



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JAN 09 2014** Office: TEXAS SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[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,


f 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 an elementary school inclusion teacher. The petitioner has taught for [REDACTED] since 2005. At the time of filing, the petitioner was working for [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 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) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

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

The petitioner has established that her work as an elementary school inclusion teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner’s work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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

The petitioner filed the Form I-140 petition on June 22, 2012. In Part 4 of the Form I-140, the petitioner answered “yes” to whether any petitions had previously been filed on her behalf. The record reflects that [REDACTED] filed a Form I-140 petition, with an approved labor certification, on her behalf on August 24, 2009, to classify her as a professional under section 203(b)(3)(A)(ii) of the Act. The Texas Service Center approved the petition on October 21, 2009, with a priority date of September 7, 2008.

In a June 17, 2012 letter accompanying the petition, counsel stated that the petitioner’s national interest waiver is based on her advanced degree, expertise in the field, and “numerous achievements and citations.” Academic degrees, 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 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 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 elementary 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 elementary school 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 an inclusion teacher has influenced the education 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, teachers, and a student's parent discussing her work as an educator. As some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

Principal, [REDACTED] stated:

[The petitioner] has been in [REDACTED] since 2005 and since then has shown tremendous commitment to the service of students and her colleagues.

As her principal, I have had the opportunity to observe her as a 2nd grade classroom teacher. During this time, [the petitioner] has shown dedication to her profession by demonstrating content knowledge and pedagogy which resulted to her developing lessons that were intellectually, emotionally, and socially appropriate for her students, and modifying these lessons for students who weren't able to follow general pattern of development. She also assessed student learning through developmentally appropriate methods and differentiated instruction to the needs of her students. She made sure that she identified students who reflect exceptions and made referrals to the Talented and Gifted Program and Special Education as needed.

[The petitioner] also has prepared herself for creative instruction by attending seminars and workshops and embraced new methodologies to refine her skills. Her participation in the Financial Incentive Rewards for Supervisors and Teachers (F.I.R.S.T) Program and the incorporation of the America's Choice Design in her instruction would attest to her highly organized, efficient and competent practices. She is respected not only by her students but also by parents and her colleagues. She collaborated and shared her knowledge with other teachers and has maintained excellent rapport with people of diverse cultures. She is a highly qualified teacher.

Ms. [REDACTED] asserts that the petitioner "is a highly qualified teacher" and comments on the petitioner's commitment to [REDACTED] teaching activities, effectiveness as an educator, professional development, and personal qualities, but does not indicate how the petitioner's impact or influence as a teacher is national in scope. In addition, Ms. [REDACTED] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

Dr. [REDACTED] Chair, Special Education Program, [REDACTED] stated:

I have worked with [the petitioner] since September, 2005. [The petitioner] was assigned as a General Education Teacher in an Inclusive Special Education Program in our school. She worked with regular education students as well as students with special needs in a general education setting. In partnership with the Special Education teacher, [the petitioner] was tasked to modify and teach the curriculum to children with Autism, Other Health Impairments, Learning Disabilities and Emotional Problems. Preparing instructional materials, participating in the preparation and deliberation of Individualized Education Program (IEP), communicating with parents and other professionals were also part of [the petitioner's] responsibilities. [The petitioner] also participated actively in the Professional Development of the staff by sharing her thoughts and experiences during curricular sharing. She was a Grade level Chair and an inspiring leader to her team.

It is worth noting that [the petitioner] had effectively laid the foundation for her students to successfully participate in Maryland State Assessments. Her expertise in both fields of education (Special and General Education) have contributed much in assisting children to reach their potentials. She is a hardworking teacher whose commitment and dedication to her job are worth of emulation.

[The petitioner] is an outstanding professional. She is committed to help her students and their welfare is always her priority. She devotes time preparing instructional materials to meet the individual needs of her students.

Dr. [redacted] comments on the petitioner's activities in the [redacted] Inclusive Special Education Program, expertise in the field, commitment to her job, professionalism, and devotion to her students, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students in her classroom and the local school system that employed her.

[redacted] 3rd Grade Teacher, [redacted] stated:

I have known [the petitioner] over seven years. I have observed her during instructional periods, teaching moments with the students, and [as a] collaborative educator with her colleagues.

At a personal level, [the petitioner] is a well disciplined industrious individual with a pleasant personality. She will go well beyond what is required of her in the quantity and quality of any project. [The petitioner] has demonstrated great perseverance, initiative and is motivated to teach her students. She genuinely cares for others around her and wants to be a positive role model. I have found her to be an individual who wants to learn and is willing to work hard. [The petitioner] has also demonstrated a positive attitude and has sense of humor in teaching and learning.

As her co-teacher in 2nd grade at [redacted] I had the opportunity to have her as a chairperson in our grade level. She is a responsible leader and a team player.

Ms. [REDACTED] speaks favorably of the petitioner's personal qualities and work at [REDACTED] [REDACTED] but fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

Ms. [REDACTED] a parent whose child was taught by the petitioner at [REDACTED] School, stated:

[The petitioner] was my son's 2nd grade teacher at [REDACTED]. As a parent, I have known [the petitioner] as a teacher who has devotion and great love for her students.

[The petitioner] has the ability to bond with her students as well as to understand and resonate with their feelings and emotions. She is able to communicate on their level and shows her compassion at all times. She handles students' troubles in a gentle and affectionate manner. She knows how to keep calm in any situation. She can give the students some advice when they are in need or help them distinguish the right from the wrong.

As a parent I can say that [the petitioner] succeeds in inspiring my son's passion for studying. I highly appreciate [the petitioner's] enthusiasm for teaching. She was a good instrument in motivating my son to carry on his active and successful self-study at home. [The petitioner] puts effort in teaching her students how to study independently, creatively and effectively.

Ms. [REDACTED] comments on the petitioner's positive interactions with students and her ability to motivate their learning, 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 elementary school teachers.

The petitioner's references praise her teaching abilities 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 Achievement" (2006) from the County Executive of [REDACTED] during American Education Week in honor of the petitioner's "service as an educator" in the [REDACTED] system;
2. A "Staff Appreciation Award" from the principal of [REDACTED] for dedication and contributing to the function of the school (June 12, 2006);
3. A "Certificate of Merit" from the Schools Division Superintendent and three other administrators of the City of [REDACTED] Philippines "for being the Trainer of the 2nd place winner in Sports Writing during the [REDACTED] held at [REDACTED] on October 25, 2000";
4. A "Certificate of Merit" from the Schools Division Superintendent and three other administrators of the [REDACTED] Philippines "for being the Trainer of the 4th place winner in [REDACTED] during the [REDACTED] held at [REDACTED] on October 25, 2000";
5. A "Certificate of Recognition" from the Schools Division Superintendent and two other administrators of the [REDACTED] Philippines "for being the trainer of the 2nd place winner in Newswriting Category during the [REDACTED] held at [REDACTED] on October 29, 1999";
6. A "Certificate of Recognition" from the Schools Division Superintendent and two other administrators of the [REDACTED] Philippines "for being the trainer of the 2nd place winner in [REDACTED] during the [REDACTED] held at [REDACTED] on October 29, 1999";
7. A "Certificate of Recognition" from the Schools Division Superintendent and Division Filipino Supervisor of the [REDACTED] Philippines "for being the Trainer/Adviser of the 1st place winner in the Copyreading and Headlining Category" at the [REDACTED] (October 3, 1998);
8. A "Certificate of Recognition" from the Schools Division Superintendent and Division Filipino Supervisor of the [REDACTED] Philippines "for being the Trainer/Adviser of the 1st place winner in the Newswriting Category" at the [REDACTED] (October 3, 1998);

9. A "Certificate of Recognition" from the Schools Division Superintendent and two other administrators of the [REDACTED] Philippines for being the "Coach/Trainer of the 2nd place winner in News Writing" at the [REDACTED] (Division Level) held at [REDACTED] . . . on October 10, 1996";
10. A "Certificate of Recognition" from the Schools Division Superintendent and two other administrators of the [REDACTED] Philippines for being the "Coach/Trainer of the 3rd place winner in Sports Writing" at the [REDACTED] (Division Level) held at [REDACTED] . . . on October 10, 1996";
11. A Certificate of Recognition from [REDACTED] (where the petitioner earned her bachelor's degree) "for his/her exemplary performance in his/her field of specialization during the first semester of school year 1989-1990";
12. A Certificate of Appreciation from the [REDACTED] Philippines (2001);
13. A Bronze Service Award from the [REDACTED] for "Outstanding Contribution and Active Support" (March 29, 1996);
14. An "Outstanding Service" certificate from the Maryland Chapter of the [REDACTED] "for her/his invaluable contribution in giving academic help to the students of [REDACTED] in conjunction with its [REDACTED] 2011 – 2012";
15. A Certificate of Appreciation from the administration of [REDACTED] Philippines (the petitioner's employer from 1993-1994) issued "in celebration of the International Teachers' Day";
16. Five Certificates of Appreciation for serving a Vacation Bible School volunteer;
17. An event program from the [REDACTED] indicating that the petitioner was among 26 individuals at [REDACTED] who received a financial reward;
18. Academic records and transcripts;
19. A Maryland Educator Certificate;
20. A "Certification of Good Standing" from the [REDACTED];
21. A Praxis Series test score report;
22. A "Report of Rating" from the National Board for Teachers stating that the petitioner "passed the professional board examination for teachers held in [REDACTED] School";
23. A "Certificate of Eligibility" from the [REDACTED];
24. Employment verifications;
25. A Certificate of Membership from the [REDACTED];
26. A membership card and online member profile for the [REDACTED]; and
27. A membership card for the [REDACTED]

Again, academic records, occupational experience, professional certifications, membership in professional associations, and recognition for achievements are all elements that relate to a finding of exceptional ability, but exceptional ability is not sufficient to establish eligibility for the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received (items 1 – 17) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 27 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner also submitted numerous certificates of participation, completion, and attendance for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

In addition, the petitioner submitted copies of her "satisfactory" teacher evaluations from [REDACTED]. 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 elementary school teachers and how her specific work has had significant impact outside of the school where she has taught.

The petitioner also submitted [REDACTED] showing the reading levels of various second grade students at [REDACTED] but the petitioner does not explain how the reports demonstrate her influence on the field as a whole.

The director issued a request for evidence on December 4, 2012, instructing the petitioner to submit evidence demonstrating that the benefits of her proposed employment would be national in scope and that she "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted a March 24, 2003 letter from U.S. Secretary of Education Rod Paige providing information about "how school districts may continue to hire and employ visiting teachers from other countries while being consistent with the statutory requirements that define a highly qualified teacher"; President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; a copy of Section 1119 of the No Child Left Behind Act (NCLBA); a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; an article entitled "Supporting Science, Technology, Engineering, and Mathematics Education – Reauthorizing the Elementary and Secondary Education Act"; "Barack Obama on Education" questions and answers posted at www.ontheissues.org; an article in the *Wall Street Journal* entitled "The Importance of Math & Science in Education"; the written testimony of Microsoft's Bill Gates before the Committee on Science and Technology of the United States House of Representatives (March 12, 2008); information about STEM (science, technology, engineering

and mathematics) fields printed from the online encyclopedia *Wikipedia*; an article entitled “STEM Sell: Are Math and Science Really More Important Than Other Subjects?”; and an article discussing the highlights from the Trends in International Mathematics and Science Study (2007). As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the “substantial intrinsic merit” prong of *NYSDOT*’s national interest test. None of the preceding documents demonstrate that the petitioner’s specific work as an elementary school inclusion teacher has influenced the field as a whole.

The director denied the petition on March 25, 2013. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown that the proposed benefits of her work as an elementary school inclusion teacher will be national in scope. The director also determined that the petitioner had failed to demonstrate “any contributions of unusual significance that would warrant a national interest waiver.”

On appeal, counsel asserts that “USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act of 2001 [NCLBA] as the guiding principle rather than the precedent case” *NYSDOT*. With regard to following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to ignore binding precedent. See 8 C.F.R. § 103.3(c).

Counsel argues that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and claims that “[t]he obscurity in the law that *NYSDOT* sought to address has been clarified,” because “Congress has spelled out the national interest with respect to public elementary and secondary school education” through such legislation. In addition, counsel contends that “the [NCLBA] and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public school 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 has not shown that the NCLBA contains a similar legislative change.

Counsel further states:

With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: “Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase “national . . . educational interests,” but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien’s “services . . . are sought by an employer in the United States.” By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien “will substantially benefit prospectively the national . . . educational interests . . . of the United States.” Again, neither the Act nor the NCLBA create or imply any blanket waiver for highly qualified foreign teachers. As members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that includes the job offer requirement.

Counsel asserts that “Congress legislated [NCLBA] to serve as guidance to USCIS in granting legal residence to ‘Highly Qualified Teachers.’” Section 9101(23) of the NCLBA defines the term “Highly Qualified Teacher.” Briefly, by the statutory definition, a “Highly Qualified” elementary 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
- has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, or (in the case of experienced teachers not “new to the profession”) demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation.

In addition, the U.S. Department of Labor’s *Occupational Outlook Handbook*, 2012-13 Edition, describes the minimum qualifications necessary to become a special education teacher:

Public school teachers are required to have a least a bachelor’s degree and a state-issued certification or license.

* * *

Education

All states require public special education teachers to have at least a bachelor's degree. Some of these teachers major in elementary education or a content area, such as math or chemistry, and minor in special education. Others get a degree specifically in special education.

* * *

Some states require special education teachers to earn a master's degree in special education after earning their teaching certification.

* * *

Licenses

All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.

* * *

Requirements for certification vary by state. However, all states require 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.

Many states offer general special education licenses that allow teachers to work with students across a variety of disability categories. Others license different specialties within special education.

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

Some states allow special education teachers to transfer their licenses from another state. However, some states require even an experienced teacher to pass their own licensing requirements.

See <http://www.bls.gov/ooh/Education-Training-and-Library/Special-education-teachers.htm#tab-4>, accessed on December 4, 2013, 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." Moreover, the petitioner's specific level of education and experience are not required for "highly qualified" status under the NCLBA.

Counsel quotes remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: “This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas.” Counsel interprets this passage to mean that Congress created the national interest waiver for “highly qualified” educators. The Immigration Act of 1990, however, was not restricted to the creation of the waiver. It was, rather, an overhaul of the entire immigration structure, creating new employment-based immigrant classifications to replace the “third preference” and “sixth preference” classifications previously in place. “[S]cientists and engineers and educators” are all members of the professions who, under the terms dictated by Congress in the Immigration Act of 1990 (as it amended the Act), are all subject to the job offer requirement.

Counsel asserts that the director “erred in disregarding evidence demonstrating the national scope of the petitioner’s proposed benefit through her effective role in serving the national educational interest of closing the achievement gap.” The record, however, contains no evidence that the petitioner’s efforts have significantly closed that gap in [REDACTED] or nationally. The national importance of “education” as a concept, or “educators” as a class, does not establish that the work of one teacher produces benefits that are national in scope. *NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continues:

The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of [REDACTED] and [the petitioner’s] assigned school. The 2012 [REDACTED] Reading results show that out of the 24 Maryland school districts [REDACTED] ranked near the bottom at the “All Student” level for each [REDACTED] covered grade level

* * *

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

The petitioner has worked for [REDACTED] since 2005, and thus had been there for a number of years before the administration of the 2012 [REDACTED] tests. Counsel does not explain how the 2012 [REDACTED] results for [REDACTED] (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in “closing the achievement gap.”

Counsel 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*, 19 I&N Dec. at

534, n.2; *Matter of Laureano*, 19 I&N Dec. at 3, n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 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 school where she has taught.

Counsel points to the petitioner’s awards (items 1 – 17) as evidence of her “past history of achievement.” As previously discussed, the petitioner’s awards do not show that her work has had a wider impact on the field of elementary education, or that her work has otherwise influenced the field as a whole.

Counsel states that factors such as “the ‘Privacy Act’ protecting private individuals” make it “impossible” to compare the petitioner with other qualified workers and that USCIS “should have presented its own comparable worker.” The *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 school teacher. 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,” but 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 her work “would specifically benefit the national interest of the United States to a substantially greater degree than a similarly qualified U.S. worker.”

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 *NYS DOT*’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 cites to studies pointing to high turnover rates and inexperience among special education teachers. Again, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221. This information shows that there is a demand for credentialed special education teachers, a demand that the labor certification process can – and, in this instance, did – address.

Counsel asserts that the labor certification process poses a “dilemma” for the petitioner because she possesses qualifications “that could not be articulated in conformity with the process regulations.” Counsel’s assertion, however, is not supported by the evidence in the record. As previously indicated, [REDACTED] filed an Application for Permanent Employment Certification, ETA Form 9089, on behalf of the petitioner that was certified by the U.S. Department of Labor with a priority date of September 7, 2008. 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. *NYSDOT* at 218, n.5.

Counsel contends that a waiver would ultimately serve the interests of United States teachers, because if schools “fail to meet the high standard required under the [NCLBA]” the result would be “not only . . . closure of these schools but [also] loss of work for those working in those schools.” Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Again, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. at 534, n.2; *Matter of Laureano*, 19 I&N Dec. at 3, n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 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. However, there are no blanket waivers for highly qualified foreign teachers. As previously discussed, 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. *Id.* 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.

(b)(6)

NON-PRECEDENT DECISION

Page 17

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.