



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 01 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:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before us at the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an elementary library media specialist for [REDACTED] County Public Schools [REDACTED] in 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 legal brief.

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

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

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

(B) Waiver of Job Offer –

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

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

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

Supplementary information to regulations implementing the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

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

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*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 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 28, 2012. In an accompanying personal statement, the petitioner stated:

As a Library Media Specialist, my main job is to effectively provide library information services to all students, teachers and staff and integrate the library media programs into the school's curriculum. I also teach research skills, technology integration, and provide information literacy to the school community. I also

organize the Media Center to create an inviting and exciting environment that produces student's enthusiasm to read and learn. I work closely and collaborate with teachers, parents, and administrators for a more effective classroom instructions and outcomes. I always make sure that every moment with the students is a teachable moment especially during my volunteer after-school tutorial with students with special needs and accommodations. . . .

As an educator, my mission is to provide for a quality education that develops the content knowledge, skills and positive attitudes of my students and help them reach their maximum potential as responsible, life-long learners and productive citizens.

An introductory statement submitted with the petition included the following assertions:

[The petitioner] is an experienced K-12 Library media Special [sic]/Teacher with twenty-one years of experience as elementary, middle, high school and college teacher. She is tech savvy, extremely driven, and an innovator in her field by integrating the latest tech trends in research to her library work.

It is her expertise in Library Science, which compelled American school officials from the state of Maryland to bring her over from the Philippines in 2008. Since then, she has provided several institutions . . . with her mastery of her field, and elevated these schools' research capabilities to unprecedented heights. . . .

Our nation needs expert teachers like [the petitioner]. Educators like her mold the future leaders and citizens of this great nation and it's a matter of National Interest that we continue to have experts like her to teach and form American children. . . .

[The petitioner] plays a crucial role in the future of the improvement of United States education and the attainment of our nation's goals. . . .

The substantial impact that [the petitioner] already has had on her students, their families, her community, and the education field is already evident by her past achievements.

As evidence of the "past achievements" mentioned above, the petitioner listed 15 "Awards and Recognitions." Four of the certificates recognized various titles that the petitioner held in the [redacted] between 2002 and 2008. The petitioner claimed no subsequent titles in any organizations covering the entire field (rather than the alumni of one university).

A 2007 certificate from [redacted] thanked the petitioner for serving as "the Chair of the Accommodation Committee during tl [redacted]" Another certificate, from 1995, is a "Certificate of Recognition . . . for having passed the Fourth Licensure

Examination for Librarians.” The petitioner did not explain why passing a licensure examination is an achievement that distinguishes her from other librarians.

Two relevant certificates date from the petitioner’s time in the United States. A June 2010 “Certificate of Appreciation” acknowledged the petitioner’s “dedication and service to [redacted]” A May 2012 certificate reads: “”Outstanding Teacher / [redacted] School is proud to honor [the petitioner] in recognition of outstanding teaching and commitment to the [redacted] students.” The certificate, from the school’s Parent-Teacher-Student Association, did not indicate that the title “Outstanding Teacher” was unique to the petitioner; the document bears a logo for “National Teacher Appreciation Week.”

The remaining certificates do not have any evident relation to her work in library science. One certificate, for instance, is a “Certificate of Support” from the [redacted] and the others are from religious or charitable organizations.

The petitioner also submitted letters from [redacted] administrators, teachers, students, and others who have worked with the petitioner in various capacities. These writers praised the petitioner’s character, enthusiasm, and professional abilities, but they provided no evidence that the petitioner’s work has had a wider impact or influence on the field of education or school library science as a whole.

The petitioner documented several “Lectures and Presentations,” all dating from her time at [redacted] [redacted] The presentations concerned library science rather than education. The petitioner did not establish that the presentations were for an audience beyond the university; that the presentations reflected original innovations that others later adopted; or that she continued such presentations after she entered the United States.

The director issued a request for evidence (RFE) on January 30, 2013. The director stated: “it is unclear how the beneficiary’s experience and abilities set her apart from other highly qualified library media specialists.” The director instructed the petitioner to submit evidence to establish “some degree of influence on the field of library media specialists as a whole.”

In response, the petitioner submitted a 27-page statement, most of which consisted of variations on the assertion that, by passing the No Child Left Behind Act of 2001 (NCLBA), Pub. L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), Congress fixed a definition of the “national educational interest” that clarifies congressional intent and supersedes *NYSDOT*. That statute defined the term “highly qualified teacher,” and the phrase appears frequently in the RFE response statement. The RFE response does not establish that the NCLBA includes librarians in the definition of “highly qualified teachers.” The NCLBA differentiates between teachers and school library personnel; section 1251(g)(4), for example, calls for “increased collaboration between school library media specialists,

¹ *Sic*. Other materials in the record show that the school name is [redacted] initials on the certificate.

teachers, and administrators,” thus acknowledging the categories as distinct from one another. The NCLBA groups library staff with “teachers” only in the context of “Subpart 5 – Teacher Liability Protection,” which, for ease of reference, uses the word “teacher” as a blanket term for a variety of school personnel, including school board members (see NCLBA § 2363(6)).

The RFE response statement includes substantial passages that appear to be geared toward teachers rather than library media specialists. For instance, the statement asserts that the Teach for America program has produced unsatisfactory results, but it does not claim that the program is used to staff school libraries. The word “mathematics” appears in bold type on page 14, although the petitioner is not a mathematics teacher. Supporting evidence submitted with the RFE response discussed teachers and classroom education, rather than library staff.

The RFE response statement uses the phrase “Highly Qualified Library Media Teacher” in quotation marks, but that term does not appear anywhere in the text of the NCLBA. The NCLBA did not directly or indirectly create a blanket national interest waiver for school library professionals, or otherwise amend the Act. The text of the NCLBA does not mention the national interest waiver or any other immigration benefits for foreign educational professionals; it is not an immigration statute.

The RFE response statement repeated the list of “Awards and Recognitions,” without explaining their significance or their relevance to the matter at hand.

As an “equitable consideration,” the RFE response statement indicated that the petitioner

is firmly committed to continue teaching a [REDACTED]. However, [REDACTED] is currently barred for a two-year period (i.e. from March 16, 2012 to March 15, 2014) from filing any employment-based immigrant and/or nonimmigrant petition . . . arising from [REDACTED] willful violations of the H-1B regulations at 20 C.F.R. Part 655, subparts H and I. . . . Thus, through no fault of her own, [the petitioner] would not be able to continue teaching in [REDACTED] unless her E21 visa petition is approved, not to mention the fact that she has already firmly established a life here in the United States.

The standard for the waiver of the job offer requirement is not the petitioner’s desire to remain in the United States or her prospective employer’s temporary inability to petition on her behalf. The temporary debarment order (now expired) is not grounds for granting a permanent immigration benefit.

The director denied the petition on September 11, 2013, stating that the petitioner had met the first prong of the *NYS DOT* national interest test, pertaining to substantial intrinsic merit, but that the petitioner had not established that the benefit from her employment in a school library would be national in scope, or that the petitioner has had an impact or influence on her field that would justify a national interest waiver. The director observed that “the record contains no work by the beneficiary that has been disseminated at the national level,” and that the petitioner did not show

how she “will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.”

On appeal, the petitioner submits an appellate brief that, as with the RFE response, attempts to demonstrate that the passage of the NCLBA essentially established a blanket waiver for “highly qualified teachers.” Some of the language in the brief directly copies the earlier RFE response. The brief refers to the petitioner as a “Highly Qualified Teacher” and a “School Teacher,” although the petitioner did not call herself a teacher on Form I-140. On Part 6, lines 1 and 2 of that form, the petitioner called herself a “library media specialist,” with Standard Occupational Classification (SOC) code 25-4021. That SOC code corresponds to “librarians”; a variety of other codes applies to “teachers,” depending on the subject taught and grade level of the students. Again, the petitioner has not established that the term “highly qualified teacher,” as defined in the NCLBA, applies to school library staff.

Furthermore, as previously discussed, the petitioner has not established that the NCLBA established or implied a blanket waiver for foreign workers in any profession. The text of the NCLBA includes numerous provisions relating to “immigrant children and youth,” but no provisions relating to immigrant teachers or other school staff. The text of the NCLBA does not contain the phrases “national interest” or “national interest waiver,” and that statute did not amend the Act. The assertion, therefore, that Congress enacted the NCLBA with the specific intention of granting national interest waivers to teachers amounts to unsupported speculation, which has no weight in this proceeding. 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)).

The brief quotes remarks made by then-President George H.W. Bush when he signed IMMACT 90: “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.” The petitioner interprets this passage to mean that Congress created the national interest waiver for educators, but the job offer requirement for which the petitioner seeks a waiver was, itself, an integral provision of IMMACT 90. President Bush’s quoted remarks did not specifically mention the national interest waiver, and there is no evidence that the remarks referred particularly to the waiver, rather than to IMMACT 90 as a whole. The national importance of “education” as a concept, or “educators” as a class, does not lend national scope to the work of a single media specialist in a school library, establish a blanket waiver for all professionals who are involved in education.

The brief states: “the Obama Education Programs emphasize Science, Technology, Engineering and Mathematics (‘STEM’).” The brief contends that the petitioner “is an effective teacher in raising student achievement in STEM, and, as such, enflashes the Obama Education Programs’ priority of having a great teacher in every classroom.” The petitioner is not a STEM teacher, and does not appear to teach any classes.

The brief includes the following passage:

Contrary to USCIS-Texas Service Center [TSC]’s finding, [the petitioner] has demonstrated that she has a past history of achievement. On the one hand, she has submitted overwhelming evidence in the initial submission against which, the TSC denial has not effectively produced concrete contrary evidence to support its hypothetical.

The Director’s imposition of the requirement of comparison with other workers having the same qualification is a search for the impossible given legitimate issues such as the ‘Privacy Act’ protecting private individuals, among others. At best, the USCIS-Texas Service Center should have presented its own comparable worker, if there be any at all, and deliberated its point in the decision, allowing the petitioner to rebut such a solid finding of fact. Besides, testimonial evidences, in the form of letters and recommendations, in favor of [the petitioner’s] achievements and contributions, have been freely attested to by her colleagues and superiors and more importantly help ‘bridge the national gap.’

The *NYSDOT* guidelines are not an item-by-item comparison of an alien’s credentials with those of qualified United States workers. That decision indicated that the petitioner must establish a record of influence on the field as a whole. *Id.* at 219, n.6. To do so does not require a review or comparison of other teachers’ credentials. 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).

Regarding the claimed “overwhelming evidence in the initial submission,” the brief appears to refer to the “letters and recommendations” and the “Awards and Recognitions” listed again on appeal. Discussion of the “Awards and Recognitions” appeared earlier in this decision. None of them identifies any specific contribution that the petitioner has made to library science in the United States, and many of them do not relate to her occupation at all.

The “achievements and contributions” described in the letters are local in nature. For example, [redacted] assistant principal of [redacted], stated that the petitioner leads “an after-school Media club.” [redacted] assistant principal of [redacted] stated that the petitioner “arriv[ed] to work before her duty hours every morning, [and] also remained late in order to assist students with research and class assignments.” Dr. [redacted], praised the petitioner’s “concise record-keeping and detailed monthly reports.” The brief does not provide quotations from any of the letters indicating that the petitioner’s contributions have had a wider impact beyond the schools where she worked.

The petitioner contends that “the Immigration Service is requiring more from the beneficiary’s credentials and tantamount to having exceptional ability,” even though one need not qualify as an alien of exceptional ability in order to receive the waiver. Section 203(b)(2)(A) of the Act shows that the

threshold for exceptional ability is below, not above, the threshold for the national interest waiver; it is possible to establish exceptional ability but still not qualify for the waiver. Also, the director did not require the petitioner to establish exceptional ability in her field. Instead, the director found that the petitioner's evidence failed to establish that her work has had an influence beyond the school districts where she has worked.

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. *NYSDOT*, 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").

As is clear from 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.

We 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.