(b)(6)

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

U.S. Citizenship and Immigration Services

DATE: APR 18 2014 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a special education elementary school teacher. The petitioner has taught for since October 2003. At the time of filing, the petitioner was working for at in 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 did not qualify for classification as a member of the professions holding an advanced degree, and that the petitioner had 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. –
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> > (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.
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> > (B) Waiver of Job Offer –
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> > > (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 regulation at 8 C.F.R. § 204.5(k)(3)(i) states:

> To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:
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> > (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner submitted evidence that she received a Bachelor of Elementary Education degree from in 1990. The petitioner also submitted a February 2, 2012 "Expert Opinion Evaluation" report prepared by Dr. Professor of Operations Management and Management Science, stating that the petitioner has "at least seven years of post-baccalaureate progressive work experience in education."

The director found that the evidence of record failed to show that the petitioner has progressive 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). Specifically, the director stated that the petitioner had not demonstrated that "her experience was progressive." The petitioner, however, submitted a May 8, 2013 letter from Specialist, Office of Talent Development, stating:

> The Program recognizes teachers who extend their expertise, knowledge, and skills to support improvement efforts with colleagues, both within their schools and across the county. As a participant [the petitioner] facilitated a staff workshop on Differentiated Instruction during the 2008-2009 school year. In 2009-2010 she was designated the Web Master for the school's website, and for school years 2010-2012 she organized the annual Book Swap as well as worked as the Extended Learning Opportunity Teacher/Tutor.

In addition, the petitioner submitted a "Verification of Employment" memorandum from stating that she has worked there as a teacher since October 2003. The petitioner also submitted documentation indicating that while working as a teacher she engaged in numerous professional development training courses and seminars from 2004 through 2012. Accordingly, the petitioner's employment experience with demonstrates advancing levels of responsibility and knowledge as an educator. As the evidence submitted by the petitioner establishes that she has more than five years of progressive post-baccalaureate experience as a school teacher, the director's finding is withdrawn. The petitioner therefore qualifies as a member of the professions with progressive post-baccalaureate experience equivalent to an advanced degree.

The remaining issue 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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service 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, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she 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 she 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.

The petitioner has established that her work as an elementary school special education teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work will 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.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner'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 petitioner 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 U.S. Department of Labor through the labor certification process. *Id.* at 221.

The petitioner filed the Form I-140 petition on July 2, 2012. In Part 4 of the Form I-140, the petitioner answered "no" to whether any immigrant visa petitions had previously been filed on her behalf. The record, however, reflects that filed a Form I-140 petition, with an approved labor certification, on her behalf on December 5, 2008, to classify her as a professional under section 203(b)(3)(A)(ii) of the Act. The Texas Service Center approved the petition on February 25, 2009, with a priority date of July 16, 2007.

In his June 28, 2012 letter accompanying the petition, counsel did not mention the *NYSDOT* guidelines or explain how the petitioner meets them. The record does not show how the petitioner's work will impact the field beyond With regard to the petitioner's teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her students such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as a special education teacher beyond the students at her school and, therefore, that her proposed benefits are national in scope. In addition, the record lacks specific examples of how the petitioner's work as a teacher has influenced the field on a national level. 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 submitted a May 8, 2013 letter from Ms. that stated:

> As the Program Teacher Liaison, I have worked alongside [the petitioner] for the past 3 years.
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> * * *
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> [The petitioner] works with a positive attitude and has the capability of motivating her colleagues, while working collaboratively with them. She works as a Special Education reading and math co-teacher in grades K, 1, 2, and 5 at She effectively plans and delivers whole group lessons, as well as small group instruction. Her interaction with the students is positive and demonstrates respect. In turn, the students

respond well. Her students have continued to show academic growth based on the data provided from local and state assessments.

Ms. comments on the petitioner's positive attitude, ability to motivate her colleagues, job responsibilities, positive interactions with students, and effectiveness as an educator at but does not indicate how the petitioner's impact or influence as a special educator is national in scope. In addition, Ms. fails to provide specific examples of how the petitioner's work has influenced the field as a whole or how she will benefit the United States to a greater extent than other similarly qualified special education teachers. Ms. does 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 reference is not without weight and has 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 letter of support from Ms. the petitioner submitted the following:

1. A Certificate of Achievement (2006) from the County Executive of during American Education Week in honor of the petitioner's "service as an educator" in the system;
2. A Certificate of Appreciation from the principal of "for Dedicated Service for the 2003/2004 school year";
3. A Certificate of Appreciation from the administration of School "for Dedicated Service for the 2006-2007 school year";
4. A Certificate of Appreciation from the Department of Teacher Leadership and Professional Development, "for assisting and coaching novice teacher(s) at

as part of the (2007-2008);

5. A Certificate of Appreciation from "for outstanding service as a teacher in the 2008 School Improvement Summer School at
6. A Maryland Educator Certificate;
7. A Texas Educator Certificate;
8. A "Professional Teacher" license for the State of Colorado;
9. A July 11, 2011 letter from the Maryland State Department of Education informing the petitioner that she holds teaching certificates in Elementary Education and Middle School, and Generic Special Education;
10. Praxis Series Examinee Score Reports;
11. A "Certification of Good Standing" dated September 2011 from the Republic of the Philippines Professional Regulation Commission, Manila;
12. A "Professional Teacher (Elementary)" certificate from the Republic of the Philippines, Professional Regulation Commission, Board for Professional Teachers;
13. Academic records and transcripts;
14. An employment verification from and
15. A February 9, 2012 letter from the stating that the petitioner is a member of the the Maryland State Education Association, and the National Education Association.

Academic records, occupational experience, professional certifications, membership in professional associations, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), (E), and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. 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. *NYSDOT* at 218. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. 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 – 5) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 15 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner also submitted numerous certificates of participation and completion for training courses and seminars relating to her professional development. While taking courses and attending

seminars 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.

In addition, the petitioner submitted copies of her "satisfactory" teacher evaluations and teacher observation forms from [redacted] The petitioner, however, failed to demonstrate how the evaluations and observation forms reflect that she has impacted the field to a substantially greater degree than other similary qualified special educators and how her specific work has had significant impact outside of the school where she has taught.

The petitioner also submitted President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; information about Public Law 94-142; an article in *Encyclopedia of the Supreme Court of the United States* about *Brown v. Board of Education*, 347 U.S. 483 (1954); a copy of Section 1119 of the No Child Left Behind Act (NCLBA); a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; a September 26, 2011 article in *Education Week* entitled "Shortage of Special Education Teachers Includes Their Teachers"; an article entitled "Supporting Science, Technology, Engineering, and Mathematics Education – Reauthorizing the Elementary and Secondary Education Act"; "Barack Obama on Education" questions and answers posted at www.ontheissues.org; information about STEM (science, technology, engineering and mathematics) fields printed from the online encyclopedia *Wikipedia*; an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?"; a report entitled "Special Education Teacher Retention and Attrition: A Critical Analysis of the Literature"; an abstract for a report entitled "SPeNSE: Study of Personnel Needs in Special Education"; an article in the *Wall Street Journal* entitled "The Importance of Math & Science in Education"; an article in *Computer Science Technology* entitled "Importance of Science and Math Education"; and the written testimony of Microsoft's Bill Gates before the Committee on Science and Technology of the United States House of Representatives (March 12, 2008). 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 benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the petitioner's specific work as an elementary school special education teacher has affected the field as a whole.

The director denied the petition on August 21, 2013. The director indicated that the petitioner had not shown that the proposed benefits of her work as a teacher for [redacted] will be national in scope. In addition, the director determined that the petitioner had not demonstrated a past record of achievement that has impacted the field as a whole. The director therefore concluded that the petitioner failed to establish that an exemption from the requirement of a job offer and labor certification would be in the national interest of the United States.

On appeal, counsel asserts that "USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act of 2001 [NCLBA] as the guiding

principle rather than the precedent case" *NYSDOT*. With regard to following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c).

Counsel argues that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and claims that "[t]he obscurity in the law that *NYSDOT* sought to address has been clarified," because "Congress has spelled out the national interest with respect to public elementary and secondary school education" through such legislation. In addition, counsel contends that "the [NCLBA] and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public education sector."

Counsel does not support the assertion that the NCLBA modified or superseded *NYSDOT* and identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. 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). In contrast to counsel's claims regarding the NCLBA, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*. Counsel, however, has not shown that the NCLBA contains a similar legislative change.

Counsel further states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "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 . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Again, neither the Act nor the NCLBA create or imply any blanket waiver for highly qualified foreign teachers. As members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that includes the job offer requirement.

Counsel asserts that "Congress legislated [NCLBA] to serve as guidance to USCIS in granting legal residence to 'Highly Qualified Teachers.'" 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 a least a bachelor's degree and a state-issued certification or license.
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> Education
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> 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.
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> * * *
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> Some states require special education teachers to earn a master's degree in special education after earning their teaching certification.
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> * * *
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> Licenses
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> All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.
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> * * *

> 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.
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> 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.
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> 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.
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> 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.

Counsel states that the labor certification process poses a "dilemma" for the petitioner because she possesses qualifications that "could not be articulated in conformity with the process' regulations." Counsel's assertion, however, is not supported by the evidence in the record. As previously noted, the petitioner is the beneficiary of an approved labor certification filed in her behalf by [redacted] Furthermore, the petitioner has not established that the NCLBA's "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 specific qualifications and experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers." Moreover, the labor certification process outlines the minimum requirements for a job opportunity. It does not preclude the employer from hiring U.S. applicants that exceed the minimum qualifications for the position. Regardless, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT* at 218, n.5.

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 "highly qualified" 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 the director "erred in disregarding evidence demonstrating the national scope of the petitioner's proposed benefit through her effective role in serving the national educational interest of closing the achievement gap." The petitioner, however, has failed to establish that her efforts have significantly closed that gap in or nationally. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continues:

> The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of and [the petitioner's] assigned school. The 2012 MSA [Maryland School Assessment] Reading results show that out of the 24 Maryland school districts ranked near the bottom at the "All Student" level for each MSA-covered grade level . . . .
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> * * *
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> Additionally, it is noteworthy that the updated 2012 Maryland Report Card shows that did not meet its Reading proficiency AMO [Annual Measurable Objectives] targets at the "All Student" level . . . .

The petitioner has worked for since 2003, and thus had been there for a number of years before the administration of the 2012 MSA tests. Counsel does not explain how the 2012 MSA results for (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in "closing the achievement gap."

Counsel asserts that the petitioner "is an effective teacher in raising student achievement in STEM," but he cited no documentary evidence to support the claim. As previously discussed, 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 addition, while counsel asserts that the petitioner has "proven success in raising proficiency of her students," he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner's work has had an impact or influence outside of the school where she has taught.

Counsel points to the petitioner's awards (items 1 – 5) and teacher evaluations from as evidence of her "past history of achievement." As previously discussed, the petitioner's awards and

teacher evaluations do not show that her work has had a wider impact on the field of special education, or that her work has otherwise influenced the field as a whole.

Counsel states that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers and that USCIS "should have presented its own comparable worker." The *NYSDOT* guidelines, however, do not require an item-by-item comparison of the petitioner's credentials with those of qualified United States workers. The key provision is that the petitioner must establish a record of influence on the field as a whole. Moreover, there is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify another equally qualified educator. 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).

Counsel contends that "the Immigration Service is requiring more from the beneficiary's credentials [ ] tantamount to having exceptional ability." However, an individual is not required to qualify as an alien of exceptional ability in order to receive the national interest waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest waiver. It remains that the petitioner's evidence does not establish eligibility for the national interest waiver. Moreover, the director did not require the petitioner to establish exceptional ability in her field. Instead, the director determined that the petitioner had "not established that a waiver of the job offer and labor certification requirement will be in the national interest of the United States."

Counsel states that while the NCLBA "requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement." However, assertions regarding the need for educational reform in the United States only address the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. In addition, counsel quotes a study that concluded the "Teach For America" program "rarely had a positive impact on reading achievement." The record, however, does not include a copy of the study. 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. Regardless, counsel does not show that the petitioner's individual teaching efforts, after several years in the United States, have set her apart from other educators with regard to raising student achievement in PGCPS or nationally.

Counsel asserts that "59% [of] special educators in the nation [hold a] Master's degree," and "92% [of] special educators [have] full certification." The petitioner, however, has not submitted evidence indicating that she ever completed a master's degree. According to the information provided by counsel, more than half of U.S. special education teachers possess higher academic credentials than those of the petitioner.

Counsel cites to studies pointing to high turnover rates and inexperience among special education teachers. The unavailability of qualified U.S. workers or the amelioration of local labor shortages are not considerations in national interest waiver determinations because the labor certification

process is already in place to address such shortages. *NYSDOT* at 218. As previously noted, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *Id.* at 221. The studies mentioned by counsel show that there is a demand for credentialed special education teachers, a demand that the labor certification process can address. Again, the petitioner is the beneficiary of an approved labor certification that filed on her behalf on July 16, 2007.

Counsel acknowledges that the labor certification requirement exists to protect United States workers. Counsel contends that a waiver of that requirement would serve the same ultimate goal, by allowing highly qualified foreign teachers such as the petitioner to make "present school children more competitive in the job market by providing them the highest quality of education as possible." Citing the Teach For America study, counsel asserts that "U.S. workers in the teaching industry are not as competitive in the job market as . . . their foreign counterparts who have advanced degree or equivalent and fully certified [sic]." 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 does not explain how a study on a small subset of entry-level teachers is relevant to the competitiveness of U.S. teachers in general. Regardless, counsel essentially contends that highly qualified "foreign" teachers, as a class, are eligible for a blanket waiver of the job offer requirement. However, as members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that includes the job offer requirement.

Counsel contends that a waiver would ultimately serve the interests of United States teachers, because if schools "fail to meet the high standard required under the [NCLBA]," the result would be "not only . . . closure of these schools but [also] loss of work for those working in those schools." 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. In addition, 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. As previously discussed, there are no blanket waivers 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. *NYSDOT* at 217.

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 sufficient to waive 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. *Id.* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). On the basis of the evidence submitted, the

petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

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.