



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **FEB 26 2014**

Office: TEXAS SERVICE CENTER

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a middle school science teacher. The petitioner has taught for [REDACTED] since 2009. At the time of filing, the petitioner was working for [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 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 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 record reflects 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).

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) (NYS DOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

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

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.*

Eligibility for the waiver must rest with the petitioner’s own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner’s area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. Moreover, it cannot suffice to state that the petitioner possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221.

The petitioner filed the Form I-140 petition on June 29, 2012. In a June 28, 2012 letter accompanying the petition, counsel stated that the petitioner's national interest waiver is based on her advanced degree, extensive experience, and "numerous achievements and citations." Academic degrees, occupational experience, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. See section 203(b)(2)(A) of the Act. The U.S. Citizenship and Immigration Services (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, school staff, parents, and personal acquaintances discussing her work as a teacher. 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.

stated:

[The petitioner] joined the teaching staff of [redacted] two years ago. Since she has joined our school, I have closely seen how she has brought rigor and engaging science lessons and activities to our middle school students. She is also involved in district-wide endeavors to make science education better for all students in our school district. I am glad to recommend [the petitioner] for granting her . . . petition will undoubtedly benefit science instruction not only in our school but also in our school district.

* * *

I have collaborated numerous times with [the petitioner] to extend her science lessons to our Technology Education class. She generously shares her lesson plans, willingly stays after-school to meet and discuss about her lessons, and accommodate students' presentations of their science-related technology projects during her classes.

* * *

As a younger teacher than [the petitioner] in terms of age and experience, I look up to her as a mentor. I am amazed with her accomplishments, foremost of which are her two teaching certificates from the Maryland State Department of Education Certification – Advanced Professional Certificate in Chemistry 7-12 and Advanced Professional Certificate in Middle School Science 4-8. She is also a sought-after Science Fair Committee Chairman for middle school, an MSA [Maryland School Assessment] Math Review tutor, and a [redacted] scorer. She has established herself to be a good role-model and a very reliable mentor.

[redacted] comments on the petitioner's effectiveness as a science teacher, willingness to share lessons, flexibility, Advanced Professional Certificates from the Maryland State Department of Education, school activities, and reliability as a mentor, but does not indicate how the petitioner's impact or influence as a teacher is national in scope. In addition, [redacted] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

[redacted] former Assistant Principal at [redacted] stated:

I can vouch for her exceptional skills as a teacher, and she serves as an inspiration to our children in [redacted]. Her passion for teaching and also her desire to provide her students with relevant and updated information are manifested in her active involvement in various professional development activities. She chairs the middle school science fair

committee, is an active member/tutor of the Math MSA Review Team, and regularly works for the district's Biology Bridge Project.

As her immediate supervisor, I have known [the petitioner] as a competent, dedicated, hardworking, and friendly colleague. [The petitioner] interacts professionally, ethically, legally, and respectfully with parents, students, colleagues and supervisors. She is a good example for colleagues, students, and community in appearance, demeanor, and work ethics.

I have observed her teaching performance and how she values and respects the individuality of her students. She is a very resourceful, creative, and flexible educator. She makes herself available to her students before and after work hours to listen to their concerns and problems especially related to academics. On the personal level, I could vouch for her integrity, discipline, humility, and compassion for her students.

[redacted] points to the petitioner's exceptional teaching skills, passion for education, participation in professional development, school activities, positive interactions with others, and personal qualities, 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] a parent whose child was taught by the petitioner at [redacted] stated:

I was fortunate enough to meet [the petitioner] during the 2011-2012 academic school year. It was during this time frame that she served as my son's science teacher. My twelve year old was diagnosed with Autism almost a decade ago, so I was worried about the progress that he would make in her class. After conferencing with [the petitioner], she was not only sympathetic to my concerns, she was open to regularly talking with me to ensure that his needs were met. Over the course of the year, my son made incredible progress in her class, earning no less than an A- each marking period. With [the petitioner's] dedication to him, and the other students in her care, he has been able to retain and share many of the skills and concepts she taught him.

* * *

Serving as a science teacher, she is a positive role model for female students who may be interested in pursuing a career in that field. She has had such a positive impact on the education of the students that she has interacted with. I know this first-hand since she was able to meet the needs of my son while he was in her class. She was always available to meet with her students and parents to discuss how all involved parties could maximize the learning opportunities.

[redacted] comments on the progress made by her son in the petitioner's class, the petitioner's positive interactions with students, and the petitioner's effectiveness as an educator, but does not

indicate that the petitioner's work has had, or will continue to have, an impact beyond [REDACTED]

The petitioner's references praise her abilities as a science 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 Certificate of Appreciation from the Director of the Commission on Higher Education, [REDACTED] for presenting a paper in the conference entitled "[REDACTED]" (March 8, 2006);
2. A Certificate of Appreciation from [REDACTED] for serving as a panelist in "the [REDACTED] . . . held on October 12, 2005" at [REDACTED];
3. A Certificate of Appreciation from [REDACTED] for participation as a research presenter on the topic [REDACTED];
4. A Certificate of Recognition from the Dean of the College of Science, [REDACTED] for organizing "[REDACTED]" (July 22, 2005);

- 19. A Certificate of Recognition for participating in “ [REDACTED] held on February 8, 2006 at the [REDACTED] [REDACTED]”;
- 20. A Certificate of Recognition for participating in “the Community Outreach and Extension Service of the College of Science on ‘Water Analysis’” (September 10, 2005);
- 21. A certificate from the Ocean Conservancy “for outstanding and dedicated service to the 2003 [REDACTED] and profound commitment to the marine environment”;
- 22. [REDACTED] #205 for perfect attendance in April 2012;
- 23. A Golden Apple Award from the principal at [REDACTED] #205 for perfect attendance in February and March 2012;
- 24. A Golden Apple Award from the principal at [REDACTED] #205 for perfect attendance in January 2012;
- 25. An Attendance Certificate from the principal at [REDACTED] #205 for outstanding attendance in November 2011;
- 26. A Certificate of Perfect Attendance for the period of August 22nd to October 7th, 2011 from the principal at [REDACTED] #205
- 27. An Attendance Certificate from the principal at [REDACTED] #205 for outstanding attendance from August 29, 2011 to November 4, 2011;
- 28. An Attendance Award from the principal at [REDACTED] for perfect attendance in September 2008;
- 29. A Perfect Attendance Certificate from the principal at [REDACTED] School for January 2008;
- 30. A “Great Overseer’ Award” in recognition of leadership in the “ [REDACTED] (July 31, 2008);
- 31. [REDACTED] where the petitioner earned a master’s degree in Chemistry);
- 32. A “Certificate of Recognition and Appreciation” from the [REDACTED] Affiliation Campaign for school year 1993-1994;
- 33. A Maryland Educator Certificate;
- 34. [REDACTED] Series Examinee Score Report;
- 35. A Certificate of Eligibility from the [REDACTED]
- 36. A Report of Rating from the [REDACTED]
- 37. A membership card for the [REDACTED] Teachers of America;
- 38. A Notice of Eligibility for the American Federation of Teachers;
- 39. A membership certificate for the [REDACTED]
- 40. A membership certificate for the [REDACTED]
- 41. A membership certificate for the [REDACTED]
- 42. Membership certificates for the [REDACTED]

- 43. A membership card for the [REDACTED]
- 44. A membership certificate for the [REDACTED]
- 45. A certificate of membership for the [REDACTED]
- 46. Membership certificates for the [REDACTED]
- 47. Earnings statements;
- 48. Academic records and transcripts; and
- 49. Employment verifications.

Again, academic records, occupational experience, professional certifications, membership in professional associations, and recognition for achievements are all elements that can contribute 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 – 32) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 49 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner submitted various 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 annual evaluation reports, periodic observation reports, ratings, and performance evaluation forms from [REDACTED] Colleges. 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 educators and how her specific work has had significant impact outside of the institutions where she has taught.

The petitioner submitted documentation indicating that she served as an advisor and examiner for [REDACTED] degrees. The petitioner also submitted [REDACTED] Master of Business Administration thesis that acknowledges the petitioner as her statistician and advisor. The petitioner, however, does not explain how the submitted documentation demonstrates her influence on the field as a whole.

Additionally, the petitioner submitted articles that she authored entitled [REDACTED]
[REDACTED]

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’” and 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.” 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.

* * *

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.

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 February 6, 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." The labor 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. Thus, the petitioner's specific qualifications and experience are not required for "highly qualified" status under the NCLBA. 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 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. *NYS DOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYS DOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel states that the Maryland School Assessment (MSA) is “the [NCLBA]-designated metric to determine whether the law’s goals are being met” in the state of Maryland. In addition, counsel contends that closing the achievement gap “resonates with [REDACTED] as it is a high-poverty and high-minority school district.” Although the petitioner has worked for [REDACTED] since 2009, the petitioner failed to submit MSA test results for [REDACTED] demonstrating that the petitioner has played an effective role in “closing the achievement gap.”

Counsel asserts that the petitioner “is an effective teacher in raising student achievement in STEM,” but he cited no documentary evidence to support the claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506. In addition, while counsel asserts that the petitioner has “proven success in raising proficiency of her students,” he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner’s work has had an impact or influence outside of the schools where she has taught.

Counsel states that the “director erred in his appreciation of the petitioner’s past achievement” and points to the petitioner’s award certificates and published articles. As previously discussed, the petitioner’s awards and publications do not show that her work has had a wider impact on the field of science education, or that her work has otherwise influenced the field as a whole.

Counsel asserts 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 *NYS DOT* 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 *NYS DOT* 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 [redacted] 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 contends that a waiver would ultimately serve the interests of United States teachers, because if schools "fail to meet the high standard required under the [NCLBA]," the result would be "not only . . . closure of these schools but [also] loss of work for those working in those schools." Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Again, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506. In addition, counsel asserts that by waiving the labor certification requirement for highly qualified teachers such as the petitioner, "more American teachers will have . . . employment opportunities" because standards will be met and schools will not be abolished. As previously discussed, there are no blanket waivers for highly qualified foreign teachers; USCIS grants national

interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *NYSDOT* at 217.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT* 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.