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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:  
DEC 08 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:

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 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 with post-baccalaureate experience equivalent to an advanced degree. The petitioner seeks employment as a physics and chemistry teacher. He has worked for [REDACTED] since 2004. 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 the classification sought, 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 and supporting evidence.

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 with the defined equivalent of 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 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 18, 2013. In an accompanying statement, the petitioner acknowledged: “[redacted] petition for him as an immigrant worker was already approved in December 2008, but some constraints not attributable to Petitioner that arose before he could adjust status prevented him” from doing so. The petitioner did not identify the “constraints.” USCIS records show that the petitioner filed Form I-485, Application to Register Permanent Resident Status or Adjust Status, on August 4, 2014; that application is now pending.

The petitioner cited background information about education reform and the importance of teaching science, technology, engineering and mathematics (STEM). This information speaks to the intrinsic merit of STEM education, which is not in dispute in this proceeding. Congress has created no blanket waiver for STEM educators. Rather, Congress defined school teachers as members of the professions at section 101(a)(32) of the Act, and held members of the professions holding advanced degrees to the job offer requirement at section 203(b)(2)(A) of the Act. Assertions about the cumulative importance of high school education at the national level do not show that the work of any one high school teacher produces benefits that are national in scope.

The petitioner identifies some of his former students who have gone on to study or work in the sciences, but the petitioner has not shown that this has had a national-level impact on the sciences or science education.

Letters from colleagues, administrators and former students attest to the petitioner's local impact, but do not show that the petitioner has had an influence on the field of science education as a whole.

Regarding the third prong of the *NYSDOT* national interest test, the introductory statement includes the following claims:

It cannot be denied that [the petitioner's] possession of the equivalent of a Master's degree gives him an edge over other high school Science teachers. Petitioner does understand that this fact alone is not sufficient to warrant a national interest waiver. Petitioner, however, is highly confident that the sum total of his credentials sets him substantially above his colleagues.

[The petitioner] respectfully draws attention to his 26 years of progressive experience as a teacher which certainly work to distinguish him from most others. The professional development endeavors he undertook . . . have helped him become the effective teacher he is. . . .

He is also the recipient of various awards and special recognitions that are not readily given to just any Science teacher. Notably, after just his first year of teaching in the U.S., he already received the [redacted] award, because of the nomination of a former Physics student who believed in his dedication and commitment. . . .

[H]e is a member of national and professional organizations like the [redacted]

Experience, memberships, and recognition are factors that can contribute to a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(B), (E), and (F). Exceptional ability, in turn, is not sufficient to establish eligibility for the waiver, because section 203(b)(2)(A) subjects aliens of exceptional ability to the job offer requirement.

If the petitioner had received awards or other recognition as a result of influential contributions to his field beyond the local level, such materials might have considerable weight, but the petitioner has not established that this is the case. Most of the exhibits submitted as awards are from employers or from schools that the petitioner attended, for contributions at the local level. The exception is a letter from the publisher of [REDACTED]. This letter made no reference to an award as described above. Rather, the letter indicated that the petitioner had “been selected for inclusion in the [REDACTED] of a directory bearing that title. The publisher’s letter claimed that this selection “is a tremendous honor,” but apart from the publisher’s own promotional materials, the record contains no evidence that this directory listing is particularly prestigious. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9<sup>th</sup> Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). The publisher named no specific contributions that warranted the petitioner’s inclusion in the volume.

With respect to “[t]he professional development endeavors he undertook,” professional development courses are a requirement for continued licensure in Maryland.<sup>1</sup> Completion of mandatory training does not distinguish the petitioner in his field. Pursuit of additional training beyond the minimum establishes his diligence, but does not inherently show the petitioner’s influence on his field.

The introductory statement indicated that the petitioner “has had the privilege of participating in discussions, formulations, and special trainings where such participations are offered only by invitation.” In a separate, personal statement, the petitioner described one example:

On May 2<sup>nd</sup> [2013], I participated in a **focused [sic] group of Chemistry and Physics teachers in the State** initiated by the [REDACTED] for Education to discuss some issues the STEM teachers face daily and to give suggestions on how the industry, higher education and government practitioners who use science concepts in their work can support teachers in their quest for superior student achievement. This will also be used to expand the *STEMnet Teacher Hub* developed in partnership with the [REDACTED] Education through the *Race to the Top* federal project.

(Emphasis in original.) The petitioner did not submit evidence to establish the criteria for invitation in focus groups and other activities, or to show that his participation in the focus group led to significant changes or improvement in science education beyond the local level.

The petitioner stated: “my membership [in] the [REDACTED] allowed me to be able to give feedback to the finalization of the *Next Generation Science Standards*

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<sup>1</sup> See [REDACTED] (added to record November 20, 2014).

(NGSS).” The petitioner has not shown that his feedback resulted in significant changes to those standards. The petitioner has not claimed any role in drafting the standards.

The petitioner stated:

I was elected by [redacted] to be one of the representatives to the [redacted] in [redacted] Georgia and to the Maryland State . . . [redacted] convention in October. Since 2005, I have consistently been elected as one of the faculty representatives in my school [redacted] to the [redacted].

The petitioner did not explain how his attendance at union conventions has influenced the field of science education as a whole. Furthermore, the record shows that the petitioner was one of dozens of [redacted] delegates to the national convention in Atlanta; a partial list of delegates, in alphabetical order, shows 24 names from “A” to “L.” The record does not show that the petitioner stood out at the national gathering, for example by introducing significant initiatives that the [redacted] then adopted at a national level.

The petitioner also stated:

Recently, I was chosen as the only teacher to represent our school in a pilot program to improve the use of technology in [redacted]. Three high schools from the county were selected to initiate the program and the plan is to extend this project for the succeeding years. I am a critical member of this cutting edge project and it would be substantially disrupted without my contribution.

The pilot program, as described, is a local initiative, with no indication that there was potential for adoption outside of [redacted]. Furthermore, there is no evidence that the petitioner developed the pilot project or was responsible for its content. Rather, a communication from [redacted] supervisor of science for [redacted] stated:

[redacted] is the selected partner to implement what they call a STEM Innovation Cloud Pilot. Their proposal calls for targeting about 20-30 students/school/class and equipping those students with devices, cloud supported storage, virtual classrooms and mentoring.

We met with [redacted] and the county and decided that the best way to do this would be to focus on a single teacher in each of your schools and covering the students in that teacher’s class. . . . These students would get devices (probably some type of tablet) and have access to summer camps, internships, and mentoring. The teacher would develop modules with assistance from our Science Office. In addition, the

teacher's classroom would be outfitted with the latest in technology for virtual learning.

The petitioner stated: "I have a website where students check regularly to see their assignments and to check out videos and presentations which can help them in their review and better understanding of concepts." The petitioner has not shown that this use of the Internet is unusual or innovative, rather than a standard resource. The website's use by the petitioner's own students amounts to local impact, but the petitioner claims wider influence, stating: "Some educators from various parts of the country have used and followed my website. There are teachers from California, New York, Georgia, New Mexico, Arizona, Texas, and others who have adopted some ideas from my website for their own classroom use." The petitioner submitted screen shot printouts from the web site, but no evidence that teachers around the country have adopted elements from it. 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 director issued a request for evidence on September 27, 2013. The director instructed the petitioner to submit evidence to establish "a past record of specific prior achievement with some degree of influence on the field as a whole." Regarding awards that the petitioner has received, the director stated that the petitioner must submit evidence to establish their significance.

In response, the petitioner submitted materials from the College Board, showing approval of the petitioner's Advanced Placement (AP) physics syllabus. The petitioner asserts that "[t]his is an unequivocal indicator of Petitioner's exceptional ability . . . because not every high school teacher can" develop such a syllabus. As stated above, exceptional ability, by statute, is not sufficient grounds for approving the national interest waiver. Because Congress has created no blanket waiver for AP physics teachers, the assertion that only a fraction of high school physics teachers qualifies to teach AP courses does not demonstrate eligibility for the waiver. Furthermore, a letter from [redacted] principal and its AP coordinator refers to "the new curriculum proposed by the [redacted] indicating that the petitioner would be developing a local curriculum based on the [redacted] guidelines. The wider influence, therefore, lies with the [redacted] rather than with any one local teacher.

The petitioner provided additional information and evidence regarding a number of activities, most of them discussed previously, such as his work with the teacher's union. The petitioner did not establish the significance of these activities; rather, he described them and asserted that they were important and influential. For example, the petitioner showed that the number of followers of his BlogSpot web page has "increased from 150 to 245," but he did not explain how this translates into impact beyond the local level.

The petitioner repeated the claim that, as a member of the [redacted] he "was able to give input[] towards the finalization of [redacted]" If this opportunity was open to all [redacted] members, then it does not set the petitioner

apart in his field. If the petitioner significantly shaped new standards that were then broadly adopted, then he will have influenced his field; evidence of the opportunity to provide input is not evidence that the petitioner actually provided such input, or that such input actually resulted in significant improvements to the standards.

Evidence accompanying the petitioner's response to the request for evidence shows the petitioner's involvement in national organizations, but not that the petitioner, as an individual, has contributed beyond a local level.

The petitioner cited "the dire and urgent lack of STEM teachers." A shortage of qualified workers would be a factor in approving, rather than waiving, labor certification. See *NYSDOT*, 22 I&N Dec. at 218. As the petitioner has previously acknowledged, [REDACTED] already obtained a labor certification on his behalf, which formed the foundation of a now-approved immigrant petition. The petitioner has not explained why it would be in the national interest to waive a requirement he has already met.

The director denied the petition on January 9, 2014, stating that the petitioner had established the substantial intrinsic merit of his occupation, but not that the benefit from his employment will be national in scope, or that his "proposed employment would specifically benefit the national interest of the United States to a substantially greater degree than a similarly qualified U.S. worker."

The director discussed the petitioner's activities, such as his participation in the aforementioned focus group and pilot project. The director determined that the petitioner had not shown that he has influenced the field, and noted that a claimed labor shortage does not warrant a waiver of the labor certification process which exists to address such shortages. The director cited a footnote in *NYSDOT* stating "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." *Id.* at 217 n.3.

On appeal, the petitioner submits a legal brief, asserting that the quoted passage from *NYSDOT* "is merely dictum that does not have the full force of a precedent," and "does not squarely apply to [the petitioner's] proposed employment and the current Petition." The footnote in question mentioned teachers in the context of illustrative examples of occupations which, though beneficial, lack national scope. The assertion that this example "is merely dictum" does not refute its underlying logic or prove that the opposite is true.

The brief cites information regarding the importance of STEM instruction. The petitioner submits background materials such as a transcript of President Obama's 2014 State of the Union Address and a 2013 report by the U.S. Department of Education, *A Blueprint for R.E.S.P.E.C.T.* These materials do not mention the petitioner specifically. Rather, they address the general importance of education, and as such they concern the intrinsic merit of the petitioner's occupation. The director did not contest the intrinsic merit of science education, and these materials do not establish the petitioner's eligibility for the waiver or show that the director erred in deciding otherwise. There has been no finding that STEM education, as a whole, lacks national scope. The finding, rather, was that the

work of one STEM teacher does not produce benefits that are national in scope. The benefit from STEM education is collective and cumulative.

The brief contends that the petitioner's "employment will actually have national – potentially, even global – impact." The brief observes that the petitioner's students "will go on to get higher education and/or to work." The impact of the petitioner's former students at later stages of life will be theirs, not the petitioner's. If the contributions of the petitioner's former students are simply projections of their teacher's prior influence, then by the same logic, credit for the petitioner's contributions should go not to him, but to those teachers who prepared him for his career as he prepares his own students.

The brief notes that the petitioner's "employment will not necessarily be confined to [redacted]" A change of employment would not magnify or multiply the petitioner's impact. It would, rather, transfer his ongoing local impact from one location to another, and even frequent changes of employment would bring him into direct contact with only a very small fraction of students and schools in the United States.

In terms of the petitioner's influence on his field, the appellate brief asserts that the petitioner's "remarkable grasp and presentation of his material . . . has, and will continue to, groom and propel students for higher learning and/or greater achievements. . . . [The petitioner] has made significant impact on his students." The petitioner's impact on his own students is not at issue in this proceeding; the director made no finding that teachers do not influence their own students. The standard in *NYS DOT* is influence on the field as a whole. Every competent teacher benefits the United States to a small degree by educating his or her students, but section 203(b)(2)(A) of the Act unambiguously states that foreign workers who will prospectively benefit the United States remain, nevertheless, subject to the job offer requirement.

The petitioner has submitted letters from past students attesting to his impact on their lives and on their educational decisions. By statute, the job offer requirement presumptively applies to all teachers, not only to unexceptional teachers who make no impression on their students. Student testimonials regarding the petitioner's skills as a physics teacher have limited weight, because, while these students are speaking from their own experience, that experience is limited to the teachers they have encountered during their secondary education. Such students do not have, and should not be expected to have, a comprehensive understanding that would permit them to compare the petitioner to high school physics teachers across the country.

The record indicates that more students at [redacted] are passing the AP physics examination now that the petitioner is teaching AP physics there. This is an honorable achievement that speaks well of his skill in the classroom, but this result is confined to [redacted] The petitioner has not shown that his work, as an individual, has had a wider impact on AP examination scores. The impact results from his personal involvement in the classroom, which is inherently limited to a small number of students each year.

The brief asserts that the petitioner's "exceptional abilities will help greatly improve high school physics curriculum and teaching methodology, and will further aid other science teachers in the United States into becoming highly effective educators." The petitioner has taught in the United States since 2005, eight years before he filed the petition and nine years before he filed the appeal. The petitioner has not identified any documented impact that his work has had on a national level during that considerable period of time. Without evidence that his work has had such impact in the past, the assertion that it will have such impact in the future amounts only to speculation.

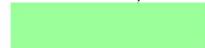
The brief identifies national organizations to which the petitioner belongs, and national-level efforts in which the petitioner has participated to various extents. The director did not find that these organizations and efforts, at the national level, lack impact or influence. The petitioner, however, has not shown that his involvement has had a discernible effect at the national level. For example, whatever the collective influence of the [REDACTED] may be, the petitioner's membership in that organization does not show that he is responsible for the organization's policies or achievements.

The brief repeats several previous claims that the petitioner has influenced his field through web sites, participation in pilot programs, and other activities he has pursued either at school or through professional organizations and unions. The petitioner, however, has not shown how STEM education, at a national level, is different as a result of these activities. The core assertion appears to be that, because STEM education is indisputably important, the petitioner's dedication to that field makes him an influential figure. The record does not contain the evidence needed to support this claim.

The petitioner submits new letters in support of the appeal (as well as a copy of one previously submitted letter). The letters attest to the petitioner's involvement in the focus group discussed above; his attendance at "a two-week graduate course" at [REDACTED] and "his significant participation in the County Science Fair" and involvement in the [REDACTED] pilot project. [REDACTED] states: "Maintaining America's educational prestige is dependent upon retaining well qualified and exceptional teachers."

[REDACTED] letter articulates the emphasis throughout the proceeding on the inherent, collective importance of well-qualified science teachers. USCIS lacks the authority to designate blanket waivers based on the importance of a given occupation. *See NYS DOT*, 22 I&N Dec. at 217. Congress has the authority to create such blanket waivers through legislation, as shown by section 203(b)(2)(B)(ii) which applies to certain physicians, but no such legislation exists for STEM teachers.

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 his influence be national in scope. *NYS DOT*, 22 I&N Dec. 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 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.