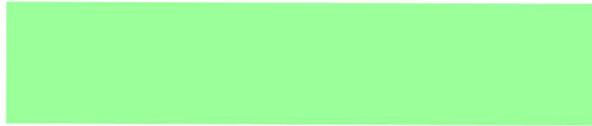


(b)(6)

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: **APR 07 2014** OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 the defined equivalent of an advanced degree. The petitioner seeks employment as an elementary school teacher. Since 2007, the petitioner has taught at [REDACTED] Florida.<sup>1</sup> 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 the equivalent of an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief and supporting exhibits.

For a time, attorney [REDACTED] of [REDACTED] represented the petitioner in this proceeding. There is, however, no evidence that Ms. [REDACTED] participated in preparing or filing the appeal. Form I-290B, Notice of Appeal or Motion, advises that attorneys “must attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative” to the appeal, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). The appeal does not include this form. The AAO will therefore consider the petitioner to be self-represented, and the term “former counsel” shall refer to Ms. [REDACTED].

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

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<sup>1</sup> The spelling [REDACTED] appears in much of the record, including the petitioner’s own statements and materials from the Florida Department of Education, but the school’s own letterhead uses the spelling “[REDACTED]”. This decision will use the latter spelling except when quoting sources using the variant spelling.

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 with post-baccalaureate experience equivalent to an advanced degree under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). 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, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now 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 the Form I-140, Immigrant Petition for Alien Worker, on June 29, 2012. In an accompanying statement, the petitioner stated:

The school district where I is [sic] working is a witness to the fact that I . . . is [sic] no ordinary teacher, I am driven, hardworking and self-motivated to perform . . . with the students, the community and the country in mind. . . .

The school where I am, [sic] teaching is one of those low performing school, [sic] with a state performance level of F before I arrive, [sic] puzzled me, and in all honesty scared me. . . . [M]y stay in the district yielded positive result [sic]. . . . I believed that I am no ordinary teacher and I deserve to receive the benefit under the National Visa Waiver Program (NIW) [sic]. . . .

In all those years that I have been teaching [in the Philippines from 1991 to 2007], I have produced or touched at least five of hundreds [sic] of students many of whom became professionals and are scattered all over the world and became part of their work force contributing to their economies including USA. . . . While I was principal [of a public elementary school] . . . [t]he school I headed was recipient of at least 2Million [sic] Pesos grant for materials to build a two classroom building, but because of a lack of counterpart funding from the local government . . . I turned to the parents of my students for help. . . . Due to this the building was materialized and are used [sic] up until this time. . . .

The school where I am teaching is one of the poorest schools when it comes to academic achievement fairing [sic] F almost consistently, in Florida's Comprehensive Assessment Test (FCAT). . . . In the early part of my employment in [redacted] County, I was assigned to teach grade 3 self-contained curriculum in 2007-2009, in which my class got the highest performance in FCAT. In 2009-2011 I taught 3<sup>rd</sup> grade Math departmentalized. In 2011 my 3<sup>rd</sup> grade Math increased there [sic] FCAT performance by 32 points in percentage from 46% to 78%. Presently teaching 4<sup>th</sup> grade Math departmentalized. In the same year, [redacted] County's FCAT 2.0 Math Results was [sic] 84% Proficiency ranked [redacted] in the State.

The petitioner indicated that, beyond her standard teaching duties, she participated in enrichment programs funded by a School Improvement Grants in the 2008-2009 and 2011-2012 school years, and teaches at a "Migrant Summer School." Regarding her claimed eligibility for the national interest waiver, the petitioner stated:

In my case, I am teaching elementary kids, 8 or 9 years old and stationed in one school, [REDACTED] will my “simple” usually unnoticed job benefit the nation? I am just building minds, or do I really need to be a scientist, a PhD, a genetic engineer or the like to be given this privilege of the national interest waiver. My work goes beyond the bridge that was build or a stem cell that was discovered. I help kids realize they are important. . . . The students, [sic] who have this pleasant experience in the classroom will learn and perform better and [be] more likely to succeed in life, as such, they will positively contribute to the community and the country as a whole. Unlike other in profession [sic], in teaching the result is not immediate but the offshoot of a well taught elementary children are [sic] better high school and college students and nation’s professionals in the long run.

If an engineer in a given place was granted the privilege under National Interest Waiver, because the bridge he built, maybe [sic] used by travelers from other states qualifying it as of national interest, I firmly believe, that by educating the young, [sic] is much more of national interest than any material products.

The petitioner does not identify any engineer who received a national interest waiver by building a bridge. The beneficiary in *NYSDOT* was a bridge engineer, but that beneficiary did not receive the waiver. The decision in *NYSDOT* explained why his employer had not established his eligibility for the waiver.

The petitioner’s statements concerning public elementary education as a whole address the intrinsic merit of education, which is not in dispute in this proceeding. The overall importance of education, however, does not qualify every educator for the national interest waiver. Section 203(b)(2)(A) of the Act subjects members of the professions to the job offer requirement, and section 101(a)(32) of the Act states that school teachers are members of the professions. Therefore, the general importance of teaching does not warrant granting the waiver to individual school teachers.

The next prong of the *NYSDOT* national interest test is that the benefit arising from the petitioner’s work will be national in scope. The impact of a single school teacher is typically local. *Id.* at 217 n.3. The petitioner claimed that her impact will be widespread in the long term, as her influence on her students will shape their later lives. The petitioner’s earliest students are now adults, but the petitioner submits no evidence to allow a meaningful, objective comparison between her former students and other, demographically similar students who did not study under her. The petitioner’s general assertion, therefore, is vague, speculative, and unsupported. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

*NYS*DOT's third prong requires the petitioner to establish her influence on her field as a whole. Improved test scores in one grade at one school does not show wider influence. The petitioner's evidence, however, addresses only her impact on [REDACTED]

The petitioner submitted four witness letters with the petition. Dr. [REDACTED] a staff scientist at the [REDACTED] knows the petitioner through the [REDACTED] (of which Dr. [REDACTED] is a board member and a former president). Dr. [REDACTED] stated:

[I]t is clear that [the petitioner] belongs to an elite class of elementary school educators. Her list of exemplary accomplishments . . . speaks loud and clear as to the caliber of her contributions to the educational field. Foremost among this [*sic*] is her unique talent in teaching, using [REDACTED] which is undisputedly the main factor in carrying [REDACTED] Country [*sic*] score in 2011 FCAT Math Results from the lowest 4 countries [*sic*] in the State of Florida up to number [REDACTED] overall! [The petitioner] is also one of the only three 3<sup>rd</sup> grade math teachers from [REDACTED] [REDACTED] who made the 32 percentage point gain (46% to 78%) in 2010, which earned a one point up grade for [REDACTED] . . . .

One of the best teachers I have ever known in my career are those that is [*sic*] never satisfied with what they know and continue to quest for self improvement. [The petitioner] is just this kind of individual who always search [*sic*] for additional skills and knowledge. . . .

[The petitioner] has proven herself to be an outstanding teacher in a category by herself and is a rare find.

Dr. [REDACTED] holds the petitioner in high regard, but did not explain how the petitioner has influenced the field of education as a whole (as opposed to her own classroom and school). General assertions about the importance of math education and the "remarkable immigrant tradition" do not suffice in this regard.

The remaining witnesses are local school officials. Dr. [REDACTED] district coordinator for the Race to the Top federal grant awarded to [REDACTED] County Schools, stated that the petitioner "made significant educational contributions and reforms in the field of Math," but she identified no contribution beyond [REDACTED] Dr. [REDACTED] stated that the petitioner's "students went from 46% proficiency in 2010 to 78% proficiency in 2011. . . . This was a tremendous achievement for [REDACTED] [REDACTED] a school that earned a grade of an 'F' . . . in 2010 then moved to a 'C'" due to the efforts of the petitioner and two other third grade math teachers. The principal and assistant principal of [REDACTED] also attested to these statistics.

This improvement is a considerable one in relative terms, but does not show that the petitioner has had a national impact on elementary math education. The record does not show that it is a rare or

influential achievement for a math teacher's students to reach 78% proficiency. (Documentation in the record shows that the 2011 figure fell short of the school's target of 80% proficiency.) Furthermore, test scores documented in the record show an improvement from 2010 to 2011, but some measurements also show a significant decline in the two preceding years, when the petitioner was already teaching at [REDACTED]. Thus, much of the significant one-year increase regained ground lost in earlier years.

The petitioner did not establish that her former students continued to attain comparatively high math scores in subsequent years, and therefore she did not support her general claims about her lasting influence on her students.

[REDACTED] assistant principal of [REDACTED] stated: "I believe, if she be given a chance to write instructional materials in her field, [the petitioner] would be able to share her strategies [with] all math teachers of the country." The petitioner has not published instructional materials in the United States. The assertion that such materials would be influential, were they to come into existence, is speculative and therefore without weight.

The director issued a request for evidence on October 24, 2012. The director quoted witness letters and stated: "no corroborative primary evidence has been presented specifying the direct role the beneficiary's work has played in the field of Education as a whole." The director requested "documentary evidence that the beneficiary's contributions will impart national-level benefits."

In response, former counsel stated:

The beneficiary's past record of specific prior achievement using her Multi grade teaching technique, [REDACTED] justifies projections of future benefit to the nation. In the Philippines [the petitioner] demonstrated widespread acclaim in her field by authoring a manual on Multi-grade teaching that was used in over 400 schools in the Philippines. She also was asked to give presentations on Multi-grade and alternative teaching methods at local, regional and national conferences in the Philippines, which shows her ability to serve the national interest to a substantially greater extent than the majority of others. As a principal, she also wrote and was awarded grants from the international non-governmental organization, Save the Children, to provide electricity, chairs and desks for her students based on student achievement and need. . . .

[REDACTED] is a method coined by [the petitioner] to maximize time and promote simultaneous learning among two grade groups. This is when the teacher handles one grade in the class, and she gives . . . activities to the other grade with the help of higher grade students, technology or with the gifted learners. . . . Multigrade teaching becomes easy when the methods of waiting time . . . are implemented properly. . . .

[The petitioner's] achievement with her students lead [sic] to her being asked to write a Multigrade manual highlighting [REDACTED] for the Department of Education in the Philippines. The Multigrade lesson plans (for teachers) and workbook (for students) [that the petitioner] authored were utilized by all multigrade classes in the Department of Education, Division of [REDACTED] having a total of 469 public elementary schools. . . .

[The petitioner] was also asked by Department of Education to contribute to two English I and English II lesson plan materials for the Division of [REDACTED] in 2000 and 2003.

With respect to prospective (future) benefit to the United States, the petitioner has not shown that any school other than [REDACTED] or any teacher other than herself, has adopted the [REDACTED] technique since the petitioner arrived in the United States in 2007.

The petitioner submitted a copy of a "Certificate of Recognition" from the [REDACTED] of [REDACTED] thanking the petitioner "for her efforts in the preparation of weekly plans for use of Multi-grade classes for Grades I and II in the Division of [REDACTED] for school year 1995-1996." This certificate appears in a section of the record labeled "Publications," but the certificate is not a publication. Other submitted materials identified the petitioner as one of 20 Grade I contributors to English workbooks for 2003-2004. The record does not include or establish the publication of "a Multigrade manual highlighting [REDACTED] for the [REDACTED]. The petitioner's unspecified contribution to lesson plans and English workbooks in one division of one region of the Philippines does not show that the petitioner's work has or will result in national-level benefit to elementary education.

The petitioner submitted copies of Region VI certificates showing that she "successfully conducted a demonstration teaching during the REGIONAL TRAINING ON MULTIGRADE INSTRUCTION" in March [REDACTED] and "a demonstration lesson during the ECD TRAINING OF GRADE ONE TEACHERS" in August [REDACTED]. A third certificate submitted under the category of "Presentations," issued by the Philippine Department of Education, acknowledged the petitioner's "having launched/implemented his/her re-entry project entitled [REDACTED] in fulfillment of the requirements for Phase 2 of the Basic School Management Course" in September 2004. The certificates do not show the extent, if any, to which the petitioner's [REDACTED] technique figured in the presentations. The petitioner's completion of a required "Basic School Management Course" around the time she became a school principal is not evidently a mark of distinction or impact on her field.

Former counsel asserted that the petitioner, while in the Philippines, helped to obtain a grant from Save the Children that paid for construction, electricity, and basic furniture for the school where she worked at the time. The petitioner has not shown that these efforts had more than a local impact, or that U.S. schools require comparable assistance from non-governmental organizations.

With respect to the petitioner's teaching work in the United States, former counsel stated:

[The petitioner's] unique ability to apply Multi-grade instruction has been successfully applied in [redacted] Florida, a small rural area of about 7,000 people that has many migrant farm workers and their children with limited English proficiency. . . .

[T]he after school program is district wide so the grade levels range from kindergarten to high school. Her use of her [redacted] technique has still succeeded even with the additional challenge of serving migrant students who lack proficiency in English. . . . Her excellent ability to handle this many students . . . cannot be articulated on a labor certification. . . .

There was also an overwhelming enrollment in the after school program this year. The program started with about 1 to 10 total of students, but the year she joined the program in 2010, it increased to about 30-40. This year it doubled to around 70. That simply means that the parents believe in the after school program. . . .

[The petitioner's] teaching skills are of national interest because of a nationwide ESOL [English for speakers of other languages] teacher shortage. She teaches ESOL students in an after school program that serves students district wide and in multi-grade [sic] levels, K-12. . . . [The petitioner] utilized GOMATH and IMAGINEITREADING technology to develop curriculum for each student based on each task they need to master. Her techniques have been successful, as demonstrated in the increase of her student's [sic] scores on the statewide Florida Comprehensive Achievement Test, the use of her instruction techniques by other after school programs, and the interest in publishing manuals of her teaching style by her Assistant Principal at [redacted]

A shortage of ESOL teachers does not warrant approval of the national interest waiver, because the labor certification process is already in place to address shortages of qualified workers. See *NYSDOT* at 218. Former counsel asserted that the assistant principal of [redacted] had expressed "interest in publishing manuals of [the petitioner's] teaching style," but [redacted] had not stated any intention to be involved in such publication. Rather, the assistant principal stated: "if she be given a chance to write instructional materials in her field, [the petitioner] would be able to share her strategies [with] all math teachers of the country." No [redacted] official has indicated that writing instructional materials has been or will be part of her official duties for the school; the qualifier "if she be given a chance" implies that her work at the school since 2007 has not yet given her such a chance. Furthermore, the assertion that publication of the petitioner's work would enable her to "share her strategies [with] all math teachers in the country" is not evidence that other teachers nationwide would, in fact, adopt those strategies. Publication, were it to occur, would simply make the materials available for adoption.

A new witness letter, from [REDACTED] principal of [REDACTED] addressed the petitioner's use of new technology:

[The petitioner] exceeds the required scope and duties of her job. . . . For instance, in 2010 the Response System Clickers was a new technology tool in [REDACTED] County Schools. . . . [The petitioner] was the only teacher at [REDACTED] to utilize the tool. The use of this tool brought additional excitement, motivation and interest to her classroom. That year, [the petitioner's] class scored the highest gains at [REDACTED] and in the [REDACTED] School District for the third grade on the FCAT Mathematics Assessment. The following summer, [the petitioner] conducted a Response System Clickers training for all thirty-five teachers . . . at [REDACTED] . . . and now the technology system is used in all third through fifth grade math classrooms at [REDACTED] . . . With this our math scores continue to improve each year. . . . This is only one instance of services [the petitioner] has rendered. She also serves as a mentor for new and beginning teachers. Her math classroom serves as a model for the school and also the district.

Ms. [REDACTED] did not indicate that the petitioner has influenced education beyond the district. Instead, she called the petitioner "a great resource to our campus." With respect to the cited example of the petitioner's work, the petitioner's early adoption of "a new technology tool" indicates that she was ahead of her colleagues at [REDACTED] but she did not develop the tool and therefore its use is not evidence of her impact on education. An alien's job-related training in a new method, whatever its importance, cannot be considered to be an achievement or contribution comparable to the innovation of that new method. *NYSDOT* at 221 n.7.

[REDACTED] ESOL program specialist for [REDACTED] County Public Schools, stated that the petitioner "is definitely an asset to our program and to our ESOL students. . . . Her expertise in handling multigrade and multilevel students in the same classroom setting has proven incomparable in assisting our middle and high school students." Ms. [REDACTED] did not indicate that the petitioner's methods have seen, or will see, wider implementation. Instead, she stated that the petitioner "would be a great asset to any educational setting" and should have "the opportunity to work and watch the immense progress and success of all students under her instruction."

The director denied the petition on March 15, 2013, stating that the petitioner had established the intrinsic merit of primary education, but had not met the remaining two prongs of the *NYSDOT* national interest test. The director stated: "no corroborative primary evidence has been presented specifying the direct role the beneficiary has played in the field of education." The director also stated that speculation regarding the petitioner's potential future impact has no weight as evidence that the petitioner is already eligible for the benefit sought.

On appeal, the petitioner repeats statistics quoted previously, showing that [REDACTED] "is one of the poorest schools when it comes to academic achievement," and that there has been an overall

improvement in FCAT scores in recent years. The petitioner states: "I am not only reaching local students from my school, but I have the opportunity to teach other children from three more schools within the district" through the "Migrant Summer School" program. The potential student pool for the summer school is, geographically, slightly wider than the one for [REDACTED] itself, but this difference does not translate into national scope.

The petitioner quotes *NYS DOT* regarding the limited scope of elementary school teachers, and asserts that the quoted passage represents "a pre judgment as to whether an Instructional Teacher will be able to qualify for the waiver. . . . If this is the case no single school teacher may qualify for the waiver." Although the petitioner appears to dispute this "pre judgment," the petitioner also appears to affirm it. The petitioner asserts that, as much as "teachers would want to get to multiple schools so as to widen their service area, the nature of the job will not permit it. . . . It has to be taken into consideration that, teachers are limited by the system they are into [*sic*]."

It is possible for a professional in the field of education to have a wider impact, for example by developing curricular materials that other teachers then adopt on a national basis. The petitioner claims to have developed such materials in the Philippines, although the record contains little documentary evidence in that regard.

The petitioner asserts that elementary education forms the foundation for subsequent higher levels of education. This assertion, however, does not show that the petitioner meets the *NYS DOT* guidelines for the national interest waiver. By the plain wording of section 203(b)(2)(A) of the Act, a foreign worker is generally subject to the job offer requirement (including labor certification) even if that worker's employment "will substantially benefit prospectively the . . . educational interests . . . of the United States." Employment in a beneficial occupation, therefore, does not qualify the petitioner for the national interest waiver.

Likewise, exceptional ability, defined at 8 C.F.R. § 204.5(k)(2) as "a degree of expertise significantly above that ordinarily encountered" in a given field, is not automatically grounds for granting the waiver. Therefore, an elementary school teacher with a degree of expertise significantly above that ordinarily encountered in the field of elementary education would not, as a result, necessarily qualify for the waiver. These provisions are found in the statute, and USCIS has no discretion to disregard or overrule them. By law, exceptional ability that will substantially benefit the United States is not sufficient grounds for approving the national interest waiver.

The petitioner states that the United States will benefit from "[g]iving, Instructional Teachers a fair chance to obtain lawful permanent residence." The referenced to "a fair chance" implies that there is something unfair about the job offer/labor certification requirement. That requirement, however, does not bar teachers from immigrating; it simply imposes conditions that the teacher and the employer must meet. The national interest waiver is not a standard avenue for immigration. It is, rather, a special exemption from an otherwise routine requirement.

The petitioner claims: “the labor certification process will delay delivery of my services to my students as well as the continuity of the system I had implemented.” The petitioner does not explain this claim. The timing of the filing (such as the imminent expiration of one’s nonimmigrant status) does not determine eligibility for the waiver.

The petitioner asserts that her “case is far different from” *NYSDOT* because that precedent decision concerned an engineer rather than a teacher. The core findings in *NYSDOT* were deliberately broad; the three-pronged national interest test is not limited to engineers.

The petitioner states: “Granting that I had 20 pupils in my class in the last 5 years, it is 100 pupils whose mind [sic] I had helped and whose life [sic] I had touched,” who continue to benefit from their time in the petitioner’s classroom. The petitioner has not shown that these figures are significant at a national level. The petitioner’s impact on her own students is not influence on the field of elementary education as a whole.

The petitioner claims that the recent improvement in student performance at [redacted] proves her superiority to local U.S. workers. She states: “Should there be an U.S. worker of with [sic] the same qualifications as I have . . . and can generate the same result as I did in the first place, I believe this school would not have remained at the bottom when it comes to students [sic] performance.” The record shows that an overall improvement coincided with the petitioner’s time at the school, but the record does not establish that the petitioner was largely or solely responsible for that improvement. The petitioner contends that there is a high rate of staff turnover at the school, meaning that many other new teachers arrived during the same period. Furthermore, the upward trend in scores has not been uniform.

Also, the petitioner claims that school performance should be a determining factor for the waiver, but the petitioner has not shown that [redacted] is a top-performing school; only that it is no longer near the bottom. Statistics submitted with the initial filing of the petition show that student achievement at [redacted] remains well below the state average. A submitted excerpt from a State Report of School Results for Grade 3 Mathematics dated May 27, 2010, for instance, listed FCAT results for 53 schools. The figures under “Percent in Achievement Levels 3 and Above” range from 41 to 100; [redacted] showed 46 percent, with only two other schools showing the same or lower percentage. Under “Number Sense,” out of a maximum possible score of 12, [redacted] students had a mean score of 6. All but four listed schools scored higher, and none scored lower. The figures the petitioner has provided do not show that the petitioner has transformed [redacted] into a model for student performance.

Exhibits submitted on appeal include lesson plans and other teaching materials, as well as a copy of the [redacted]. The record does not show, and the petitioner does not claim, that the petitioner played a role in developing the [redacted] system. Rather, the record shows that the [redacted] system devices are the “response system clickers” to which [redacted] had previously referred. The petitioner trained her colleagues at [redacted] in the use of the devices, but this does not establish the petitioner has played a role outside the school with respect to

the devices. A memorandum reproduced on appeal shows that the school made use of the 2Know! system mandatory in 2011; the petitioner's status as the first [REDACTED] teacher to complete mandatory training does not establish influence on the field of elementary education as a whole.

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 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 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.