



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 08 2013** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal filed on November 21, 2012 [REDACTED] will be dismissed.¹

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 an “Elementary Special Education Teacher” for [REDACTED]. The petitioner has worked for [REDACTED] since 2008. At the time of filing, the petitioner was teaching at [REDACTED] in [REDACTED], Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel, a report entitled “Special Education Teacher Retention and Attrition: A Critical Analysis of the Literature,” an abstract for a report entitled [REDACTED] and copies of documents previously submitted.

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.

¹ The petitioner filed a separate untimely appeal on December 28, 2012 [REDACTED]. Both appeals related to the same denied I-140 petition, [REDACTED]. The AAO rejected the untimely appeal.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

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 is not sufficient to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

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

The petitioner has established that her work as a special education teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of petitioner's work would be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on December 19, 2011. In a December 13, 2011 letter accompanying the petition, counsel stated that the petitioner's national interest waiver is "based on her expertise in the . . . field as evidenced by her numerous awards and citations from a multitude of educational institutions here in the United States." Recognition for achievements by peers, governmental entities, or professional organizations is an element that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(F). Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The petitioner's awards will be further discussed later in this decision.

The petitioner submitted various letters of support from administrators and teachers discussing her work as an educator. 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.

Principal, [REDACTED] stated:

Currently, [the petitioner] is assigned as a Kindergarten/First Grade Classroom teacher in the Comprehensive Special Education Program at my school. [The petitioner] is a detailed-oriented person who works diligently to provide the best instruction. She is caring and nurturing to her students and willing to assist her colleagues to further strengthen their skills.

I am quite pleased she is a member of my special education team and a member of my staff. It is truly my intent to retain [the petitioner] for next school year.

Ms. [REDACTED] comments on the petitioner's personal qualities and responsibilities at [REDACTED] but Ms. [REDACTED] does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under her tutelage and the local school system that employed her.

Kindergarten Chairperson, stated:

As the kindergarten chairperson, I have grown to know [the petitioner] in a professional capacity and have observed her to be a true asset to our grade level team. [The petitioner's] knowledge resulting from staying abreast of the latest pedagogy and educational methods is equally matched by her strong work ethic. Her dedication to special education students results in her continued willingness to go beyond the call of duty, garnering the respect and admiration among her colleagues. Her gentle and loving spirit is well received among her peers and her students alike. In sum, [the petitioner] is an outstanding person both personally and professionally and I endorse her in any capacity.

Ms. praises the petitioner's knowledge, dedication, and personal traits, but Ms.'s observations do not set the petitioner apart from other competent and qualified special education teachers, or explain how the petitioner's work has impacted the field beyond the students at her school.

Ms. Directress, Philippines, stated:

[The petitioner] has worked in this institution for . . . 3 years as a SPED [Special Education] teacher. She also facilitates a Toddler Class and a 30 min. per day Reading Program for the Preparatory students.

In three years that she taught here, [the petitioner] showed exemplary dedication, patience and initiative with regards to her classroom duties. Her relationship with her fellow faculty members was excellent and she showed genuine interest and concern when dealing with her pupils.

I respectfully recommend her to any position commensurate with her qualifications.

Ms. comments on the petitioner's work at and her effectiveness as a teacher, but Ms. fails to provide specific examples of how the petitioner's work has influenced the field as a whole. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner's references praise her teaching abilities and personal character, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the schools where she has worked. They also do not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217 n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner’s references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”).

In addition to the reference letters, the petitioner submitted the following:

1. A Certificate of Congratulations from the administration of [REDACTED] School for “Outstanding Achievement” at the school (February 5, 2009);
2. A Certificate of Appreciation from the principal of [REDACTED] for “dedication to teaching and making public schools great for every student during the 88th annual American Education Week (November 2009);
3. An “Outstanding Service” certificate from the [REDACTED] “for invaluable contribution in giving academic help to the students of [REDACTED] in conjunction with its [REDACTED] (November 12, 2011);
4. An “Outstanding Service” certificate from the [REDACTED] “for her invaluable contribution in giving community service during the [REDACTED] (October 1, 2011);
5. A Certificate of Appreciation from the [REDACTED] “for rendering her voluntary services as a Youth Council Advisor of the [REDACTED] (2011-2012);
6. A Certificate of Recognition from the [REDACTED] “for rendering her exemplary services for the General Assembly of the [REDACTED] (November 5, 2011);
7. A Certificate of Excellence from the [REDACTED] “for sharing her expertise in Handwriting Without Tears” (November 19, 2011);
8. A Certificate of Recognition from the [REDACTED] “for his/her exemplary service rendered for the success of the [REDACTED] (November 19, 2011);

9. A Maryland Educator Certificate;
10. A Professional Teacher Certificate from the Republic of the Philippines;
11. A membership card for Autism Society Philippines;
12. A membership card for the National Organization of Professional Teachers;
13. A Special Olympics 2011 Partner card;
14. A membership card for the Maryland State Education Association;
15. A Certificate of Membership for the [REDACTED];
16. A Bachelor of Science in Business Administration degree
17. A graduation certificate from a Post Baccalaureate Program in Special Education; and
18. Academic transcripts.

Again, academic records, professional certifications, memberships, and recognition for achievements are all elements that pertain to a finding of exceptional ability, but exceptional ability 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 (items 1 – 8) have more than local or institutional significance. For instance, the petitioner's awards from [REDACTED] (items 1 and 2) and from the [REDACTED] (items 3 – 8) reflect institutional or regional recognition for rather than nationally significant awards in the field of education. There is no documentary evidence showing that items 1 – 18 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner submitted 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 copies of her "satisfactory" teacher evaluations from [REDACTED]. The petitioner, however, failed to demonstrate how the evaluations reflect that she has impacted the field to a substantially greater degree than other similarly qualified special education teachers and how her specific work has had significant impact outside of the schools where she has taught.

The petitioner submitted documentation indicating that she has provided service and financial support for various charitable causes and organizations such as the [REDACTED] but there is no documentary evidence demonstrating how this work has influenced the field of education as a whole.

The director issued a request for evidence (RFE) on June 13, 2012, instructing the petitioner to submit evidence to establish that her “past record justifies projections of future benefit to the nation.” The director’s RFE stated: “The petitioner must establish . . . a past record of specific prior achievement with some degree of influence on the field as a whole.”

In response, the petitioner submitted President George H.W. Bush’s “Remarks on Signing the Immigration Act of 1990”; information about Public Law 94-142; a copy the Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954); Title I of the Elementary and Secondary Education Act; a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; and a September 26, 2011 article in *Education Week* entitled “Shortage of Special Education Teachers Includes Their Teachers.” As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. These assertions address only the “substantial intrinsic merit” prong of *NYSDOT*’s national interest test. None of the preceding documents demonstrates that the petitioner’s specific work has influenced the field as a whole.

The director denied the petition on October 19, 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 the proposed benefit of her work as a special education teacher would be national in scope. In addition, the director stated that there was “insufficient evidence to demonstrate that the proposed employment of [the petitioner] would specifically benefit the national interest of the United States to a substantially greater degree than a similarly qualified U.S. worker.”

On appeal, counsel states: “[The petitioner’s] request for waiver of the labor certification is premised on her Master’s degree in Special Education.” While the petitioner has taken some graduate level courses, there is no evidence showing that the petitioner holds a Master’s degree in Special Education. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Regardless, an advanced degree is not a factor that qualifies the petitioner for a national interest waiver. The advanced degree is, by definition, a fundamental requirement for classification as a member of the professions holding an advanced degree. Section 203(b)(2)(A) of the Act subjects members of the professions holding advanced degrees to the job offer requirement. The national interest waiver is a benefit separate from the classification sought, and therefore eligibility for the underlying classification does not imply eligibility for the benefit of the waiver.

Counsel asserts: “the reasoning behind the denial . . . is a complete departure from the parameters elicited in the New York Department of Transportation case.” Specifically, counsel states that “the Director is requiring more from [the petitioner’s] credentials . . . and tantamount to having exceptional ability,” even though one need not qualify as an alien of exceptional ability in order to

receive the waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest waiver. Regardless, the director did not require the petitioner to establish exceptional ability in her field. Instead, the director observed that the petitioner's evidence failed to show that her work as a special education teacher is national in scope and that she will benefit the national interest of the United States to a substantially greater degree than a similarly qualified U.S. worker.

Citing various government efforts to improve education, counsel states:

[T]he issue of whether the beneficiary's proposed employment as 'Highly Qualified Special Education Teacher' traverses the restrictive confines of physical and geographical limitation that normally applies to areas such as Bridge Engineer, Marine Scientist and the like.

Here, the most tangible national benefit to be derived from a 'Highly Qualified Special Education 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.

Hence . . . , the benefits that would be conferred [from the petitioner's work] spreads [sic] to the entire nation's economy and security.

Counsel fails to explain how the actions of one special education teacher would contribute significantly to nationwide social reform, economic recovery, and security. As indicated previously, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506. 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 did not create a blanket waiver for special education teachers. It is clear from the statute, therefore, that an alien who works in a beneficial profession such as special education is not automatically or presumptively exempt from the job offer requirement.

Apart from describing the petitioner as a "highly qualified special education teacher" and stating that such teachers, as a group, should be exempt from the job offer/labor certification requirement, counsel fails to distinguish the petitioner from other qualified professionals in her field. Having first asserted that the director strayed from the guidelines of *NYSDOT*, counsel then alternatively contests those same guidelines, stating on page 13 of his brief: "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 cites to studies pointing to high turnover rates and inexperience among special education teachers. As the alien employment certification process was designed to address the issue of worker shortages, a shortage of qualified workers in a given field does not establish eligibility for the national interest waiver. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221. This information submitted by the petitioner shows that there is a demand for credentialed special education teachers, a demand that the labor certification process can address.

Counsel asserts that “59% [of] special educators in the nation [hold] a Master’s degree or equivalent,” and “92% [of] special educators [have] full certification.” The study that counsel cited, the “SPeNSE: Study of Personal Needs in Special Education,” did not indicate, as counsel claimed, that 59% of United States special education teachers have a master’s degree “or equivalent.” Rather, as quoted by counsel, the study stated: “Fifty-nine percent of special educators had their Master’s degree.” Again, the petitioner in this proceeding took some graduate-level courses, but she did not submit evidence that she completed a master’s degree. Therefore, the information provided by counsel indicates that the average United States special education teacher possesses higher academic credentials than those of the petitioner. Although counsel makes several references to the petitioner’s master’s degree in special education (rather than its defined equivalent), there is no evidence to support his claim. Again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506.

Counsel quotes remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: “This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas.” Counsel interprets this passage to mean that Congress created the national interest waiver for educators. The Immigration Act of 1990, however, was not restricted to the creation of the waiver. It was, rather, an overhaul of the entire immigration structure, creating new employment-based immigrant classifications to replace the “third preference” and “sixth preference” classifications previously in place. “[S]cientists and engineers and educators” are all members of the professions who, under the terms dictated by Congress in the Immigration Act of 1990 (as it amended the Act), are all subject to the job offer requirement.

Counsel asserts that providing “legal immigrant status for ‘Highly Qualified Special Education Teachers’ including [the petitioner] . . . will not only serve the best interest of American students with special needs but more importantly serve be [sic] ‘key to the nation’s economic prosperity.’” Again, counsel does not explain how the actions of one teacher would contribute significantly to improving the national educational system or the U.S. economy. Congress could have created a blanket waiver for mathematics teachers, but did not do so. Instead, the job offer requirement applies to members of the professions (such as special education teachers) and to aliens of

exceptional ability (*i.e.*, foreign national workers who show a degree of expertise significantly above that ordinarily encountered in a given field).

Counsel contends that the labor certification process poses a “dilemma” for the petitioner because she possesses qualifications above the minimum required for the job she seeks. Specifically, counsel asserts that the petitioner’s qualifications include a “Master’s degree in Special Education” and “about 10 years of experience.” Counsel states that the labor certification guidelines “require only a bachelor’s degree,” and therefore “may not meet the objective of employers to hire highly qualified teachers pursuant to No Child Left Behind.”

Section 9101(23) of the NCLBA defines the term “Highly Qualified Teacher.” Briefly, by the statutory definition, a “Highly Qualified” elementary school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor’s degree; and
- has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, or (in the case of experienced teachers not “new to the profession”) demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation.

In addition, the petitioner submitted information from the U.S. Department of Labor’s *Occupational Outlook Handbook* describing the minimum qualifications necessary to become a special education teacher:

Public school teachers are required to have at least a bachelor’s degree and a state-issued certification or license.

* * *

Education

All states require public special education teachers to have at least a bachelor’s degree. Some of these teachers major in elementary education or a content area, such as math or chemistry, and minor in special education. Others get a degree specifically in special education.

* * *

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

* * *

Licenses

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

* * *

Requirements for certification vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, which is typically gained through student teaching. Some states require a minimum grade point average.

Many states offer general special education licenses that allow teachers to work with students across a variety of disability categories. Others license different specialties within special education.

Teachers are often required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

Some states allow special education teachers to transfer their licenses from another state. However, some states require even an experienced teacher to pass their own licensing requirements.

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

The petitioner has not established that the "Highly Qualified" standard involves requirements that are significantly more stringent than those outlined in the *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "Highly Qualified Teacher." Thus, the petitioner's level of education and experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, does not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel states that "unquantifiable factors that zero in on 'passion'" distinguish the petitioner from qualified United States workers and that labor certification cannot take these factors into account, but the record contains no evidence to support the claims. Once again, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506.

Counsel contends that, under the NCLBA, schools that fail to meet specified benchmarks will lose federal funding and be “abolished,” thereby putting teachers out of work. Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506. Counsel asserts that by waiving the labor certification requirement for highly qualified teachers such as the petitioner, “more American teachers will have . . . employment opportunities” because standards will be met and schools will not be abolished. However, neither the Immigration and Nationality Act nor the NCLBA, create or imply any blanket waiver for highly qualified foreign teachers. USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *NYS DOT* at 217.

Counsel points to the NCLBA and other government initiatives to reform and improve public education. Counsel asserts that national interest waiver petitions filed by school teachers should be considered “outside the confines” of *NYS DOT*. Counsel, however, does not identify any specific legislative or regulatory provisions in the NCLBA or in other federal statutes that exempt foreign school teachers from *NYS DOT* or reduce its impact on them. It is within Congress’s power to establish a blanket waiver for teachers, “highly qualified” or otherwise, but no such waiver has been enacted. With regard to following the guidelines set forth in *NYS DOT*, by law, USCIS does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c).

Counsel does not support the assertion that the NCLBA modified or superseded *NYS DOT*; that legislation did not amend section 203(b)(2) of the Act. Once again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYS DOT*, counsel has not shown that the NCLBA indirectly implies a similar legislative change.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level 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. *See NYS DOT*, 22 I&N Dec. 217 n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219 n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.