

(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

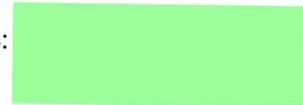


U.S. Citizenship  
and Immigration  
Services

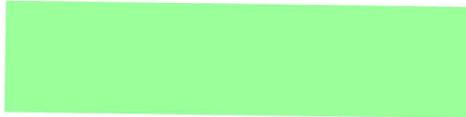


DATE: Office: TEXAS SERVICE CENTER FILE:

JAN 10 2014



IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a mathematics teacher. The petitioner taught for [REDACTED] at [REDACTED] in [REDACTED] from August 2008 until June 2009 and at [REDACTED] in [REDACTED] from August 2009 until November 2011. 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 a mathematics teacher for PGCPS 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 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 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 February 9, 2012. In a February 3, 2012 letter accompanying the petition, counsel asserted that the petitioner's national interest waiver is "based on his expertise in the . . . field as evidenced by his Master of Arts degree in Education" and "solid teaching experience in Mathematics of over thirty (30) years." Counsel also pointed to the petitioner's positions as dean and college registrar at [REDACTED]. Academic degrees and occupational experience are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), 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 addition, counsel stated:

But for the unfortunate incident that happened to [REDACTED] [the petitioner] would have continued the joy and honor of teaching his students in Maryland. [REDACTED] on the same note would love to retain the status quo were it not [for] the said unfortunate incident.

Counsel refers above to the debarment provisions of section 212(n)(2)(C)(i) of the Act invoked by the U.S. Department of Labor against [REDACTED] owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS cannot approve any employment-based immigrant or nonimmigrant petitions filed by [REDACTED]. This debarment means that [REDACTED] is, temporarily, unable to file its own petition on the petitioner's behalf, and thus explains why labor certification is not an option in the short term. 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. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent [REDACTED] from filing a petition on his behalf.

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

---

<sup>1</sup> The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. See <http://www.dol.gov/whd/immigration/H1BDebarment.htm>, accessed on December 12, 2013, copy incorporated into the record of proceeding.

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 school such that they will have a national impact. *NYS DOT* 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 mathematics 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 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 various letters of support from administrators, teachers, former students, and a parent discussing his 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

[REDACTED] Principal of [REDACTED] stated:

[The petitioner] has served the students and community of [REDACTED] for 2 years as a Mathematics teacher. During this time, the instructor has earned satisfactory evaluations, participated in collaborative instructional planning sessions, shared in continuous professional development sessions to enhance instructional practices, and developed an instructional program that supported student achievement for diverse student populations.

Therefore, it is without any reservation that I recommend [the petitioner] for continued employment in the United States as an educator.

Ms. [REDACTED] comments on the petitioner's activities at [REDACTED] and expresses her recommendation for his continued employment as an educator, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under his tutelage and the local school system that employed him. In addition, Ms. [REDACTED] observations fail to demonstrate that the petitioner's work has influenced the field as a whole.

Mathematics Teacher and Coordinator, stated:

[The petitioner] taught Algebra 1 at for the school year 2008-2009.

[The petitioner] was an excellent teacher. His students responded very well to him and he was well prepared for every class he taught.

[The petitioner's] interactions with students, parents and teachers were always professional and positive. His attendance was outstanding and he always completed everything I asked of him in a timely manner.

[The petitioner] took advantage of every opportunity to grow professionally by attending workshops and training sessions that were offered to him.

Because of a change in curriculum, we were forced to cut five math positions and since [the petitioner] was one of the last 5 teachers we had hired, he transferred to another school in our county.

Ms. comments on the petitioner's effectiveness as an algebra teacher, positive interactions with others, outstanding attendance, timeliness, and pursuit of professional development opportunities, but she does not indicate how the petitioner's impact or influence as an educator is national in scope.

a parent whose child was taught by the petitioner at stated:

It is my pleasure to commend [the petitioner] on his excellent teaching skills and his ability to motivate the students in his classroom at

My daughter is a senior at [The petitioner] was her Pre-Calculus teacher in 11th grade (2010-11) and her Advanced Placement Calculus teacher the first part of 12th grade (2011).

As a result of [the petitioner's] instruction, my daughter was able to grasp the concepts in Pre-Calculus and Calculus with ease. She did exceptionally well in his classes and often spoke about her love for math as a result of his methods of teaching as well as his vibrant personality. Because of [the petitioner], Pre-Calculus and Calculus were her favorite classes as he always encouraged her and challenged her to do her best.

Ms. commends the petitioner's teaching skills and ability to motivate students, and asserts that the petitioner increased her daughter's knowledge of calculus concepts and interest in mathematics, 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 mathematics teachers.

The petitioner's references praise his 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 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 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 March 8, 2004 certification from the [REDACTED] Commission on Higher Education, Regional Office III stating that the petitioner is a member of the Regional Quality Assessment Team under the Science and Mathematics disciplinal clusters;
2. A "Personal Success Award" from the Principal of [REDACTED] in recognition of "Dedication to Hall Duty" (January 1, 2011);
3. A Certificate of Appreciation from the President of [REDACTED] for serving as Resource Person in the 3-day Seminar-Workshop on "Enhancing Teachers' Research Capabilities" given at [REDACTED] (May 12, 2006);
4. A Certificate of Appreciation from the administration of [REDACTED] for serving as Resource Speaker in "Test Construction" (June 2, 2003);
5. A "Plaque of Appreciation" from the Commandant of the Air Reserve Command, Headquarters [REDACTED] of Air and Science Tactics, [REDACTED]

- for “support and contribution to the Goals and Objectives of [REDACTED] of Air Science and Tactics” (March 25, 2006);
6. A Certificate of Appreciation from the Officer-in-Charge, Regional Office Number III, [REDACTED] National Police Commission in acknowledgement of “continuous support to the Commission as Examiner during the conduct of the [REDACTED] Entrance and Promotional Examinations on April 29, 2007 at [REDACTED]”;
  7. A Certificate of Appreciation from the Regional Director and Assistant Regional Director, Regional Office Number III, [REDACTED] National Police Commission in acknowledgement of services “rendered as Examiner during the conduct of the [REDACTED] Entrance and Promotional Examinations on November 26, 2006 at [REDACTED]”;
  8. Employment verifications;
  9. A Maryland Educator Certificate;
  10. Degrees and academic transcripts;
  11. A “Certification of Good Standing” from the [REDACTED] Professional Regulation Commission, [REDACTED];
  12. A letter from the Membership Specialist of the Maryland State Education Association (MSEA) stating that the petitioner is a member of the National Education Association (NEA), MSEA, and [REDACTED];
  13. A letter from the Director of Administration of the [REDACTED] stating that the petitioner is a member of the [REDACTED] MSEA, and NEA; and
  14. A Certificate of Membership from the Maryland Chapter of the Association of [REDACTED] Teachers of America.

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 his field, but the petitioner has failed to demonstrate that the awards he received (items 2 – 7) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 14 are indicative of the petitioner’s influence on the field of education at the national level.

The petitioner also submitted various certificates of participation and attendance for training courses and seminars relating to his 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 his “satisfactory” teacher evaluations from [REDACTED]. The petitioner, however, failed to

demonstrate how the evaluations reflect that he has impacted the field to a substantially greater degree than other similar qualified mathematics teachers and how his specific work has had significant impact outside of the schools where he has taught.

The petitioner also submitted a January 6, 2012 letter from the Head Librarian, [REDACTED] stating:

This is to certify that the Graduate School Thesis of [the petitioner] entitled [REDACTED] [REDACTED] which was published in March 1995 is being used as . . . Library Reference Material in the Graduate School Section of the [REDACTED] [REDACTED]

While the petitioner's thesis is catalogued in the library of the school where he received his Master of Arts in Education degree, there is no evidence demonstrating that the petitioner's published findings were implemented by a number of schools, were frequently cited by independent educational scholars, or have otherwise influenced the field as a whole.

The director issued a request for evidence (RFE) on May 26, 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"; 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 (science, technology, engineering and mathematics) fields printed from the online encyclopedia *Wikipedia*; an article entitled "Effective Programs in Middle and High School Mathematics: A Best-Evidence Synthesis"; an article discussing the highlights from the Trends in International Mathematics and Science Study (2007); an article entitled "Supporting Science, Technology, Engineering, and Mathematics Education – Reauthorizing the Elementary and Secondary Education Act"; and an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?" 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 a mathematics teacher has influenced the field as a whole.

The petitioner's response to the director's RFE included a Form I-797, Notice of Action, "Approval Notice" for a [REDACTED] teacher who received a national interest waiver. Counsel asked that the present petition "be adjudicated in the same light." Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. Without such evidence, the assertion that both cases merit the same outcome is unwarranted. The only stated similarity is that the beneficiary of the approved petition was also a teacher in [REDACTED]

The director denied the petition on September 6, 2012. The director indicated that the petitioner had not shown that his "contributions have been greater than other workers in the same field." The director also determined that the petitioner had failed to demonstrate that his "contributions have influenced the field such that the request for a waiver of labor certification would be warranted." 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 the petitioner's positive impact on students, "who are future U.S. workers and thus equally protected by labor certification process," warrants a waiver of the job offer requirement in the national interest. Counsel comments on the trend of "declining performance by American students," but there is no documentary evidence showing that the petitioner has played a specific role in reversing that trend on a national level. Neither the petitioner himself nor any of his references indicate that his work has impacted the field beyond the schools where he has taught.

In addition, counsel states: "The academic performance of each American student is weighed against the rest across the nation for each grade level by the United States Department of Education for the purpose of determining their competitive standing globally which crucially gauges the prospective economic condition of the United States of America." Counsel points to the NCLBA as a legislative initiative to improve student performance in the United States. Counsel further states:

[T]he most tangible national benefit to be derived from a 'Highly Qualified Mathematics Teacher' is recreating a society of responsible and values-driven citizens including a highly productive and well-balanced work force that would translate the current recession adversely affecting the United States of America into a formidable economy again including national security.

Counsel does not explain how the actions of one mathematics teacher would contribute significantly to nationwide social reform, economic recovery, or national security. 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). Again, general assertions about the overall importance of education, and the need for education reform, do not exempt every teacher from the job offer requirement. Congress did not create a blanket waiver for teachers of math, science or any other subject. A plain reading of the statute indicates that an individual who works in a beneficial profession such as teaching mathematics is not automatically or presumptively exempt from the job offer requirement.

Counsel asserts: “Exclusively and strictly enforcing the rudiments behind the New York State Department of Transportation Case to Highly Qualified Teachers is unjust, unreasonable and damaging to the ‘Best Interest’ of the American School Children.” Precedent decisions are binding on all USCIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Counsel cites no statute, regulation or case law that would require or permit USCIS to disregard *NYSDOT* as it applies to school teachers. Counsel refers to presidential speeches and federal initiatives such as the NCLBA, stating that they demonstrate the “underlying urgency on this matter,” but counsel identifies no special legislative or regulatory provisions that exempt school teachers from *NYSDOT*.

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. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506. 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 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 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 providing “legal immigrant status for ‘Highly Qualified Mathematics Teachers’ including [the petitioner] . . . will not only help improve the Mathematics Education in the country but more importantly serve as ‘key to the nation’s economic prosperity.’” Again, counsel does not explain how the actions of one teacher would contribute significantly to improving the national educational system or the U.S. economy. Congress could have created a blanket waiver for mathematics teachers, but did not enact such legislation. Instead, the job offer requirement applies to members of the professions (such as public school teachers) and to aliens of exceptional ability

(i.e., foreign national workers who show a degree of expertise significantly above that ordinarily encountered in a given field).

Counsel emphasizes “the critical timeline” and “time-sensitive obligation” for hiring “Highly Qualified Teachers,” and claims that the labor certification process cannot accommodate this need because “[t]he United States Department of Labor minimum education requirement . . . for High School Teacher is just a bachelor’s degree.”

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 a high school teacher:

High 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 high school teachers to have at least a bachelor’s degree. Most states require high school teachers to have majored in a content area, such as chemistry or history.

\* \* \*

Some states require high school teachers to earn a master’s degree after earning their teaching certification.

\* \* \*

Licenses

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

\* \* \*

Requirements for certification vary by state. However, all states require at least a bachelor's degree. States 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 typically require candidates to pass a general teaching certification test, as well as a test that demonstrates their knowledge in the subject they will teach.

Often, teachers are required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check, and some states require teachers to complete a master's degree after receiving their certification.

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

The petitioner has not established that the "Highly Qualified" standard of the NCLBA 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 master's degree and years of 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." Moreover, the employment certification process outlines the minimum requirements for a job opportunity. It does not preclude the employer from hiring applicants that exceed the minimum qualifications for the position.

Counsel states that "unquantifiable factors that zero in on 'passion'" distinguish the petitioner from qualified United States workers and that labor certification cannot take these factors into account, but the record contains no evidence to support the claims. Counsel also contends that, under the NCLBA, schools that fail to meet specified benchmarks will lose federal funding and be "abolished," thereby putting teachers out of work. 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* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506.

In addition, counsel asserts that by waiving the labor certification requirement for highly qualified teachers such as the petitioner, "more American teachers will have ... employment opportunities" because standards will be met and schools will not be abolished. However, 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 individual 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*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.