



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JAN 13 2014 OFFICE: TEXAS SERVICE CENTER

[Redacted]

IN RE: Petitioner:
Beneficiary:

[Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a middle school science/special education teacher in [REDACTED]. Since 2008, the petitioner taught at [REDACTED], part of the [REDACTED] system. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

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

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

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

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

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

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

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

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 29, 2012. In an accompanying introductory statement, counsel stated that the petitioner’s “petition for waiver of the labor certification is premised on her Master of Arts in Education (Major in Educational Management) and nearly thirty (30) years of inspired, innovative, and progressive teaching experience in both the United States and the Philippines.” Academic degrees and experience can support a claim of exceptional ability in the sciences, the arts, or business, under the USCIS regulations at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (B), respectively. Exceptional ability, however, does not establish eligibility for the waiver, and therefore partial evidence of exceptional ability is not sufficient to show eligibility for the waiver.

Counsel stated: "During her time in the Philippines, [the petitioner's] . . . instruction techniques had proven so effective that her classes were used as a model by the [redacted] for their in-campus observation and practice teaching in Integrated Science and Biology." The petitioner taught at [redacted] (which includes a high school) from 1987 to 2008, and was a graduate student there during some of that time. The use of her work at that school, therefore, would not demonstrate wider influence.

Furthermore, counsel's assertions are not evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains letters from officials of [redacted] but these witnesses did not state that the petitioner's "classes were used as a model" as counsel asserted. Therefore, counsel's claim is unsupported.

Counsel stated:

Here in the United States . . . [the petitioner's] influence in her profession continues to expand. . . .

Through her hard work, [the petitioner] quickly rose to acclaim among her colleagues, earning Teacher of the Month for January 2011. Additionally, [the petitioner] serves as a leader in the [redacted]. This program is intended to help implement the Apple iPad in connection to the educational setting. At the moment, this program is in its pilot stages in only four selected middle schools in the nation, including [the petitioner's] school, [redacted] in [redacted]. [The petitioner's] leadership includes choosing appropriate applications for students with special needs to be utilized by all students using iPads in the classroom.

[The petitioner's] influence in the field of education, therefore, is not only local in scope among her students and her immediate educational community, but also extends throughout the country and within tangential sectors of the economy and technological fields. Her widespread, integrated influence in education and throughout her communities is critical to pursuit of the national interest.

The petitioner submitted a copy of her "Teacher of the Month" certificate, but the record contains no further evidence or information about the program that counsel described in the quoted passage apart from a [redacted] "Certificate of Completion" showing that the petitioner completed [redacted] Teacher Training" in January 2012. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The reference to "four selected middle schools in the nation" implies that the program is national rather than regional or local, but the record does not identify the other three participating schools or state their location. Also, the petitioner's participation in a pilot program

does not mean that she is responsible for creating the program or implementing it more widely, or that the petitioner had anything to do with [REDACTED] selection as one of the pilot schools. Rather, her completion of “[REDACTED] Teacher Training” indicates that the [REDACTED] program was developed first, and then the petitioner (and other participants) received training in its implementation.

Apart from the “Teacher of the Month” certificate, other certificates in the record that counsel called “Awards/Recognitions” consist primarily of “Certificates of Appreciation” and “Teacher Recognition Certificates” from [REDACTED]. A “Certificate of Recognition” from [REDACTED] acknowledged the petitioner’s “Perfect Attendance in the training course on basic office productivity tools,” and the [REDACTED] gave the petitioner a “Certificate of Commendation . . . for training the participants of [REDACTED] in the SciQuiz 2006.”

Counsel claimed a statutory basis for the waiver claim, asserting:

As the U.S. Congress has identified in the No Child Left Behind Act of 2002 (NCLB), elementary education, particularly in the fields of science, technology, engineering, and mathematics (STEM) is critical to the future of the United States and its position as a global leader in an increasingly competitive global market. Similarly, the Individuals with Disabilities Education Act (IDEA) stresses the need to offer the same support and guidance to the education of all America’s children, especially those more in need of individualized education plans.

Through these acts, the federal government has provided guidelines to see the evolution of the U.S. Educational System; similarly, it has earmarked funds to support the system’s growth and to see that highly qualified educators like [the petitioner] can have the resources to provide their skills to the best of their ability.

Counsel cited no passage from the NCLB Act or from the IDEA relating specifically to the national interest waiver or, more generally, to immigration provisions for teachers. General emphasis on the importance of education does not create specific immigration benefits for foreign teachers.

The petitioner submitted several letters from witnesses at [REDACTED] attesting to the petitioner’s talent and dedication as a teacher. Many of these submissions are letters of recommendation intended for employers. For example, [REDACTED] stated: “I strongly recommend [the petitioner] without reservation for a teaching position in your school.” These letters focus on information that would be of interest to potential employers (such as her classroom management style) rather than the petitioner’s impact or influence on her field as a whole. Other letters, written more recently specifically to support the petition, are complimentary toward the petitioner but, like the letters intended for employers, emphasize the local impact of the petitioner’s work.

The petitioner submitted copies of cards and letters from some of her former students at [REDACTED] and their parents. These informal messages conveyed thanks and appreciation directly to the petitioner,

but do not address the petitioner's impact outside the classroom. The statements from administrators, teachers, students, and students' parents establish that the petitioner has earned the respect of the [REDACTED] community, but being a competent and respected teacher is not sufficient to meet the *NYS DOT* threshold for the national interest waiver.

The petitioner submitted a copy of a letter from [REDACTED], superintendent of schools for [REDACTED], informing the petitioner: "At this time, [REDACTED] is debarred by the Department of Labor from sponsoring visa extensions for its foreign national employees," and therefore [REDACTED] "will be unable to extend your employment beyond" "the expiration date of your H1-B visa." The threshold for waiving the job offer requirement is the national interest, rather than the inability of a particular employer to petition for an intended employee. 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 the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *NYS DOT* at 218 n.5.

Furthermore, the debarment affects only [REDACTED]; other schools and districts remain able to petition on the petitioner's behalf. The record contains a copy of a "Professional Teacher" license for "Science Education (7-12)" and "Special Education Generalist (5-21)," issued by the State of Colorado on March 12, 2012, less than four months before the petition's filing date. This new license implies that the petitioner is open to employment outside of [REDACTED].

The petitioner submitted copied pages from [REDACTED] identifying her as a consultant to the publication. The petitioner submitted no evidence of circulation outside the school. The record does not show that her consulting role on a student publication has influenced education on a national scale.

The director issued a request for evidence on September 29, 2012, stating: "The petitioner must establish that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole. The beneficiary's previous influence on the field as a whole must justify projections of future benefit to the national interest."

In response, counsel quoted section 203(b)(2)(A) of the Act: "Visas shall be made available . . . to qualified immigrants who . . . will substantially benefit prospectively the national . . . educational interests . . . of the United States." Counsel also quoted then-President George H.W. Bush who, upon signing IMMACT 90 into law, stated that the law "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 concluded that "education is one of the sectors that the E21 preference classification seeks to address." That immigrant classification does include educators, but it also incorporates a requirement that the immigrants' "services . . . are sought by an employer in the United States." The legislation does not show that teachers automatically qualify for the waiver; it proves the opposite.

Counsel stated:

the contours of the national interest waiver under INA § 203(b)(2)(B)(i) were amorphous at best. . . .

[T]he United States Congress has spelled out the national interest with respect to public elementary and secondary school education through the No Child Left Behind Act of 2001 (“NCLB Act”), 20 U.S.C. § 6301 et seq. . . .

[T]he NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in connection with an E21 visa petition for employment as a Highly Qualified Teacher in the public middle school education sector.

The obscurity in the law that *NYSDOT* sought to address has been clarified, at least with respect to questions about the national educational interest. Thus, an automatic application of *NYSDOT*'s exacting standards in a national interest waiver connected with a job in a public school district, without considering the wide-ranging impact of the NCLB Act, would be inapposite given the factual circumstances availing in *NYSDOT* and the post-*NYSDOT* enactment of the NCLB Act. More importantly, a straight-jacket [*sic*] application of *NYSDOT* constricts, instead of promoting, the national educational interests. In effect, therefore, the United States Congress, with the enactment of the NCLB Act, has preempted the USCIS with respect to the parameters that should guide its determination whether a job offer requirement based on the national educational interests is warranted. Otherwise stated, the requirement of a job offer or labor certificate for the occupation of Highly Qualified Middle School Special Education Teacher in a public school district should be waived if it is established that the alien will substantially benefit prospectively the national educational interests of the United States, as these interests are enunciated in the NCLB Act and the Obama Education Programs.

The NCLB Act, however, did not amend the Immigration and Nationality Act or mention the national interest waiver. The statute contains several references to “immigrant children and youth” (*e.g.*, section 301 of the NCLB Act bears the title “Language Instruction for Limited English Proficient Children and Immigrant Children and Youth”), but no references to immigrant teachers. The NCLB Act does not refer to section 203(b)(2) of the Act, and the phrase “national interest” does not appear in its text.

In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95, 113 Stat. 1312 (1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Thus, Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*. Absent a comparable provision in the NCLB Act or other education-related legislation, the petitioner has not established that the legislation indirectly implied a blanket waiver for teachers. This legislation also shows that the creation of a blanket waiver is a prerogative

belonging to Congress rather than to USCIS. USCIS will not designate blanket waivers for entire fields or specialties. *See NYS DOT* at 217.

Regarding the claimed ambiguity of *NYS DOT* with respect to teachers, that decision pointed to school teachers as an example of an occupation that is nationally important at a collective level, but lacks national scope at an individual level. *Id.* at 217 n.3.

Counsel claimed that the NCLB Act gives the petitioner's work national scope because the legislation aimed to effect national-level changes in the quality of public education. This assertion concerns the national scope of public education as a whole, and of the NCLB Act as a statute, but it does not follow that every worker affected by the statute produces national-level benefits at an individual (rather than cumulative) level. Overall benefits produced by a generally applicable statute, such as the NCLB Act, do not entitle every foreign worker covered by that law to special immigration benefits such as the national interest waiver.

In the passage quoted above, counsel contended that a waiver is in order "if it is established that the alien will substantially benefit prospectively the national educational interests of the United States." The plain text of section 203(b)(2)(A) of the Act, however, states: "Visas shall be made available . . . to qualified immigrants who . . . will substantially benefit prospectively the national . . . educational interests, or welfare of the United States, and whose services . . . are sought by an employer in the United States." In this way, Congress specified that substantial prospective benefit to the interests of the United States is not sufficient for the waiver; an intending immigrant who offers such benefit must still be "sought by an employer in the United States." The NCLB Act did not establish a lower standard for teachers.

Citing background materials regarding the performance of U.S. students compared to students in other nations, counsel stated: "Given the mediocre performance by American students in Math and Science globally, [the petitioner's] success in the state of Maryland would certainly bear national impact." Counsel also cited the "achievement gap" between underprivileged students and those from more affluent backgrounds, and stated that the Teach for America program, which places minimally trained recent college graduates into classrooms, has produced disappointing results compared to the petitioner's "proven success." Counsel, however, also quoted statistics showing that [redacted] students continue to perform poorly in comparison to other Maryland students. The record does not show that the petitioner, in her several years at [redacted] has perceptibly closed the achievement gap. The claim that she will do so in the future is unsupported speculation.

Counsel asserted that the "Teach for America Program . . . is reported to have rare positive impact," and emphasized that Congress enacted the NCLB Act in order to reform and improve public education, but counsel cited no statistics indicating that the NCLB Act has improved education more than Teach for America has done. Counsel focused on the claimed intention behind the NCLB Act, rather than on its results in the decade since its enactment.

Counsel cited studies indicating that special education teachers "with more training were more likely to indicate they intended to leave." Counsel claimed that, "given [the petitioner's] highly achieved

qualifications, she is not one of those with more training more likely to indicate they intended to leave,” but offered no support for the claim that “highly achieved qualifications” counteract this trend among special education teachers “with more training.” The studies that counsel cited indicated that the correlation existed only with regard to “intent to leave”; they showed no such correlation with “leaving, moving or exiting.” Therefore, the study, as described by counsel, does not appear to show that more highly trained teachers actually act upon their “intent to leave” in greater numbers than other special education teachers. Also, the departure or reassignment of a single special education teacher is a local staffing issue rather than a matter of national significance.

Counsel claimed that the labor certification process would pose a “dilemma” because the petitioner’s qualifications exceed the minimum requirements for the position, and “the employer is required by No Child Left Behind (NCLB) Law . . . to employ highly qualified teachers.” Counsel did not show that these two considerations are incompatible. Section 9101(23) of the NCLB Act defines the term “highly qualified teacher.” By the statutory definition, a “highly qualified” school teacher:

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

Counsel did not explain how the above requirements are incompatible with the existing labor certification process, and the petitioner submitted no evidence that the labor certification requirement has resulted in the widespread employment of teachers who are less than “highly qualified.” The minimum degree requirement is the same for labor certification as it is for a highly qualified teacher (*i.e.*, a bachelor’s degree).

Counsel requested “equitable consideration” of the debarment order which temporarily prevents [redacted] from petitioning for foreign workers. The waiver, however, is neither a humanitarian provision nor a loophole for debarred employers and their workers. The statutory standard for the waiver is the national interest, benefiting the United States to an extent greater than the prospective national benefit that would arise from exceptional ability in one’s field.

The petitioner submitted copies of new certificates that she received after the petition’s filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). Certificates issued after the filing date cannot retroactively establish eligibility. USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

Also, the certificates themselves would not establish eligibility even if they had predated the filing date. Most of the certificates are from [redacted] either “Certificates of Appreciation” acknowledging the petitioner’s participation in school events or “Certificates of Completion” documenting the petitioner’s ongoing training. These materials do not show that the petitioner has had or will have a significant impact beyond [redacted]. The only certificate not from [redacted] is from her church, “in

recognition of Teacher Appreciation Day.” The petitioner appears to have received this certificate because she is a teacher affiliated with the congregation; she did not show that it has any other significance.

Electronic mail messages, both dated December 1, 2012, welcomed the petitioner “to the Learning Disabilities Association of America” and “as a new member of NASET,” the National Association of Special Education Teachers. Membership in professional associations is a criterion of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(E), but exceptional ability does not demonstrate eligibility for the waiver and the petitioner did not show that membership in the named associations requires a level of impact or achievement consistent with the national interest waiver. Also, as with the new certificates from PGCPs, the membership evidence dates from several months after the petition’s filing date.

The petitioner submitted new reference letters as well as copies of some letters submitted previously. Some of the letters deal with her performance as a teacher, others with her volunteer work in the community. These letters are not significantly different from the letters initially submitted with the petition. They contain praise for the petitioner’s local work and her personal character, but do not indicate that the petitioner has had any wider effect on public education in the United States.

The director denied the petition on March 29, 2013. The director acknowledged that the “petitioner submitted more than twenty recommendation letters and copies of certificates,” and discussed the petitioner’s response to the request for evidence. The director stated: “The petitioner’s evidence . . . praises her abilities and the critical nature of her position, but fails to explain how the benefits of her employment will be national in scope.” The director also stated that, whatever the overall importance of education, “[t]he issue in this case is not whether education is in the national interest, but whether the beneficiary, to a greater extent than U.S. workers having the same qualifications, plays a significant role in that field.”

Several additional passages in counsel’s appellate brief are repeated verbatim from the earlier response to the request for evidence. One of the repeated passages concerns the claim that, by enacting the NCLB Act, Congress clarified the “national educational interest.” In new language, counsel asserts that the director “gave insufficient weight to the NCLB Act” and “the Obama administration’s current initiatives aimed at enhancing that law.” Counsel has not established that the NCLB Act contains immigration provisions that amended the Immigration and Nationality Act.

Counsel states:

The Matter of New York State Dept. of Transportation obviously is good in so far as NIW cases filed by Engineers are concerned but does not give justice to other professionals especially since the facts are definitely distinct from each other, not to mention subsequent legislations intended to provide guiding principles to implement Immigration Act of 1990.

With respect to “subsequent legislations intended to provide guiding principles to implement [the] Immigration Act of 1990,” the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102-232, 105 Stat. 1733 (Dec. 12, 1991) made the national interest waiver available to members of the professions holding advanced degrees, where previously it was available only to aliens of exceptional ability. Following the 1998 publication of *NYSDOT*, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999 amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. These statutes “provide guiding principles” with respect to the national interest waiver. Counsel has identified no legislation that contains a comparable provision for teachers.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984). The statutory language of section 203(b)(2)(A) of the Act subjects professionals, including teachers, to the job offer requirement.

Counsel claims that *NYSDOT* “requires overly burdensome evidence on the qualification [*sic*] of the self-petitioner, identical to EB-1 extraordinary requirements.” The evidentiary requirements to establish extraordinary ability appear at 8 C.F.R. § 204.5(h)(3). Those requirements are not “identical” to the guidelines in *NYSDOT*, and the director did not deny the petition due to the petitioner’s failure to establish extraordinary ability. Concerning counsel’s assertion that the waiver is “available to those either ‘with an advanced degree’ or ‘exceptional ability,’” those qualifications make one eligible to apply for the waiver, but do not guarantee the approval of that application.

Counsel states: “The standard in other words is not national geography but national intellection directed to recapture the nation’s economic dominance. This is what is called ‘Bridging the Gap.’ Syllogistically, hiring ‘Highly Qualified Teachers’ would produce more graduates than dropouts.”

The existence of federal education policy does not give national impact to the efforts of one schoolteacher, and the petitioner has not submitted evidence to establish that the hiring of one “Highly Qualified Teacher” increases graduation rates. *See Matter of Soffici* at 165; *see also Matter of Obaigbena* at 534 n.2, (citing *Matter of Ramirez-Sanchez* at 506).

Counsel cites various Department of Education publications concerning the goals of the NCLB Act and other federal programs, and repeats previously submitted assertions regarding the petitioner’s “proven success” in closing the achievement gap. Counsel, however, cites no evidence documenting the results of those programs a decade after the NCLB Act’s enactment. Instead, counsel cites recent statistics regarding poor student performance by students in [REDACTED] several years after the passage of the NCLB Act and several years after the petitioner began working for [REDACTED]. Eligibility for the waiver rests on the merits of the individual seeking the waiver, and the record does not show that the petitioner has had or will have a nationally significant impact on graduation rates. Being a “Highly Qualified Teacher” under the NCLB Act does not establish or imply eligibility for the national interest waiver.

Counsel states:

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

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

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

The petitioner has not submitted evidence to establish that her accomplishments are “incomparable” as counsel claims. After suggesting that the director’s decision is “drawn in thin air,” counsel asserts that the NCLB Act did not merely imply that USCIS should grant the waiver to “highly qualified teachers,” it “required” USCIS to do so. Counsel cites no specific section of the NCLB Act containing this claimed requirement.

The *NYS DOT* decision acknowledges the need for “flexibility” because different cases will hinge on different types of evidence, depending on the occupation involved. Flexibility does not mean that workers in different occupations are entitled to different standards of proof, or can claim blanket waivers without legislative or regulatory support.

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

Counsel asserts that the petitioner “has submitted overwhelming evidence” of eligibility, and that “the Director is requiring more from the beneficiary’s credentials tantamount to having exceptional

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

Congress has established no blanket waiver for teachers based on the overall importance of education; eligibility for the waiver rests on the merits of the individual alien. The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence must be national in scope. *NYS DOT* at 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

A plain reading of the statute shows that not every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, such as teaching, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

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

ORDER: The appeal is dismissed.