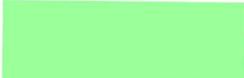


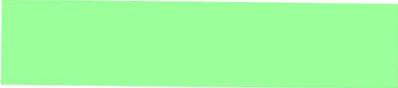
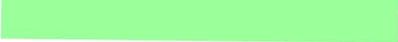


U.S. Citizenship
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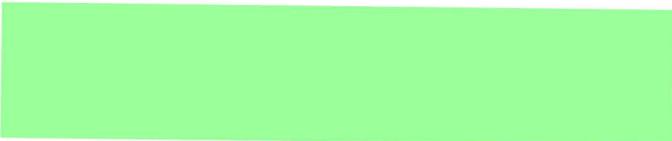


DATE: JAN 09 2014 Office: TEXAS SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

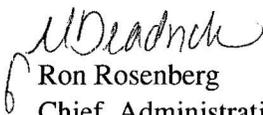


INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as an elementary school mathematics teacher. The petitioner has taught for [REDACTED] since 2007. At the time of filing, the petitioner was teaching 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 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 he 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 he 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 his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that he 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 his work as an elementary school mathematics teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work would be national in scope and whether he 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 the 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 October 7, 2011. In a September 29, 2011 letter accompanying the petition, counsel asserted that the petitioner's national interest waiver is based on his Doctor of Education degree, Master of Arts degree in Education, Bachelor of Secondary Education degree, Certificate of Appreciation for participating in the [REDACTED] during the first semester 1994-95, over twenty-five years of progressive teaching experience, and annual income of \$75,000. Academic degrees, occupational experience, salary, 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), (D), and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. See section 203(b)(2)(A) of the Act. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. 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 his 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 his work would extend beyond his 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 his impact as a elementary school mather teacher beyond the students at his school and, therefore, that his proposed benefits are national in scope. In addition, the record lacks specific examples of how the petitioner's work as a 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 he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he 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 letters of support from his principal at [REDACTED] a National Board Certified Teacher from [REDACTED], and a parent whose two children attend [REDACTED]

[REDACTED] Principal, [REDACTED], stated:

[The petitioner] has been a Math Resource teacher at [REDACTED] since December 2008 where he has received satisfactory ratings each year.

[The petitioner] consistently plans and delivers engaging, hands-on lessons aligned with math standards and curriculum frameworks. He is a master at integrating technology into his lessons to help students build their math skills and background. He has improved classroom management strategies tremendously since arriving at the school.

[The petitioner] works cooperatively and collaboratively with the remainder of the staff to plan for instruction. He has also developed outstanding relationships with the remainder of the staff as well as the students and families at the school.

[The petitioner] serves as the technology coordinator at the school since he has an extensive background and knowledge in this area. He works collaboratively with the county technology specialists to ensure that hardware is up and running for teachers to utilize. He also attends area technology meetings and has the responsibility of bringing the information back to the school to share with administration and staff.

[The petitioner] participated in our Extended Learning Program as well as our [REDACTED] this year. He worked with students in grades 3-6 to provide additional instruction on standards that students would be assessed on as part of MSA [Maryland School Assessment].

[The petitioner] is always willing to assist in whatever capacity is needed at the school. He has participated in Family Math Nights, Multicultural functions, MSA pep rallies, etc.

Ms. [REDACTED] comments on the petitioner's effectiveness as an educator and his activities at [REDACTED] but she does not indicate how the petitioner's impact or influence as school 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.

[REDACTED] a National Board Certified Teacher, and Academic Dean for Science, Technology, Engineering and Mathematics (STEM), [REDACTED] stated:

[The petitioner] currently serves in [REDACTED] as a Mathematics Resource Specialist where he has bolstered the mathematics program, improved student learning and provided needed intervention and acceleration programs for the last 3 years.

In the role of Mathematics Resource Specialist, [the petitioner] has proven his ability to encourage and provide direction to other teachers and to make personal connections with students, assessing their current academic ability and competency then working steadfastly to elevate and propel them to more advanced levels of performance. [The petitioner] understands the importance of using data to make instructional decisions to improve student achievement.

[The petitioner] has elevated mathematics learning at [redacted] by providing intervention support to all students while infusing technology. He has worked tirelessly to create and implement mathematics content that provides remediation for some and enrichment for others. The students that are privileged to work with [the petitioner] consistently show improvement on standardized tests, demonstrate a deeper mathematical understanding of mathematics content, and more readily make connections between disciplines and the real-world.

[The petitioner] approaches all of his responsibilities in a highly professional, proactive, empathetic and organized manner, from greeting students every morning and initiating math skills review in the hallway with students to developing and refining curriculum and lessons for realizable improvements in student performance. He is an exceptional mathematics teacher, intervention specialist, curriculum writer and a goal-oriented educator.

Ms. [redacted] comments on the petitioner's work with the mathematics program, improvement of student performance, positive interaction with other teachers, professionalism, and favorable teaching qualities, but she does not indicate that the petitioner's work has had, or will continue to have, an impact beyond [redacted] and the [redacted] system that employed him. While Ms. [redacted] speaks highly of the petitioner, her observations fail to demonstrate that the petitioner's work has influenced the field as whole.

[redacted] a parent whose two children attend [redacted], stated that the petitioner assisted with "safety issues and some language barriers that [may] exist during dismissal." In addition, Ms. [redacted] states that the petitioner remains "outside until all the students have left or parents have arrived." Ms. [redacted] 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 three references praise his personal character and abilities as an educator, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the school system where he has taught. They also do not address the *NYS DOT* 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. *NYS DOT* 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 the petitioner’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 his 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 Doctor of Education degree;
2. A Master of Arts degree in Education;
3. A Bachelor of Secondary Education degree;
4. Academic transcripts;
5. A Certificate of Appreciation from the Vice President of the Philippines acknowledging the petitioner’s participation as a Teacher Counterpart/Adviser in the Philippine Drug Abuse Resistance Education Program at [REDACTED] during the first semester (1994-1995);
6. A March 17, 1994 letter from the Vice President of the Philippines thanking the petitioner for his help in the pilot phase of the Philippine Drug Abuse Resistance Education Program at [REDACTED] during the second semester (1993-1994);
7. A Certificate of Achievement from the principal of [REDACTED] for the petitioner having completed his second year of teaching at the school (June 15, 2009);
8. A certificate from the principal of [REDACTED] for “making a difference in the lives of the students” at the school (June 16, 2010);
9. A Certificate of Appreciation from the principal of [REDACTED] for “time and devotion to Saturday Academy teaching 5th grade math at [REDACTED]” (March 12, 2011);
10. A Certificate of Appreciation from the principal of [REDACTED] for “time and devotion to Extended Learning Opportunities Program teaching 3rd grade math at [REDACTED]” (March 17, 2011);
11. A certificate from the principal of [REDACTED] thanking the petitioner for his contribution to the school’s landscaping project on October 22, 2009;

12. A Maryland Educator Certificate; and
13. A Form W-2 Wage and Tax Statement for 2010 reflecting earnings of \$74,439.80.

Again, academic records, professional certifications, salary, 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 his field, but the petitioner has failed to demonstrate that the awards he received are nationally significant awards in the field of mathematics education. There is no documentary evidence showing that items 1 through 13 are indicative of the petitioner's influence on the field of elementary education at the national level.

The director issued a request for evidence on July 12, 2012, instructing the petitioner to submit evidence demonstrating that the benefits of his proposed employment would be national in scope and that he "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 14, 2008 article in *The New York Times* entitled "Report Urges Changes in Teaching Math," an article in *Computer Science Technology* entitled "Importance of Science and Math Education," an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?," 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), 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, information about STEM fields printed from the online encyclopedia *Wikipedia*, an article entitled "Effective Programs in Middle and High School Mathematics: A Best-Evidence Synthesis," 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*, 22 I&N Dec. 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 teacher has influenced the field as a whole.

The director denied the petition on April 11, 2013. The director indicated that the petitioner had not shown that the proposed benefits of his work as an elementary school math teacher will be national in scope. The director also determined the petitioner had failed to submit "evidence that demonstrates that he has a past record of prior achievements with some degree of influence on the field as a whole." The director therefore concluded that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

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

Counsel argues that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and claims that “[t]he obscurity in the law that *NYSDOT* sought to address has been clarified,” because “Congress has spelled out the national interest with respect to public elementary and secondary school education” through such legislation. In addition, counsel contends that “the NCLB Act 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*; that legislation did not amend section 203(b)(2) of the Act. Counsel 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, 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 individual’s “services . . . are sought by an employer in the United States.” By the plain language of the statute that counsel quotes on appeal, a professional holding an advanced degree is presumptively subject to the job offer requirement, even if that individual “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 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 “USCIS erred in disregarding evidence demonstrating the national scope of the petitioner’s proposed benefit through her [sic] 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 MSA Reading results show that out of the 24 Maryland school districts [redacted] ranked near the bottom at the “All Student” level for each MSA-covered grade level

* * *

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

The petitioner has worked for [redacted] since 2007, and thus had been there for a number of years before the administration of the 2012 MSA tests. Counsel does not explain how the 2012 MSA results for [redacted] (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in “closing the achievement gap.”

Counsel 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 his students,” counsel did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner’s work has had an impact or influence outside of the schools where he has taught.

Counsel points to the petitioner’s awards (items 5, 7, 8, 9, and 10) as evidence of his “past history of achievement.” As previously discussed, the petitioner’s awards do not show that his work has had a wider impact on the field of elementary mathematics education, or that his 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 his field. Instead, the director determined that “the petitioner has not established that a waiver of the job offer and labor certification requirement will be in the national interest of the United States.”

Counsel states that while the NCLBA “requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement.” However, assertions regarding the need for educational reform in the United States only address the “substantial intrinsic merit” prong of *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 him apart from other educators with regard to raising student achievement in [redacted] or nationally.

Counsel emphasizes “the critical timeline” and “time-sensitive obligation” for hiring “Highly Qualified Teachers,” and claims that the labor certification process poses a “dilemma” for the petitioner because he possesses qualifications and “years of dedicated service” that “could not be articulated in conformity with the process regulations.”

Section 9101(23) of the NCLBA defines the term “Highly Qualified Teacher.” Briefly, by the statutory definition, a “Highly Qualified” 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 petitioner submitted information from the U.S. Department of Labor’s *Occupational Outlook Handbook* describing the minimum qualifications necessary to become an elementary school teacher:

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

* * *

Education

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

* * *

Some states require kindergarten and elementary school teachers to earn a master’s degree after receiving 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, typically gained through student teaching. Some states require a minimum grade point average. States often require candidates to pass a general teaching certification test, as well as a test that demonstrates their knowledge of the subject they will teach. Although kindergarten and elementary school teachers typically do not teach only a single subject, they may still be required to pass a content area test to earn their certification.

Teachers are frequently 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.

All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification.

The petitioner has not established that the NCLBA's "Highly Qualified" standard involves requirements that are significantly more stringent than those outlined in the *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "Highly Qualified Teacher." Thus, the petitioner's specific qualifications and experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers." 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 he 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 No Child Left Behind [] Law," the result would be "not only . . . closure of these schools but [also] loss of work for those working in those schools." Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Again, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 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 special educators such as the petitioner, "more American teachers will have . . . employment opportunities" because standards will be met and schools will not be abolished. As previously discussed, there are no blanket waivers for

highly qualified foreign teachers; USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *NYSDOT* at 217.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that his 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 his 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 petitioner must have “a past history of demonstrable achievement with some degree of influence on the field as a whole”). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.