the petitioner's duties as a "grade-level chair person" and called her "a valued asset to the [REDACTED]" but did not indicate that the petitioner's work has had any broader impact. Reading specialist [REDACTED] asserted that the petitioner "would be an excellent addition to the staff of any elementary school," but being a highly qualified prospective employee is not sufficient grounds for granting the waiver.

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. *NYSDOT*, 22 I&N Dec. 217 n.3. It cannot suffice for the petitioner to speculate about wider impact in the future. The petitioner must establish a past history of demonstrable achievement with some degree of influence on the field as a whole. *See id.* at 219 n.6.

On July 17, 2012, the director issued a request for evidence, instructing the petitioner to submit documentary evidence to meet the guidelines set forth in *NYSDOT*. The director observed that the petitioner's qualifications as a teacher do not presumptively qualify her for the waiver.

In response, counsel repeated the assertion that the petitioner is "a 'Highly Qualified' Science and Math teacher" with "twenty five (25) years of professional work as Science and Mathematics teacher in the Philippines and the United States of America," who "will impart national benefits in improving STEM Education" (counsel's emphasis). None of the exhibits submitted in response to

the request for evidence pertain specifically to the petitioner; they are all background documents about the stated need for improvement in STEM education.

Absent evidence that the petitioner is and will continue be a STEM teacher, the evidence that counsel cited regarding the importance of STEM education and the need for improvement in that area does not seem to apply to this case. Furthermore, the overall state of STEM education does not imply that any one teacher will play a nationally significant role in addressing its problems. General arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field or seeking an as yet undiscovered solution to the problematic issue. *NYS DOT*, 22 I&N Dec. 215. Such assertions address only the “substantial intrinsic merit” prong of *NYS DOT*’s national interest test.

The director denied the petition on October 19, 2012, stating:

Counsel’s assertions regarding the overall importance of the beneficiary’s area of expertise cannot suffice to establish eligibility for a national interest waiver. The issue in this case is not whether teaching elementary school is in the national interest, but whether the beneficiary, to a greater extent than U.S. workers having the same qualifications, plays a significant role in that field.

On appeal, counsel submits a 20-page brief. The first eight pages of the brief consist mainly of quotations from the director’s decision and a list of previously submitted exhibits. Counsel then states that the petitioner’s “proposed employment as [a] Math Teacher is national in scope,” and that the petitioner’s evidence showed “the need to resolve the adverse effect of declining quality of education in Math and Science in the United States.”

As noted previously, the petitioner herself has never claimed to specialize in STEM education, even in her nine-page introductory statement in which she exhaustively detailed her past work history. The petitioner’s own résumé indicated that, while still a graduate student, she “taught . . . Grade Five Science” for one year, but otherwise there is no consistent pattern of STEM specialization. The résumé also indicated that the petitioner’s pre-kindergarten classes involve “Science, Math, Reading, Social Studies, Music and Movement, and Art.” Likewise, none of the dozens of letters submitted previously described the petitioner as a specialized “science and math teacher.” Some witnesses mentioned that the petitioner taught about counting (which is math-related) and weather (which is science-related), but others discussed non-STEM topics such as reading and social skills, which are not the province of a specialized “science and math teacher.” The record contains no evidence that the petitioner seeks employment as a STEM teacher, or that [redacted] seeks to employ her in that capacity. The record, therefore, does not support counsel’s focus on STEM fields. Counsel’s unsupported assertions do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel states: “the reasoning behind the denial . . . is a complete departure from the parameters elicited in the New York Department of Transportation case.” Specifically, counsel states: “the Immigration Service is requiring more from the beneficiary’s credentials and tantamount to having exceptional ability,” even though one need not qualify as an alien of exceptional ability in order to receive the waiver. The director, however, did not require the petitioner to establish exceptional ability in her field. As noted earlier in this decision, it has always been USCIS’s position (consistent with the wording of the statute) that aliens of exceptional ability present “prospective national benefit,” but nevertheless remain subject to the job offer requirement. Therefore, as observed in *NYS DOT*, citing the *Federal Register*, aliens seeking the additional benefit of the waiver must present even more of a “prospective national benefit” than those who merely claim exceptional ability without the waiver. No statute, regulation or case law establishes a lower standard for members of the professions holding advanced degrees.

Counsel states that the petitioner’s positive impact on her students, “who are future U.S. workers and thus equally protected by labor certification process,” warrants waiving that process in her own case. Counsel observes that the petitioner has documented “the adverse effect of declining quality of education in Math and Science in the United States.” The petitioner had not, however, established the role she has played in reversing that trend on a national level. Neither the petitioner herself nor any of her witnesses claimed that she has played any such role whatsoever. It is counsel alone who asserts that the petitioner is a “math and science teacher” rather than a preschool teacher whose curriculum includes math and science alongside several other subjects. Counsel states:

[T]he most tangible national benefit to be derived from a ‘Highly Qualified Mathematics Teacher’ is recreating a society of responsible and values-driven citizens including a highly productive and well-balanced work force that would translate the current recession adversely affecting the United States of America into a formidable economy again including national security.

Counsel fails to explain how the actions of one mathematics teacher would contribute significantly to nationwide social reform and economic recovery. General assertions about the overall importance of education, and the need for education reform, do not exempt every teacher from the job offer requirement. As members of the professions (as defined in section 101(a)(32) of the Act), teachers are subject to the job offer/labor certification requirement set forth in sections 203(b)(2)(A) and (3)(C) of the Act. Likewise, aliens of exceptional ability who “will substantially benefit prospectively . . . the United States” are also subject to the job offer provision of section 203(b)(2)(A) of the Act. Congress created no blanket waiver for teachers of math, science or any other subject. It is clear from the statute, therefore, that an alien who works in a beneficial profession such as teaching mathematics is not automatically or presumptively exempt from the job offer requirement.

Counsel makes little effort to distinguish the petitioner from other qualified professionals in her field. Instead, counsel again appeals to the underlying merit of her occupation as a whole. Counsel asserts: “Exclusively and strictly enforcing the rudiments behind the New York State Department of Transportation Case to Highly Qualified Teachers is unjust, unreasonable and damaging to the ‘Best

Interest’ of the American School Children.” Precedent decisions are binding on all USCIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Counsel cites no statute, regulation or case law that would require or permit USCIS to disregard *NYSDOT* as it applies to school teachers. Counsel repeatedly refers to presidential speeches and federal initiatives such as No Child Left Behind, stating that they demonstrate the “underlying urgency on this matter,” but counsel identifies no special legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

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 should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.