



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JAN 08 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,


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 with the defined equivalent of an advanced degree. The petitioner seeks employment as a high school mathematics teacher in [REDACTED]

[REDACTED] Since 2007, the petitioner has taught at [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 the equivalent of 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 petitioner's foreign bachelor's degree (evaluated as being equivalent to a U.S. baccalaureate degree) and progressive post-baccalaureate experience are the defined equivalent of a master's degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT 90), P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

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

In re New York State Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

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

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

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on October 3, 2011. In an introductory statement, counsel stated that the petitioner’s “mastery over her field can be assessed through numerous awards and contests she received and won, respectively, as a coach/mentor for her students in mathematical competitions. Likewise, she was often cited and commended for her brilliant classroom management and exemplary teaching techniques.”

An accompanying exhibit list identified 28 certificates under the heading “Achievements, Awards and Recognitions” – ten for teaching, one for serving as “[REDACTED] School San Lorenzo delgado in the COA National Competition” in 2002, and 17 for coaching and training student participants in various mathematics competitions. The petitioner received all but four of the certificates while working in the Philippines. The petitioner did not claim to have acted as such a coach in the United States; she claimed to be “presently learning the ropes of mathematics competitions in the United States to determine if [she] can start coaching again.” The petitioner did not establish that this coaching work amounts to influence in the field of education.

Of the remaining four certificates, the petitioner received two from [REDACTED] and two from the [REDACTED] where she taught from 2004 to 2007:

- A certificate signed by the principal of [REDACTED] reads: “The students of The School [REDACTED] present this award for Best Teacher in 2005.” An accompanying information sheet states: “The following teachers have been voted ‘Best Teacher’ by the students of The [REDACTED] The sheet names 13 teachers.
- The petitioner and two other teachers received the School Pride Award from [REDACTED] in November 2005. The certificate reads: “Please join them and their students in creating and maintaining a clean, orderly classroom environment in which we can all be proud everyday, all day.”
- The principal of [REDACTED] gave the petitioner a Patriot Award in June 2008, with the legend: “For Your Support in the Success of the Students and Your Flexibility in Your Teaching Assignment 2007-2008.”
- The petitioner received Honorable Mention for the [REDACTED] Employee of the Month, January 2010.

The petitioner submitted several letters from school administrators, teachers, students and their parents, a teaching coach, and an official of [REDACTED]. The witnesses praised the petitioner’s skills and credentials as a teacher, and state that she has had a positive impact on the students and staff at [REDACTED], but did not establish that the petitioner’s work has had wider impact and influence that would justify a waiver of the job offer requirement that, by statute, ordinarily applies to schoolteachers.

The petitioner submitted a complete copy of [REDACTED] for “High School Mathematics/Algebra I DL/Unit 1: Data Analysis and Probability.” The “Acknowledgements” page identifies 16 “Writers” and 15 “Reviewers.” The petitioner was one of the reviewers. The record does not reveal the reviewer selection process, nor does it show that the *Guide* is in use outside of [REDACTED]. It also does not establish the extent to which the petitioner, as a reviewer (as opposed to a writer), shaped the final contents of the *Guide*.

The director issued a request for evidence on June 26, 2012. The director stated that the petitioner's initial submission did not include evidence of the petitioner's eligibility for the national interest waiver. The director instructed the petitioner to "submit evidence to establish that the beneficiary's past record justifies projections of future benefit to the nation."

In response, counsel stated that the petitioner is a "Highly Qualified Math Teacher," and the petitioner submitted background information about the importance of STEM (science, technology, engineering, and mathematics) education, and the need for reform and improvement in that field. General assertions about the importance of STEM education establish the substantial intrinsic merit of the petitioner's occupation, but do not address the other two prongs of the *NYSDOT* national interest test. The overall importance of education does not give national scope to the efforts of individual teachers. *See NYSDOT* at 217 n.3. (*NYSDOT* used the term "elementary school" as an illustrative example, rather than to suggest that only elementary school teachers lack national scope.) Similarly, claims of a national crisis in STEM education do not give national scope to the work of individual teachers. The assertion that poor STEM education affects the national economy does not establish that the efforts of any one STEM teacher can or will reverse the trend.

Regarding the claimed national scope of the petitioner's occupation, counsel stated:

Since a 'National Mathematics Teacher' is not even a real concept but more of metaphysical cognition [*sic*], undersigned wishes to once again posit a realistic proposition upon which to establish that the self-petitioner's contributions will impart national-level benefits.

Even the curricula used by each state education department in the United States vary from each other.

Counsel's assertion that different jurisdictions use different curricula is not a factor in favor of granting the waiver. Instead, it serves to emphasize the local nature of the petitioner's impact, as stated in *NYSDOT* at 217 n.3.

Counsel stated: "since not all NIW [national interest waiver] cases are based on prevailing Acts of United States Congress, it is but harmless to assert that if an NIW Petition is made with premise on some prevailing Acts of United States Congress, that by itself renders the proposed employment national in scope. But in those cases that are not premised on any prevailing Act of United States Congress, NIW self-petitioners must meet the issue on other bases." Counsel cited no support for this construction of the law. All employment-based immigrant classifications are based on "prevailing Acts of United States Congress," and so is the statutory job offer requirement.

Counsel took the position that, when Congress passes legislation that emphasizes the importance of a given profession, Congress indirectly implies that foreign workers in that profession qualify for the waiver. Congress can decide directly which foreign workers qualify for the waiver, and Congress has done so in the past. The original wording of section 203(b)(1)(B) of the Act limited the waiver to aliens of exceptional ability in the sciences, the arts, and business. 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. Following the publication of *NYS DOT*, 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.

As shown above, Congress has directly expressed its wishes regarding the waiver by amending the Immigration and Nationality Act itself, first to clarify the waiver provisions, and then to create a specific blanket waiver. Counsel identified no legislation that directly addresses the national interest waiver in this way with respect to teachers. Instead, counsel claimed that Congress indirectly implied a blanket waiver for “highly qualified teachers” by passing the No Child Left Behind Act of 2001 (NCLBA), Pub.L. 107-110, 115 Stat. 1425 (Jan. 8, 2002). Counsel asserted that the NCLBA and other legislation, along with “STEM Prioritization,” lend national scope to “the employment of [the petitioner] as a ‘Highly Qualified’ Math Teacher.”

Counsel quoted 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 contended 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 did not establish that granting the waiver to the petitioner would make a difference in meeting “the critical timeline.”

The quotation appears in a submitted copy of *Supporting Science, Technology, Engineering, and Mathematics Education: Reauthorizing the Elementary and Secondary Education Act*, a July 2010 publication of the U.S. Department of Education. That publication included an itemized list of “What we’re proposing.” None of the eight items mentioned the national interest waiver specifically, or immigration in general.

Noting that the petitioner has “over twenty (20) years of dedicated service in [her] profession,” counsel stated that it is “economically wholesome” to take advantage of the petitioner’s experience “instead of waiting for over twenty (20) years until U.S. workers become as highly qualified as she 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. Also, length of experience, by itself, does not convey influence on the field or benefit that is national in scope.

Counsel claimed that “today’s United States workers or Mathematics Teachers are not as competitive as the foreign teachers who are already in the country since not all of them were educated by ‘Highly Qualified Teachers.’” This assertion relies on the presumption that all “foreign teachers” “were educated by Highly Qualified Teachers.” Counsel cited no evidence to support that claim, and counsel’s claims are not 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 claimed that the labor certification process presents a “dilemma” because “The United States Department of Labor minimum education requirement Report for High School Teacher is just a bachelor’s degree,” but “the employer is required by No Child Left Behind . . . to employ highly qualified teachers.” Counsel asserted that a labor certification, requiring only a bachelor’s degree, “would not meet the objective of the employer to hire highly qualified teachers.” 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 did not explain how the above requirements are incompatible with the 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 labor certification “covers only the education and work experience qualifications” of job applicants, and that “even if two (2) teachers have exactly the same education degrees and work experience, their effectiveness cannot be identical.” Therefore, prior counsel concluded, “the labor certification process would not in any way [yield] an identically effective Science teacher as” the petitioner. Counsel does not explain why, when dealing with two applicants with “exactly the same education degrees and work experience,” there should be a presumption in favor of the foreign worker that overrides the statutory job offer requirement.

Counsel stated that, because “the public school always has the liberty to fire any international teachers who are found not effective,” the petitioner’s continued employment demonstrates her value to her employer. By law, the threshold for the waiver of the job offer requirement is the national interest, not the employer’s desire to continue employing the petitioner.

Counsel speculated that granting a blanket waiver to highly qualified teachers will improve school performance, thereby securing federal funding under the NCLBA and making more jobs available for U.S. teachers. Counsel cited no statistics or reports to support this speculative claim, and counsel’s own assertions are not evidence. *See Matter of Obaigbena* at 534 n.2, citing *Matter of Ramirez-Sanchez* at 506.

Congress, not USCIS, has the authority to create blanket waivers for entire occupations or fields. Absent a statutory blanket waiver for a given occupation, USCIS must consider waiver claims on a case by case basis. *See NYSDOT* at 217.

cited the petitioner's "pivotal role in improving the school's performance in the state-mandated Mathematics High School Assessment," and stated: "Our school's standing has moved from number 17 to number 4 in the county in terms of Algebra I first time test takers." The improvement in test scores attests to the petitioner's skill as a teacher, but there is no indication that this improvement went beyond her own students at . The benefit from the petitioner's accomplishment, therefore, lacks national scope.

The director denied the petition on April 15, 2013, stating that the petitioner had met only the "substantial intrinsic merit" prong of the three-pronged *NYSDOT* national interest test.

On appeal, counsel asserts that *NYSDOT* 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 . . . 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. . . .

In effect, therefore, the United States Congress, with the enactment of the NCLB Act, has preempted the USCIS with respect to the parameters that should guide its determination whether a waiver of the job offer requirement based on national educational interests is warranted. . . .

[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 claims that “the requirement of a job offer . . . should be waived if it is established that he will substantially benefit prospectively the national educational interests of the United States.” Section 203(b)(2)(A) of the Act specifies 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 claims: “a new thought process must be designed by USCIS with respect to NIW petitions by ‘Highly Qualified Teachers’ instead of routinely applying the *Matter of New York State Dept. of Transportation* generically.” As a precedent decision, *NYSDOT* is binding on all USCIS employees in the administration of the Act. See 8 C.F.R. § 103.3(c). Counsel claims that *NYSDOT*, which

concerned a bridge engineer, “obviously is good in far as NIW cases filed by Engineers are concerned but does not give justice to other professionals especially since the facts are definitely distinct from each other.” The three-part national interest test in *NYSDOT* is, by design, broad and flexible. It does not include specific evidentiary requirements that only an engineer could satisfy, and its application is not, and was not intended to be, limited to engineers.

Counsel claims that *NYSDOT* “requires overly burdensome evidence on the qualification [*sic*] of the self-petitioner, identical to EB-1 extraordinary requirements when the law makes it available to those either ‘with an advanced degree’ or ‘exceptional ability.’” The evidentiary requirements to establish extraordinary ability, at 8 C.F.R. § 204.5(h)(3), are neither identical nor similar to the guidelines in *NYSDOT*. Concerning counsel’s assertion that the waiver is “available to those either ‘with an advanced degree’ or ‘exceptional ability,’” those qualifications make one eligible to apply for the waiver, but do not guarantee the approval of that application.

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 unsupported 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]. At the time covered by those statistics, the NCLBA was already in effect and the petitioner was already working for [REDACTED]. 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 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. Congress has directly and unambiguously established a blanket waiver for certain physicians, as described at section 203(b)(2)(B)(ii) of the Act; Congress has taken no comparable action on behalf of teachers.

Counsel contends that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers, and asserts: "the USCIS-Texas Service Center should have presented its own comparable worker, if there be any at all," as a basis for comparison against the petitioner. The *NYS DOT* guidelines are not an item-by-item comparison of an alien's credentials with those of qualified United States workers. That decision indicated that the petitioner must establish a record of influence on the field as a whole. *Id.* at 219, n.6. To do so does not require an invasive review or comparison of other teachers' credentials.

Counsel asserts that the petitioner "has submitted overwhelming evidence" of eligibility, and that "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 her field. Instead, the director found that the petitioner's evidence failed to establish that her work has had an influence beyond the school districts where she has worked.

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. Instead, counsel cites a 2010 Department of Education report, *ESEA Blueprint for Reform*, which indicates that meeting the definition of a "highly qualified teacher" "does not predict or ensure that a teacher will be successful at increasing student learning."

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.