



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 15 2014 Office: TEXAS SERVICE CENTER

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 has taught for [REDACTED] since 2007. At the time of filing, the petitioner was working for [REDACTED] in [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

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

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

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

(B) Waiver of Job Offer –

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

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

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

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

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

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

*In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

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

The petitioner has established that her work as a high 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 will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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

The petitioner filed the Form I-140 petition on February 10, 2012. In Part 4 of the Form I-140, the petitioner answered “yes” to whether any petitions had previously been filed on her behalf. The record reflects that [REDACTED] with an approved labor certification, on her behalf on October 21, 2010, to classify her as a professional under section 203(b)(3)(A)(ii) of the Act. The Texas Service Center denied the previous petition for abandonment on April 5, 2013.

In a February 7, 2012 letter accompanying the instant petition, counsel stated that the petitioner’s national interest waiver is based on her expertise in the field and “numerous awards and citations.” Occupational experience and recognition for achievements are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(B) and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. See section 203(b)(2)(A) of the Act. The 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. *NYSDOT*, 22 I&N Dec. at 218. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver.

In his letter accompanying the petition, counsel did not mention the *NYSDOT* guidelines or explain how the petitioner meets them. The record does not show how the petitioner’s work will impact the field beyond [REDACTED]. With regard to the petitioner’s teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her high 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.

22 I&N Dec. at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as a mathematics teacher beyond the students at her school and, therefore, that her proposed benefits are national in scope. In addition, the record lacks specific examples of how the petitioner’s work as 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 she merits the special benefit of a national

interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted various letters of support from administrators, teachers, and students discussing her work as an educator. As some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

[REDACTED], stated:

[The petitioner] has been employed with [REDACTED] for 4.5 years now and has proven to be an exemplary employee. She has fulfilled all the requirements for an Advanced Professional Certificate in Secondary Mathematics and is currently a candidate for National Board Certification.

[The petitioner] is the holder of a Master's Degree in Mathematics and has almost completed the requirements for her Doctorate in Educational Administration and Supervision. She has been a valuable member of the teaching staff at [REDACTED] and I have had the honor of working with her these past 4 years. Her teaching has contributed to the proficiency level of her Math students, with scores in the advanced range. She has provided a structured environment in her classroom that is conducive to learning, with well-planned lessons and activities.

As her [REDACTED] I have been witness to her unyielding commitment to her students and to her fellow teachers. She has been an active participant in our curricular activities, from Back-to-School Night, parent-teacher conferences, proctoring state tests, providing home and hospital teaching for students with disabilities, reviewing projects for academic validation and providing after school tutoring. She is also the sponsor for the Math National Honors Society chapter at [REDACTED] High School.

[REDACTED] comments on the petitioner's length of employment, fulfillment of professional requirements, academic degrees, value to the school, contribution to the mathematics proficiency of her students, effectiveness as a teacher, commitment to the school, and participation in school-related activities, but does not indicate how the petitioner's impact or influence as a teacher is national in scope. In addition, [REDACTED] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

[REDACTED], stated:

[The petitioner] is the holder of a Master's Degree in Mathematics and is almost finished with her Doctorate in Educational Administration and Supervision. She has shown very commendable teaching proficiency at [REDACTED] and provided well-planned

lessons and activities to her students. Her students have reached the advanced proficiency range with her help.

As her supervising [REDACTED] I have had the pleasure of seeing her active dedication to her students and fellow teachers. She has provided valuable service to students with disabilities in home and hospital teaching, conducted after school tutoring, participated in Back-to-School night, parent-teacher conferences, and serves as the sponsor for the Math National Honors Society. Her students have made strong academic gains due to her classroom teaching and patience.

She is also one of the class sponsors of Class 2015 where she helps and motivates our 9<sup>th</sup> graders to be successful. She works with the other organization and club officers /mentors to conduct an initiated with a program "ADOPT A FRESHMAN." Adopt a freshman is where they help students who are struggling in Math and other disciplines. Her support in this program yielded positive results.

[REDACTED] points to the petitioner's master's degree, ongoing doctoral studies, teaching proficiency, dedication to others, and involvement and participation in school-related programs and activities, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond her school and [REDACTED]

[REDACTED] stated:

As [the petitioner] began teaching in our school in August 2007, I have seen that she is very eager to collaborate with colleagues to learn and share her ideas. She has shown deep passion for education and much concern for our students to learn. As a matter of fact, she willingly assumed the responsibilities as sponsor of the [REDACTED] in 2008, which I pioneered in our school in 2006. She is also regularly conducting after-school Mathematics tutorials to the struggling students. At the start of this year, I recommended her to be one of the class sponsors of class of 2015 since I have seen her efforts to motivate students to pursue higher goals. She also has enthusiasm to use latest technology in the classroom to enhance students' learning.

[REDACTED] comments on the petitioner's willingness to collaborate with colleagues, passion for education, concern for students, sponsorship of the school's Mathematics National Honor Society program, participation as an after-school mathematics tutor, service as a class of 2015 sponsor, and technological proficiency in the classroom, 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 high school mathematics teachers.

The petitioner's references praise her abilities as a teacher and personal character, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the schools where

she has taught. They also do not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. See 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is “self-serving.” See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner’s references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. See *id.* at 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”).

In addition to the reference letters, the petitioner submitted the following:

1. A Certificate of Appreciation from the principal of [REDACTED] “for support and dedicated service to the students of [REDACTED] during the 2010-11 academic year;
2. A Certificate of Achievement from the [REDACTED] Mathematics Department Chairperson for “high standards of excellence in Math Education” (June 19, 2009);
3. A Certificate of Appreciation from the [REDACTED] college planning service in recognition of the petitioner’s “dedication to the post-secondary and career planning” of her students at [REDACTED] during the 2011-12 academic year;
4. A Certificate of Excellence from the [REDACTED] [REDACTED] “for sharing her expertise in ‘Mini Booklet Foldable for Students Notes’” (January 14, 2012);
5. A Certificate of Appreciation from the administration of [REDACTED] “for active involvement in HSA [High School Assessment] Algebra 1 Wizards 2008”;
6. A Certificate of Appreciation from the [REDACTED], the petitioner’s former employer from 1999 – 2006, “in grateful recognition of her valuable contribution as Presenter on her thesis entitled [REDACTED]

- Improvement' during the Science & Technology Congress held at the [REDACTED] Technology on March 2, 2004";
7. A Certificate of Achievement from the principal of [REDACTED] for pursuing "personal development" (June 17, 2010);
  8. A "Patriot Award" from the principal of [REDACTED] for the petitioner's "support in the success of students" and "flexibility in [ ] teaching assignment 2007-2008" (June 10, 2008);
  9. A "Patriot Award" from the principal of [REDACTED] (June 15, 2009);
  10. A "Team Player Award" from the principal of [REDACTED] (September 8, 2008);
  11. A Certificate of Excellence from the administration of [REDACTED] recognizing the Mathematics Department, including the petitioner, as "Runner Up, Best Bulletin Board Display" (August 24, 2009);
  12. A certificate from the administration of [REDACTED] recognizing the petitioner "as a Nominee for November 2009 Employee of the Month";
  13. A Certificate of Appreciation "in recognition of valuable contributions to Boys & Girls Club of [REDACTED] (2007);
  14. A Maryland Educator Certificate;
  15. A Kansas State Board of Education License;
  16. A "Professional Teacher (Secondary)" certificate from the Republic of the Philippines, [REDACTED];
  17. A Certification from the Republic of the Philippines, [REDACTED] stating that the petitioner "passed the Licensure Examination for Teachers, Secondary";
  18. A ratings report from the Republic of the Philippines, [REDACTED] indicating that the petitioner passed the secondary level of the teachers licensure examination;
  19. A "Certification of Good Standing" from the [REDACTED];
  20. A "Certificate of Eligibility" from the [REDACTED];
  21. Employment verifications;
  22. Earnings statements; and
  23. Academic records and transcripts.

Again, academic records, occupational experience, professional certifications, salary information, 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. *NYSDOT*, 22 I&N. Dec. at 218. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received (items 1 – 13) have more than local, regional, or institutional significance. There is no documentary

evidence showing that items 1 through 23 are indicative of the petitioner's influence on the field of education at the national level.

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

In addition, the petitioner submitted copies of her "satisfactory" teacher evaluations from [REDACTED] and "Faculty Evaluation" reports from [REDACTED]. The petitioner, however, failed to demonstrate how the evaluations reflect that she has impacted the field to a substantially greater degree than other similarly qualified educators and how her specific work has had significant impact outside of the schools where she has taught.

The petitioner also submitted documentation indicating that she was among fifteen individuals who reviewed [REDACTED] "Algebra I Curriculum Framework for Mathematics," but the petitioner does not explain how the submitted documentation demonstrates her influence on the field as a whole.

The director issued a notice of intent to deny (NOID) on September 10, 2012, instructing the petitioner to submit evidence demonstrating that the benefit of her proposed employment would be national in scope and that she "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted a March 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"; information about STEM (science, technology, engineering and mathematics) fields printed from the online encyclopedia *Wikipedia*; an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?"; 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; 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 a mathematics teacher has influenced the field as a whole.

The petitioner's response to the director's NOID 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 treated 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 March 26, 2013. The director indicated that the petitioner had not shown that the proposed benefits of her work as a high school mathematics teacher will be national in scope. The director also determined the petitioner had failed to submit evidence that she "has significantly impacted 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 education 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 *NYS DOT*. 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 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. *NYS DOT*, 22 I&N Dec. at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYS DOT* 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 her 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 she has taught.

Counsel contends that the "director erred in his appreciation of petitioner's past achievement," but counsel fails to point to specific evidence in the record showing that the petitioner's work has had a national impact or 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 *NYSDOT* 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 *NYSDOT* requiring the director to specifically identify another equally qualified school teacher. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel contends that “the Immigration Service is requiring more from the beneficiary’s credentials [ ] tantamount to having exceptional ability,” but an individual is not required to qualify as an alien of exceptional ability in order to receive the national interest waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest waiver. It remains that the petitioner’s evidence does not establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director determined that “the petitioner 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 *NYSDOT*’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*, 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. Regardless, counsel does not show that the petitioner’s individual teaching efforts, after several years in the United States, have set her apart from other educators with regard to raising student achievement in [ ] 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 she possesses qualifications and “years of dedicated service” that “could not be articulated in conformity with the process regulations.”

Counsel emphasizes “the critical timeline” and “time-sensitive obligation” for “hiring ‘Highly Qualified’ teachers,” and asserts that the labor certification process cannot accommodate this need. Section 9101(23) of the NCLBA defines the term “Highly Qualified Teacher.” Briefly, by the statutory definition, a “Highly Qualified” middle or secondary school teacher who is new to the profession:

- 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 a high level of competency in each of the academic subjects in which the teacher teaches by – passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches; or successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

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.

Counsel states that the labor certification process poses a “dilemma” for the petitioner because she possesses qualifications that “could not be articulated in conformity with the process’ regulations.” Counsel’s assertion, however, is not supported by the evidence in the record. As previously noted, the petitioner is the beneficiary of an approved labor certification filed in her behalf by [REDACTED]. Furthermore, 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.” 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. Regardless, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *NYS DOT* at 218, n.5.

Counsel acknowledges that the labor certification requirement exists to protect United States workers. Counsel contends that a waiver of that requirement would serve the same ultimate goal, by allowing highly qualified foreign teachers such as the petitioner to make “present school children more competitive in the job market by providing them the highest quality of education as possible.” Counsel asserts that “U.S. workers in the teaching industry are not as competitive in the job market as [ ] their foreign counterparts who have advanced degree or equivalent and fully certified [sic].” 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. Counsel essentially contends that highly qualified “foreign” teachers, as a class, are eligible for a blanket waiver of the job offer requirement. However, 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 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*, 22 I&N Dec. at 217.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. 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.