



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: **JAN 07 2014** OFFICE: TEXAS SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

7 Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a mathematics teacher in [REDACTED] Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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

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

*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 the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

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

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on October 24, 2011. The petitioner's most recent claimed employment ended in June 2008, shortly before he left the Philippines. The petitioner claimed no paid employment in the United States. The petitioner's H-4 nonimmigrant status does not authorize him to work in the United States, but counsel stated that the petitioner "offered his services for free to American Children at [REDACTED] Maryland since March 2011 as a volunteer Mathematics teacher."

Counsel stated:

[The petitioner's] expertise is evidenced by his advanced degree (Masters) in Mathematics; his over twenty five (25) years of teaching experience; his authorship of several Mathematics books; his well-praised work as Mathematics trainer, coach, lecturer, trainer throughout the years; and the multitude of awards and citations he obtained from prestigious institutions both here in the US and the Philippines.

Academic degrees, experience, and recognition are all factors that can support a claim of exceptional ability under the regulation at 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B) and (F), respectively. Because exceptional ability does not, by itself, warrant approval of the waiver, it cannot suffice for the petitioner to establish these factors. He must, rather, make a showing significantly above the substantial prospective benefit that arises from exceptional ability. The petitioner cannot simply list

his recognitions and certificates; he must also demonstrate their significance with credible, objective evidence. Counsel called the petitioner's recognitions "prestigious" but cited no evidence of their claimed prestige. 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).

Counsel claims that several of the certificates reproduced in the record are awards. Several of these certificates are from the petitioner's employers, and do not establish recognition outside of institutions where the petitioner has worked. Other certificates do not appear to represent awards. They reflect the petitioner's participation in events rather than specific achievements or contributions, while still others pertain to religious activities unrelated to his work as a math teacher. Certificates from the [REDACTED] do not relate to teaching work. Instead, they acknowledged his unspecified contributions to workshops entitled "Immigration Information – Exploring Options" and "Alternative Immigration Options for Teaching Professionals."

With respect to counsel's assertion regarding the petitioner's "authorship of several Mathematics books," the petitioner's initial submission included four books, all published in the Philippines between 2001 and 2008. The petitioner was one of six authors of [REDACTED] workbook published in 2002. The petitioner also wrote [REDACTED]. The book is primarily a compilation of essays by math students; its subtitle is "[REDACTED]". The petitioner was not an author of the other two books. Rather, he was one of four editors of [REDACTED] and one of three consultants on [REDACTED]. The petitioner did not submit evidence to establish the significance or impact of these publications. The petitioner established the use of [REDACTED] in 2003. The petitioner was on the faculty of that school at the time, as was another of the book's co-authors [REDACTED]. The petitioner did not establish the extent of the book's use at other institutions or provide a basis for comparison with other books that serve the same purpose.

The petitioner submitted letters from teachers, administrators, and students at schools where he has taught, as well as others who know him such as the minister at his church. These witnesses attested to the petitioner's skill as a teacher, his mastery of the subject matter, and his relations with school staff. They did not, however, establish that the petitioner stands out to a degree that would warrant the special benefit of the national interest waiver.

The petitioner's initial submission established his experience and dedication as a teacher, but did not address the guidelines in *NYSDOT* to show how he qualifies for the national interest waiver.

The director issued a request for evidence on April 24, 2012, stating that the petitioner must meet the *NYSDOT* national interest guidelines. In response, counsel established the intrinsic merit of education in science, technology, engineering, and mathematics (STEM), and stated that there is a

national crisis in STEM education. This crisis does not establish that the petitioner, individually, has had or will have a national impact in STEM education. To address a national problem at a local level does not yield national results.

Counsel stated: “what has determined the employment of [a] Math teacher as national in scope are existing Federal Laws” that emphasize the importance of math and STEM education. These initiatives establish the collective national importance of math education; they do not lend national scope to the efforts of individual teachers. *NYS DOT* states: “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.” *Id.* at 217 n.3. The precedent decision used the term “elementary school” as an illustrative example, rather than to suggest that only elementary school teachers lack national scope.

With respect to the petitioner’s experience, counsel stated that the petitioner has “over (30) years of professional work as [a] Mathematics teacher”; elsewhere, counsel stated that the petitioner has “almost three (3) centuries [*sic*; counsel apparently meant “decades”] of dedicated service in that profession.” Counsel stated that it is “economically wholesome” to take advantage of the petitioner’s experience “instead of waiting for three (3) centuries until U.S. workers become as highly qualified as he is.” This assertion presumes that there are no experienced math teachers in the United States, and therefore it would take decades before any U.S. teacher reaches the level of experience that the petitioner has already attained.

With respect to counsel’s assertions that the petitioner has “more than 25 years of experience” and “over (30) years of professional work,” the record shows 24 years of employment from June 1984 to June 2008, followed by several years of apparent inactivity and then several months of part-time volunteer activity shortly before the filing of the petition in 2011.

Counsel stated that the Department of Labor will consider “only a bachelor’s degree” for labor certification purposes, which “would not meet the objective of the employer to hire highly qualified teachers pursuant to No Child Left Behind (NCLB) Law.” Section 9101(23) of the No Child Left Behind Act (NCLBA), Pub.L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), defines the term “highly qualified teacher.” By the statutory definition, a “highly qualified” school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor’s degree; and
- demonstrates competence in the academic subjects he or she teaches.

Section 9101(23)(A)(ii) of the NCLBA further indicates that a teacher is not “Highly Qualified” if he or she has “had certification or licensure requirements waived on an emergency, temporary, or provisional basis.” Counsel did not explain how the above requirements are incompatible with the existing labor certification process. The minimum degree requirement, which counsel has

emphasized, is the same for labor certification as it is for a highly qualified teacher (*i.e.*, a bachelor's degree).

Counsel stated that there are "other important variables" that the labor certification process cannot take into account. "In other words, even if two (2) teachers have exactly the same education degrees and work experience, their effectiveness cannot be identical. One of them would be more effective than the other because of other unquantifiable factors that zero in on 'passion.'" Counsel did not explain why, in this hypothetical matchup, the petitioner would inevitably emerge as superior to the other candidate for the position. It is true that no two candidates for a job are exactly identical, but it does not follow that experienced foreign teachers ought to be exempt from labor certification. The statutory job offer requirement applies to all professionals, including teachers, and counsel identified no specific provision of statute, regulation, or case law to supersede or overrule that provision.

The petitioner submitted background materials about math education, which address the intrinsic merit of his profession but not the other two prongs of the *NYSDOT* national interest test.

The petitioner also submitted copies of certificates newly issued after the petition's October 2011 filing date. The certificates are insufficient, both in terms of significance and in terms of timing. With regard to significance, these certificates, like those submitted previously, establish recognition only at the local level, from the school where he volunteered and from the state chapter of AFTA, and therefore they do not establish that the benefit from the petitioner's work is national in scope. Furthermore, with regard to timing, an applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). The petitioner's response to a request for evidence must likewise establish eligibility as of the filing date. 8 C.F.R. § 103.2(b)(12). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner submitted copies of various credentials and positive evaluations from different points in his teaching career. These materials attest to his competence as an educator, but the threshold for the waiver of the job offer requirement is not simply a high level of job performance. Rather, the petitioner must establish that it is in the national interest to waive a requirement that, by statute, routinely applies to workers in his profession – even those who exhibit exceptional ability.

The director denied the petition on April 11, 2013, stating that the petitioner had met only the first prong of the *NYSDOT* national interest test, by establishing the intrinsic merit of education. The director stated: "The fact that the beneficiary is qualified for the job does not warrant a waiver of the job offer and labor certification requirement."

On appeal, counsel acknowledges that *NYSDOT* constitutes binding precedent, but asserts that the precedent decision offers little specific guidance as to what, exactly, serves the national interest. Counsel contends that "[t]he obscurity in the law that *NYSDOT* sought to address has been clarified":

[T]he United States Congress has spelled out the national interest with respect to public elementary and secondary school education through the No Child Left Behind Act of 2001 (“NCLBA”), 8 U.S.C. § 6301 et seq., which came into effect upon its enactment in 2001 – that is, more than a decade after IMMACT 90 and MTINA were enacted and three years after NYSDOT was designated as a precedent decision. . . .

Accordingly, 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 elementary education sector. . . .

[I]n the instant case, USCIS gave insufficient weight to the NCLB Act because it confined its consideration of that law to the first NYSDOT factors.

The NCLBA, however, did not amend the Immigration and Nationality Act or even mention the national interest waiver.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int’l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984). The lack of a statutory definition of the phrase “national interest” does not supersede the unambiguous statutory language at Section 101(a)(32) of the Act, which states that school teachers are members of the professions, and section 203(b)(1)(A) of the Act, which states that members of the professions with advanced degrees are subject to the job offer requirement. Counsel has provided no support for the assertion that Congress passed the NCLBA for the direct or indirect purpose of clarifying the definition of “national interest” (a phrase that does not appear in the text of the NCLBA).

Counsel quotes from section 203(b)(2)(A) of the Act, and claims that, “[b]ased on these statutory provisions,” the petitioner qualifies for the waiver “if it is established that he will substantially benefit prospectively the national educational interests of the United States.” This is a misreading of the statute, which states that foreign workers who “will substantially benefit prospectively the national . . . educational interests, or welfare of the United States” can qualify for employment-based immigrant classification if their “services . . . are sought by an employer in the United States.” This latter clause embodies the job offer requirement.

The Immigration and Naturalization Service (the Service) addressed the above issues when it promulgated the regulation at 8 C.F.R. § 204.5(k) and its subsections:

Some commenters also asked that the phrase “in the national interest” be defined. One commenter suggested that the phrase should apply to any alien who would substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. The Act itself requires this showing of all aliens seeking to qualify as “exceptional,” but adds the “national interest” test to permit a job offer waiver for certain aliens who have already satisfied the “prospective national benefit” test. The Service, therefore, cannot equate the two standards. Congress has not provided a more particular definition of the phrase in the national interest. The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the standard must make a showing significantly above that necessary to prove “prospective national benefit.” 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 will be judged on its own merits.

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991). A condensed version of the above passage appeared in *NYSDOT* at 216-17. The quoted passage rebuts counsel’s contention on appeal that the “prospective national benefit” test is identical to the “national interest” test.

Counsel states that the director’s “decision did not present even one comparative candidate having at least the equivalent accomplishment as that of [the petitioner] to support its determination.” The burden of proof rests on the petitioner, not the director. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). There is no presumption of eligibility, and there is no requirement that the director must identify and produce a “comparative candidate” whose qualifications equal or surpass those of the petitioner.

Comparing *NYSDOT* to the present petition, counsel asserts that “the facts are definitely distinct from each other, not to mention subsequent legislations intended to provide guiding principles to implement Immigration Act of 1990 (IMMACT 90).” The facts of the petitions are different in that the beneficiary in *NYSDOT* was an engineer rather than a teacher, but the *NYSDOT* national interest test is, by design, broadly applicable and not limited to engineers.

With respect to “subsequent legislation,” the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102-232, 105 Stat. 1733 (Dec. 12, 1991) made the national interest waiver available to members of the professions holding advanced degrees, where previously it was available only to aliens of exceptional ability. Following the publication of *NYSDOT*, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95, 113 Stat. 1312 (1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Thus, Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so on two occasions, first to correct an omission of language, and later in direct response to *NYSDOT*. Counsel has identified no other legislation that directly addresses the national interest waiver in this way. In

the absence of a comparable provision in the NCLBA or any other education-related legislation, there is no basis to conclude that the legislation indirectly implied a blanket waiver for teachers.

Counsel claims that *NYSDOT* “requires overly burdensome evidence on the qualification [*sic*] of the self-petitioner, identical to EB-1 extraordinary requirements.” Counsel, here, refers to the “extraordinary ability” classification at section 203(b)(1)(A) of the Act. That classification requires “sustained national or international acclaim,” and the implementing regulations at 8 C.F.R. § 204.5(h)(3) require a petitioner to meet at least three of ten specified standards. The regulatory definition of “extraordinary ability” at 8 C.F.R. § 204.5(h)(2) requires a demonstration that the beneficiary “is one of that small percentage who have risen to the very top of the field of endeavor.” The director did not impose so strict a requirement in the present instance. To say that one has had significant impact on one’s field is not the same as saying that one has reached the very top of that field, or has earned sustained national or international acclaim in that field. *NYSDOT* stands as binding precedent and the director did not err by relying on that decision.

Counsel quotes remarks made by then-President George H.W. Bush when he signed IMMACT 90: “This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas.” Counsel interprets this passage to mean that Congress created the national interest waiver for educators, but the job offer requirement for which the petitioner seeks a waiver was, itself, an integral provision of IMMACT 90. President Bush’s quoted remarks did not specifically mention the national interest waiver, and there is no evidence that the remarks referred particularly to the waiver, rather than to IMMACT 90 as a whole. The national importance of “education” as a concept, or “educators” as a class, does not lend national scope to the work of a single schoolteacher.

Counsel states: “The standard in other words is not national geography but national intellection directed to recapture the nation’s economic dominance. This is what is called ‘Bridging the Gap.’ Syllogistically, hiring ‘Highly Qualified Teachers’ would produce more graduates than dropouts.” This statement confuses the national impact of federal education policy with the national impact of one schoolteacher. Also, it relies on the assumption that the hiring of “Highly Qualified Teachers” has, in fact, increased graduation rates. Counsel offers no evidence to support this claim. Counsel cites various Department of Education publications concerning the goals of the NCLBA and other federal programs, but no evidence documenting the results of those programs a decade after the NCLBA’s enactment. Instead, counsel cites recent statistics regarding poor student performance by students in [redacted] Maryland (where the petitioner seeks employment), several years after the passage of the NCLBA. Eligibility for the waiver rests on the merits of the individual seeking the waiver, and the record does not show that the petitioner has had or will have a nationally significant impact on graduation rates. Being a “Highly Qualified Teacher” under the NCLBA does not establish or imply eligibility for the national interest waiver.

Counsel states:

USCIS-Texas Service Center has not specified what it meant by ‘any contributions of unusual significance that would warrant a national interest waiver.’ There is no clarity on this particular requirement and yet, the Director has easily dismissed the incomparable accomplishments of [the petitioner] as submitted in her [sic] Case File. By requiring the petitioner to submit evidence of ambiguous nature is ‘unduly burdensome’ and in effect tantamount to requiring ‘impossible evidence’ for being extremely subjective.

The lack of clear standard on this particular requirement leaves the finding of insufficiency by USCIS-Texas Service Center highly speculative, without factual basis and rather drawn in thin air.

The mandate for ‘flexibility in the adjudication of NIW cases’ . . . must be construed liberally rather than strictly compared to the New York State Department of Transportation case. USCIS is now required by United States Congress through the No Child Left Behind Act of 2001 . . . to make it “flexible[”] and thus possible rather than impossible in favor of the ‘Best Interest of the School Children,’ by granting waivers to ‘Highly Qualified Teachers’ who have already been serving the cause instead of requiring labor certification which may only reveal uncommitted U.S. workers with minimum education qualification.

The petitioner has not submitted evidence to establish that his accomplishments are “incomparable” as counsel claims.

After protesting that the director’s decision is, in counsel’s words, “drawn in thin air,” counsel asserts that the NCLBA did not merely imply that USCIS should grant the waiver to “highly qualified teachers,” it “required” USCIS to do so. The text of the statute does not mention immigrant teachers, labor certification, the national interest waiver, or the phrase “national interest.” The NCLBA does not establish or imply a blanket waiver for teachers.

Counsel contends “the Director is requiring more from the beneficiary’s credentials tantamount to having exceptional ability,” even though one need not qualify as an alien of exceptional ability in order to receive the waiver. It is evident from the statute that the threshold for exceptional ability is below, not above, the threshold for the national interest waiver; it is possible to establish exceptional ability but still not qualify for the waiver. Also, the director did not require the petitioner to establish exceptional ability in his field. Instead, the director found that the petitioner’s evidence failed to establish that his work has had an influence beyond the school districts where he has worked.

Counsel cited a report indicating that the Teach for America program has produced disappointing results. This assertion would be relevant if the only two available options were to continue relying on the flawed Teach for America program, or to grant the national interest waiver, but this is not the case. In repeatedly citing the NCLBA in support of the waiver claim, counsel did not cite any evidence to show that the NCLBA had produced better results than Teach for America. More

importantly, the purpose of the present proceeding is not to compare the merits of Teach for America and the NCLBA, but rather to determine whether the petitioner qualifies for an immigration benefit.

Counsel cites a 2010 Department of Education report, *ESEA Blueprint for Reform*. Counsel states:

The U.S. Department of Education's finding that meeting the NCLB Act's requirements for the "highly qualified" standard "does not predict or ensure that a teacher will be successful at increasing student learning" because while the NCLB requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in what matters most: the effectiveness of teachers in raising student achievement which demonstrates that teacher effectiveness contributes more to improving student academic outcomes than any other school characteristic.

The finding that "the NCLB requirements . . . have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement" appears to undermine the claim that the NCLBA has set the standard for the national interest with respect to education.

Counsel quotes President Obama: "I'm committed to moving our country from the middle to the top of the pack in science and math education over the next decade." Counsel contends that the president has thus "effectively set the critical timeline within which to meet [this] goal. . . . the Chief Executive of the country has himself determined that the national interest would not be served if the petitioner was required to obtain a labor certificate [*sic*] for the proposed employment." Counsel has not established that granting the waiver to the petitioner would make the difference in meeting "the critical timeline." While the president's remarks represent one of the current administration's policy goals, those words do not supersede standing legislation, regulations and case law.

Counsel asserts that, by hiring teachers who meet the NCLBA's definition of "highly qualified," schools will preserve federal funding opportunities that rely on compliance with the NCLBA. This assertion has no weight unless the petitioner is the only "highly qualified teacher" available to his intending employer, a claim that the petitioner has not supported with any evidence. Even then, the petitioner has not shown that his employment as a teacher, "highly qualified" or otherwise, would have a national impact rather than a local one.

Section 9101(23) of the NCLBA defines the term "highly qualified teacher." By the statutory definition, a "highly qualified" school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- demonstrates competence in the academic subjects he or she teaches.

Section 9101(23)(A)(ii) of the NCLBA further indicates that a teacher is not “Highly Qualified” if he or she has “had certification or licensure requirements waived on an emergency, temporary, or provisional basis.” Counsel does not explain how the above requirements are incompatible with the existing labor certification process. The minimum degree requirement, which counsel has emphasized, is the same for labor certification as it is for a highly qualified teacher (*i.e.*, a bachelor’s degree). Therefore, counsel has not established that the labor certification process would result in the hiring of teachers who did not meet the “highly qualified” standards.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that the petitioner’s 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.”).

As is clear from a plain reading of the statute, engaging in a profession (such as teaching) does not exempt professionals from the requirement of a job offer. Congress has not established any blanket waiver for teachers. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the statutory job offer requirement will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.