

(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

[Redacted]

DATE: FEB 05 2014

Office: TEXAS SERVICE CENTER FILE:

[Redacted]

IN RE: Petitioner:  
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,

*U. Rosenberg*

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 middle school science teacher. The petitioner has taught for [REDACTED] since 2007. At the time of filing, the petitioner was working for [REDACTED] at [REDACTED] in [REDACTED]. 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. –

(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 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:

(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 Secondary Education degree from [REDACTED] in 1993. The petitioner also submitted an "Expert Opinion Evaluation" report prepared by Dr. [REDACTED] Professor of Operations Management and Management Science, [REDACTED] stating that the petitioner has "at least eighteen 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 the five years of experience have been progressive in nature with increasingly complex duties and responsibilities." The petitioner, however, submitted documentary evidence showing that in 2010 she was appointed Science Department Chairperson at [REDACTED] a position overseeing the academics of more than three hundred middle school students. In addition, the petitioner submitted various certifications from [REDACTED] in the Philippines reflecting her increased teaching responsibilities. The petitioner also submitted documentation indicating that while working as a teacher she engaged in numerous professional development training courses and seminars from the mid-1990s through 2012. 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.

While 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.*

The petitioner has established that her work as a middle school 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.

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 Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on June 29, 2012. In a June 27, 2012 letter accompanying the petition, counsel stated that the petitioner’s national interest waiver “is premised on her Master of Arts in Educational Administration and Supervision and more than nineteen (19) years of dedicated and progressive teaching experience in both the United States and the Philippines.” The petitioner, however, did not submit any evidence showing that she holds a Master of Arts degree in Educational Administration and Supervision.<sup>1</sup> 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)). Regardless, academic degrees and

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<sup>1</sup> Although the petitioner earned 27 credits towards a Master of Arts in Education degree at [REDACTED] she did not submit evidence that she completed the degree.

occupational experience are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), 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, 222. 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.

In his 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 [REDACTED]. With regard to the petitioner’s teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her middle school 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 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 school 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 various letters of support from administrators and teachers discussing her work as an educator. As some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references’ claims.

[REDACTED] Assistant Principal, [REDACTED], stated:

I am writing this letter in support of [the petitioner], a science and social studies teacher at my school. [The petitioner] is not only a great teacher but is a wonderful person. She is a valued member of our middle school team and is always improving her already excellent instruction for the benefit of our students. The students like and respect her and she is very dedicated to their education and wellbeing. I find [the petitioner] a very capable and dedicated teacher and an asset to our school. [The petitioner] is highly ethical and her moral values and character are beyond reproach. [The petitioner] has a positive attitude that makes her a pleasure to work with. It would be difficult to overestimate her value to our overall program.

Mr. [redacted] comments above on the petitioner's personal qualities, dedication, and value to the [redacted] but does not indicate how the petitioner's impact or influence as a teacher is national in scope. In addition, Mr. [redacted] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

[redacted] Assistant Principal, [redacted] stated:

[The petitioner] has worked at [redacted] for the past three years as a Science and Social Studies instructor. She is a very professional and knowledgeable individual. She is also very passionate about her profession. [The petitioner's] smile and bubbly spirit is very energizing and contagious. She has proven herself to be an asset to our staff and school. Her students love and adore her. They find her way of communication and teaching style to be encouraging and stimulating.

Ms. [redacted] points to the petitioner's professionalism, knowledge, passion, enthusiasm, value to the school, communication skills, teaching style, and positive interactions with students, but her observations fail to demonstrate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified middle school teachers.

[redacted] First Grade Teacher, [redacted] stated:

I have known and worked with [the petitioner] for 3 years in our school . . . . During this time, [the petitioner] demonstrated a strong commitment in her teaching skills, love and passion about work, and has grown into a productive member of our school. As a matter of fact, on [the petitioner's] second year at [redacted] [the petitioner] was given the position to be the Science Department Chair.

[The petitioner] is a dedicated teacher. [The petitioner] is always eager to help students in every way possible. On her first year at Thomas G. Pullen, [the petitioner] conducted free afterschool tutorial. [The petitioner] never asked for any compensation because [the petitioner] wanted to help students who feel Science as their week [sic] points in studies

especially those who needed especial [sic] accommodation. [The petitioner] also administered a free tutorial on how to make and start a good Science project, especially to those students who are new to the idea of making a Science Project.

As a colleague, [the petitioner] is one of the most efficient and reliable teacher[s] to ask for help about Science matters. [The petitioner] is always willing to help and share teaching strategies to anyone who may benefit from what [the petitioner] is doing in class. [The petitioner] is optimistic, sincere, and genuine in dealing with her colleagues and treated her students equally. [The petitioner] is loved by her students and by her parents because of how she interacts with them and the way she teaches Science in an exciting ways.

Mr. [redacted] comments on the petitioner's commitment, passion, productivity, appointment as Science Department Chair, dedication, school activities, willingness to help other teachers, and positive interactions with colleagues and students, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond [redacted] and [redacted]

[redacted] Assistant Principal, [redacted] stated:

I have known [the petitioner] for four years, three of which, in the capacity as her Assistant Principal and immediate supervisor at [redacted] [The petitioner] had been a valued member of our staff and had assumed a leadership position due to her work.

[The petitioner] has always displayed a demeanor in which exemplifies genuine love and concern for others, professionalism, and a strong work ethic as she is consistently well prepared and a consistent supporter of children. Of note, [the petitioner] was appointed to the Science Department Chairperson post that oversaw the academics of more than 300 middle school students. Additionally, she has been instrumental in collaborating with colleagues routinely and has spent personal time with dozens of students after-school hours assisting with their academic development.

[The petitioner] is one very dynamic individual within our system due to her commitment, dependability, and tireless work on behalf of all school community members. Her interpersonal skills have allowed her to endure the many challenges presented as it relates to working in an academic and performing arts environment . . . .

Mr. [redacted] comments above on the petitioner's value to the [redacted] leadership, concern for others, professionalism, work ethic, service as Science Department Chairperson, collaborations with colleagues, involvement with after-school activities, commitment, dependability, and interpersonal skills, but he does not provide specific examples of how the petitioner's work has influenced the field as a whole.

The petitioner's references praise her abilities as a teacher and personal character, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the schools where

she has taught. They also do not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217, n.3.

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

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

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

1. A Science Department Chair Award for “dedication and leadership on behalf of students at [REDACTED] (2011);
2. A Certificate of Recognition from the Rotary Club of [REDACTED] in cooperation with the Department of Education of [REDACTED] for being a “nominee during the 10<sup>th</sup> Annual Search for Most Outstanding Public School Teachers in [REDACTED] (December 18, 2003);
3. A Certificate of Recognition from the principal and assistant principal at [REDACTED] honoring the petitioner as the school’s “Most Outstanding Teacher in the field of Science” (December 19, 2003);
4. A Certificate of Appreciation from the Republic of the Philippines, Department of Education, [REDACTED] in recognition of the petitioner’s “active involvement in the Science Department as Club Adviser for SY [School Year] 2005-2006 in [REDACTED] (September 29, 2005);
5. A Certificate of Participation from the Republic of the Philippines, Department of Education, [REDACTED] “for having participated as Coach in the Battle of Champions held on January 17, 2005 at [REDACTED] (January 17, 2005);

6. A Certificate of Appreciation from the [REDACTED] of the [REDACTED] [REDACTED] for support that contributed "to the success of the Standard First Aid and Basic Life Support Training held in [REDACTED]" (November 30, 2002);
7. A Certificate of Appreciation from the Schools Division Superintendent, Division of City Schools [REDACTED] for serving "as facilitator during the [REDACTED] s held on October 17-18, 2002 at [REDACTED]";
8. A Certificate of Recognition from the Organizers of the 1999 - 2000 [REDACTED] [REDACTED] "for invaluable services rendered during the Division Stage of the 1999 - 2000 [REDACTED] held on 23 November 1999";
9. A Certificate of Appreciation from the Republic of the Philippines, Department of Education, [REDACTED] "for serving as Demonstration Teacher in the Division Science & Technology Demonstration Teaching held at [REDACTED] (February 10, 2003);
10. A Certificate of Appreciation from the Republic of the Philippines, Department of Education, [REDACTED] for serving "as Demonstration Teacher in the Division Science Demonstration Teaching held at [REDACTED] (October 6, 2003);
11. A Certificate of Appreciation from the Department of Welfare and Development, [REDACTED] "for actively participating in the Community Outreach Program at the [REDACTED] (March 4, 2003);
12. A Certificate of Appreciation from the Republic of the Philippines, Department of Education, [REDACTED] "for serving as Demonstration Teacher in the Division Level held on August 10, 2011 at the [REDACTED]";
13. A Certificate of Appreciation from the Republic of the Philippines, Department of Education, [REDACTED] for "serving as Demonstration Teacher (Division Level) held at [REDACTED] School . . . on October 13, 2000";
14. A Certificate of Appreciation from the Republic of the Philippines, Department of Education, [REDACTED] for "having been a Division Demonstration Teacher (Division Level) held at [REDACTED] . on August 11, 1999";
15. A Certificate of Appreciation from the Republic of the Philippines, Department of Education, [REDACTED] for "having been a Division Demonstration Teacher (Division Level) held at [REDACTED] . on August 11, 1996";
16. A Certificate of Appreciation from the Regional Chairperson of the [REDACTED] [REDACTED] for support during "the 1994 [REDACTED] Convention & Science Club Management Training Seminar-Workshop held at the [REDACTED] . . . on August 20-21, 1994";
17. A Certificate of Appreciation from the Republic of the Philippines, Department of Education, [REDACTED] for serving

- “as Demonstration Teacher in the Division Science and Technology Demonstration Teaching held at [REDACTED] . . . on September 16, 1995”;
18. A Certification from the Head of the Science Department at [REDACTED] School stating that the petitioner “acted as a coordinator of first year teachers” at the school from 1996 - 2003;
  19. A Certification from the Head of the Science Department at [REDACTED] [REDACTED] stating that the petitioner “acted as a Science Club Adviser” at the school from 2001 - 2002;
  20. A Certification from the Head of the Science Department at [REDACTED] [REDACTED] stating that the petitioner “acted as consultant in the Science Research Workshop sponsored by [REDACTED]”;
  21. A Certification from the Head of the Science Department at [REDACTED] [REDACTED] stating that the petitioner “acted as Chairman in the research work sponsored by [REDACTED] held at [REDACTED]”;
  22. A Certification from the Head of the Science Department at [REDACTED] [REDACTED] stating that the petitioner “participated in the Outreach Program sponsored by the Science Club”;
  23. A Certification from the Republic of the Philippines, Department of Education, [REDACTED] [REDACTED] for demonstrating “the use of Practical Work Approach in Teaching Earth Science during the Division Summer Institute held at [REDACTED] on May 27, 1998”;
  24. A Certification from the Republic of the Philippines, Department of Education, [REDACTED] [REDACTED] for demonstrating “a topic on ‘Ecological Waste Management’ in the Division Science & Technology Demonstration Teaching held on August 23, 1995 at [REDACTED]”;
  25. Three Certificates of Membership for the [REDACTED] Chapter of the Association of Filipino Teachers of America;
  26. A National Science Teachers Association Membership;
  27. A Union of Concerned Scientists Membership;
  28. Academic records and transcripts;
  29. A Maryland Educator Certificate;
  30. A teaching license from the State Board of Education of North Carolina;
  31. A “Certification of Good Standing” from the Professional Regulation Commission, [REDACTED];
  32. A “Professional Teacher Certificate” from the National Board for Teachers, Metro [REDACTED] and [REDACTED];
  33. Employment verifications.

Again, academic records, occupational experience, professional certifications, membership in professional associations, and recognition for achievements are all elements that relate to a finding of exceptional ability, but exceptional ability is not sufficient to establish eligibility for the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including labor certification). *NYSDOT*

at 218, 222. 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 – 17) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 33 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner also submitted numerous certificates of participation, completion, and attendance 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 from [REDACTED] and [REDACTED]. The petitioner, however, failed to demonstrate how the evaluations reflect that she has impacted the field to a substantially greater degree than other similarly qualified school teachers and how her specific work has had significant impact outside of the schools where she has taught.

The petitioner also submitted evidence of her teaching material, student performance reports from [REDACTED] and other educational activities, but the petitioner does not explain how the submitted documentation demonstrates her influence on the field as a whole.

The director issued a request for evidence on January 30, 2013, instructing the petitioner to submit evidence demonstrating that the benefits of her proposed employment would be national in scope and that she "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted a March 24, 2003 letter from U.S. Secretary of Education Rod Paige providing information about "how school districts may continue to hire and employ visiting teachers from other countries while being consistent with the statutory requirements that define a highly qualified teacher"; President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; 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; 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](http://www.ontheissues.org); 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"; information about STEM (science, technology, engineering and mathematics) fields printed from the online encyclopedia *Wikipedia*; 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); an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?"; and an article discussing the highlights from the Trends in International Mathematics and Science Study (2007). 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 a teacher has influenced the field as a whole.

The director denied the petition on May 23, 2013. The director indicated that the petitioner had not shown that the proposed benefits of her work as a teacher will be national in scope. The director also determined that the petitioner had not demonstrated that “she has had some degree of influence on 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 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” middle or secondary school teacher who is new to the profession:

- 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 a high level of competency in each of the academic subjects in which the teacher teaches by – passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches; or successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

In addition, the U.S. Department of Labor’s *Occupational Outlook Handbook*, 2014-15 Edition, describes the minimum qualifications necessary to become a middle school teacher:

Middle school teachers must have a bachelor’s degree. In addition, public school teachers must have a state-issued certification or license.

#### Education

All states require public middle school teachers to have at least a bachelor’s degree. Many states require middle school teachers to major in a content area, such as math or science. Other states require middle school teachers to major in elementary education.

Some states require middle school teachers to earn a master's degree after receiving their teaching certification.

#### Licenses, Certifications, and Registrations

All states require teachers in public schools to be licensed, or certified.

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Certification of middle school teachers varies considerably from state to state. In some states, they are certified to teach elementary school grades, which are typically first through sixth grades or first through eighth grades. In other states, they are certified to teach middle school grades, which include sixth through eighth grades. Still other states provide middle school teachers with a secondary school or high school certification, which often includes seventh through twelfth grades.

Requirements for certification also vary by state. However, all states require teachers to have 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. States typically require candidates to pass a general teaching certification test, as well as a test that demonstrates their knowledge of the subject they will teach. For information on certification requirements in your state, visit [Teach.org](http://Teach.org).

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

All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification. Some alternative certification programs allow candidates to begin teaching immediately after graduation, under the supervision of an experienced teacher. These programs cover teaching methods and child development. After they complete the program, candidates are awarded full certification.

See <http://www.bls.gov/ooh/education-training-and-library/middle-school-teachers.htm#tab-4>, from January 17, 2014, copy incorporated into the record of proceeding. The petitioner has not established that the NCLBA's "Highly Qualified" standard involves requirements that are 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 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 [REDACTED] 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 [REDACTED] and [the petitioner’s] assigned school. The 2012 MSA [Maryland School Assessment] Reading results show that out of the 24 Maryland school districts [REDACTED] ranked near the bottom at the “All Student” level for each MSA-covered grade level . . . .

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Additionally, it is noteworthy that the updated 2012 Maryland Report Card shows that [REDACTED] did not meet its Reading proficiency AMO [Annual Measurable Objectives] targets at the “All Student” level . . . .

The petitioner has worked for [REDACTED] since 2007, 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 [REDACTED] (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 contends that the “director erred in his appreciation of petitioner’s past achievement,” but counsel fails to point to specific evidence in the record showing that the petitioner’s work has had a national impact or 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. 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 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 TFA 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 asserts 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. The employment certification process outlines the minimum requirements for a job opportunity. It does not preclude the employer from hiring 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. *NYS DOT* at 218, n.5.

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. *NYS DOT* 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. *NYS DOT* at 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. See also *id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole”). 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.