



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JAN 22 2014** Office: NEBRASKA SERVICE CENTER [Redacted]

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

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 physical education teacher in [REDACTED]. At the time of filing, the petitioner was teaching physical education at [REDACTED] Unified School District [REDACTED]. Previously, the petitioner worked as a physical education teacher [REDACTED]

and at [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 physical education 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 March 29, 2012. In a March 27, 2012 letter accompanying the petition, counsel stated that the petitioner's national interest waiver "is premised on her Master's Degree in Education with a concentration in Physical Education and more than twenty-four (24) years of dedicated and progressive teaching experience." 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. *NYSDOT*, 22 I&N Dec. at 218, 222. 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.

With regard to the petitioner's teaching duties at [REDACTED] there is no evidence establishing that the benefits of her work would extend beyond her school such that they will have a national impact. The director, however, incorrectly concluded that the proposed benefits of the petitioner's work are national in scope. *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.

NYSDOT, 22 I&N Dec. at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as a physical education teacher beyond the students at her school and, therefore, that her proposed benefits are national in scope. Accordingly, the director's finding that the proposed benefits of the petitioner's work are national in scope is withdrawn. 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 school administrators discussing her work as a physical education teacher. 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.

stated:

I have worked with [the petitioner] in my position as a principal at [redacted] School the past year. I supervised and evaluated her performance as an educator.

While a physical education teacher at [redacted] she has gone above and beyond other employees, setting expectations for students high and providing them the means to achieve their goals. She is an incredible resource in the area of education; she is willing to help other staff members improve their skills as teachers and is extremely approachable.

[The petitioner] has a wonderful rapport with people of all ages, especially children. Her ability to connect with her students and her talent at teaching simple concepts, as well as more advanced topics, are both truly superior. She has excellent written and verbal communication skills, is extremely organized, reliable and computer literate. [The petitioner] can work independently and is able to follow through to ensure that the job gets done. She accomplishes these tasks with great initiative and with a very positive attitude. She is willing to be a part of extra-curricular activities.

[The petitioner] has volunteered for numerous activities at the school including coaching the girls' basketball team, cross country team, science fair coordinator, and quiz bowl coordinator. She also took on the task of adding health and science to her curriculum while being the physical education teacher simultaneously with no additional compensation.

[redacted] comments on the petitioner's high expectations for students, ability to help students achieve their goals, willingness to serve a resource to other teachers, positive interactions with students, communication skills, organization, reliability, computer literacy, ability to work independently, initiative, positive attitude, participation in school activities, and acceptance of additional teaching assignments, 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:

I have known [the petitioner] for the last few years, as a committed teacher and staff member, working hard to provide a successful environment for our students.

Words cannot express how much [the petitioner] works beyond expectations and goes above the call of duty. She puts more than 100% into daily lessons and physical education events for staff, students and families. Not only does [the petitioner] extend the daily curriculum, but she embellishes her settings with daily objectives, connections to math, science and language arts and even adds artistic touches to capture anyone engaged in that setting.

[The petitioner] has also demonstrated a special connection with students and has successfully hooked them into a health school living experience.

[REDACTED] points to the petitioner's commitment to [REDACTED], capacity to work beyond expectations, high level of teaching effort, introduction of other subjects in her daily physical education curriculum, and connection with students, but does not indicate that the petitioner's work had an impact beyond her particular school or [REDACTED]

[REDACTED] stated:

Since being at [REDACTED] for two years, I have found that [the petitioner] incorporates more effective strategies and techniques into her teaching as recommended. In the short time she has been at this school, she has become an integral part of the staff. [The petitioner] is respected by both students and staff.

[REDACTED] comments on the petitioner's effectiveness as a teacher, value to [REDACTED] School, and the respect that the petitioner earned from students and staff, but [REDACTED] observations fail to demonstrate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified physical education teachers.

The petitioner's references praise her abilities as a physical education 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. Academic records and transcripts;
2. An Arizona Department of Education teaching certificate;
3. A Maryland Educator Certificate;
4. A [REDACTED] “Teacher of Physical Education” license;
5. A “Professional Secondary Teacher” certificate from the Republic of the Philippines Professional Regulation Commission;
6. A “Report of Rating” from the Republic of the Philippines National Board for Teachers stating that the petitioner “passed the professional board examination for teachers held in [REDACTED]”;
7. A [REDACTED];
8. An “Outstanding Teacher Award” from the assistant principal of [REDACTED] School (November 12, 2010);
9. A May 18, 2011 letter of thanks from the assistant principal of [REDACTED] School;
10. A Certificate of Appreciation from the assistant principal of [REDACTED] School for “contributions to the 2010 Winter Concert” (December 17, 2010);
11. A Certificate of Appreciation from the administration of [REDACTED] for “Teacher Appreciation Week 2011”;
12. A Certificate of Appreciation from the administration of [REDACTED] for “contributions to the students of [REDACTED] during the 2010-2011 school year”;
13. A “Great Job!” certificate from the assistant principal of [REDACTED] for serving as coordinator of the [REDACTED];
14. An August 23, 2010 letter of thanks from the assistant principal of [REDACTED] School for “making the signs for the morning and the buses”;
15. An “Award of Commendation” from the Schools Division Superintendent, Department of Education, Culture and Sports, Region X, Division of [REDACTED] for [REDACTED]

- “services rendered as Officiating Official/Support Staff in the conduct of City School Division Meet '98 held at [REDACTED] track oval on November 11-14, 1998”;
16. A “Commendation Award” from the Schools Division Superintendent, Department of Education, Culture and Sports, Region X, Division of City Schools, [REDACTED] “for having fully implemented the work plan for Secondary Philippines 2000 Bulletin Board during the school year 1994-95”;
 17. A Certificate of Recognition from [REDACTED], the petitioner’s alma mater, “for having actively participated in the community extension services as Resource Speaker on the seminar ‘Enhancing Teaching Effectiveness’ in [REDACTED] School” (September 24, 2003);
 18. A Certificate of Recognition from [REDACTED] “for having shared . . . invaluable time and expertise as a Resource Person during the ‘Adaptive Physical Education Seminar Workshop’ held in [REDACTED] (July 15, 2009);
 19. A Certificate of Recognition from [REDACTED] for “service unselfishly rendered in the Fitness Festival 2003 held at [REDACTED];
 20. A Certificate of Recognition for “service and support rendered during the conduct of the [REDACTED] (March 5, 2000);
 21. An “Award of Recognition” for “service rendered during the holding of the [REDACTED];
 22. A Certificate of Recognition from [REDACTED] for serving as “Facilitator/Resources Speaker during the Dance Workshop Seminar for the [REDACTED] Theater held on April 14-16, 2004 at [REDACTED];
 23. A “Plaque of Appreciation” for performing duties and responsibilities at the Commission on Higher Education – [REDACTED] Regional Meet (March 24, 2004);
 24. A “Certificate of Recognition” from the Schools Division Superintendent, Department of Education, Culture and Sports, Region X, Division of [REDACTED] for “outstanding performance as Resource Speaker/Trainer and Facilitator . . . of the [REDACTED] Seminar Workshop in ‘Teaching Skills Enhancement in Basic Sports Discipline’” (June 2001);
 25. A “Certificate of Recognition” from the Schools Division Superintendent, Department of Education, Culture and Sports, Division of City Schools, [REDACTED] for “service rendered as Facilitator and Resource Speaker during [REDACTED] in Folk Dancing” (September 2001);
 26. A “Certificate of Recognition” from the Director IV, Department of Education, Culture and Sports, [REDACTED] for “services rendered as Member of the Board of Judges” during the 1st Department of Education, Culture and Sports [REDACTED] (December 4, 2000);
 27. A “Certificate of Recognition” for “service which contributed to the resounding success of the [REDACTED];

28. A "Certificate of Merit" for "service rendered as Officiating Official in Softball during the 7th [REDACTED] on September 27-28 and October 4-5, 2003";
29. A Certificate of Recognition from the Mayor of [REDACTED] "as the Choreographer of the winning group, [REDACTED] 41st City Charter Anniversary" (July 23, 2001);
30. A "Certificate of Recognition" from the Director IV, Department of Education, Culture and Sports, Region X, [REDACTED] for serving as a "Demonstration Teacher" at the "Regional Seminar workshop for Division trainers" (October 1997);
31. A Certificate of Recognition from [REDACTED] for "service as a Resource Person during the Softball Seminar-Workshop held at [REDACTED] on February 4, 2004";
32. Employment verifications;
33. Earnings statements; and
34. A "Professional Identification Card" from the Republic of the Philippines Professional Regulation Commission, [REDACTED]

Again, academic records, occupational experience, professional certifications, salary information, 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 labor certification). *NYS DOT*, 22 I&N Dec. at 218, 222. 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 7 – 31) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 34 are indicative of the petitioner's influence on the field of physical education at the national level.

The petitioner also submitted various 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 teacher evaluations from [REDACTED]. The petitioner, however, failed to demonstrate how the evaluations reflect that she has impacted the field to a substantially greater degree than other similarly qualified educators and how her specific work has had an impact outside of the schools where she has taught.

The petitioner also submitted evidence of her teaching activities, but the petitioner does not explain how the submitted documentation demonstrates her influence on the field as a whole.

The director issued a request for evidence on November 30, 2012, instructing the petitioner to submit evidence demonstrating that the benefits of her proposed employment would be national in scope and that she has “a past record of specific prior achievement that justifies projections of future benefit to the national interest.”

In response, the petitioner submitted a March 24, 2003 letter from U.S. Secretary of Education Rod Paige providing information about “how school districts may continue to hire and employ visiting teachers from other countries while being consistent with the statutory requirements that define a highly qualified teacher”; President George H.W. Bush’s “Remarks on Signing the Immigration Act of 1990”; a copy of Section 1119 of the No Child Left Behind Act (NCLBA); an article entitled “Supporting Science, Technology, Engineering, and Mathematics Education – Reauthorizing the Elementary and Secondary Education Act”; “Barack Obama on Education” questions and answers posted at www.ontheissues.org; a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; an article in the *Wall Street Journal* entitled “The Importance of Math & Science in Education”; 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?”; and 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). 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 physical education teacher has influenced the field as a whole.

The director denied the petition on May 17, 2013. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director stated that the petitioner’s training certificates, award certificates, and recommendation letters failed to demonstrate her influence in the field of teaching.

On appeal, counsel asserts that “USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act 2001.” Counsel notes 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 elementary school sector.” With regard to the director 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 does not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. Counsel identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534, n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3, n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*. Counsel has not shown that the NCLBA contains a similar legislative change.

Counsel further states:

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

(Omissions in original.) Counsel, above, highlights the phrase “national . . . educational interests,” but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien’s “services . . . are sought by an employer in the United States.” By the plain language of the statute that counsel quotes on appeal, 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 asserts that “the Director has easily dismissed the incomparable accomplishments of [the petitioner],” without providing clarity as to what accomplishments might demonstrate that the petitioner will serve the national interest to a substantially greater degree than would a similarly trained U.S. worker. Counsel concludes the lack of clarity creates an undue burden on the petitioner. 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. Because the waiver is potentially available to workers in a wide range of occupations, there is no single, rigid set of specified evidentiary requirements; the available evidence will vary on a case-by-case basis. The director is not required to speculate as to how a school teacher might exert influence on her field. Rather, the petitioner must submit evidence that

demonstrates such influence. Strong credentials, employer appreciation certificates and favorable performance reviews do not show influence or impact on the field.

Counsel points to the petitioner's awards (items 7 – 31) as evidence of her "past history of achievement." As previously discussed, the petitioner's awards do not show that her work has had a wider impact on the field of physical education, or that her work has otherwise influenced the field as a whole.

Counsel states that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers and that USCIS "should have presented its own comparable worker." The *NYS DOT* guidelines, however, do not require an item-by-item comparison of the petitioner's credentials with those of qualified United States workers. The key provision is that the petitioner must establish a record of influence on the field as a whole. Moreover, there is no provision in the statute, regulations, or *NYS DOT* requiring the director to specifically identify another equally qualified school teacher. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel contends that "the Immigration Service is requiring more from the beneficiary's credentials . . . tantamount to having exceptional ability," but an individual is not required to qualify as an alien of exceptional ability in order to receive the national interest waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest waiver. *NYS DOT*, 22 I&N Dec. at 218, 222. It remains that the petitioner's evidence does not establish eligibility for the national interest waiver. Furthermore, the director did not require the petitioner to establish exceptional ability in her field. Instead, the director determined that the petitioner had "not established that a waiver of the requirement of an approved labor certification requirement will be in the national interest of the United States."

Counsel asserts that the petitioner's positive impact on students, who "are future U.S. workers and thus equally protected by labor certification," warrants a waiver of the job offer requirement in the national interest. Counsel states that while the NCLBA "requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement." However, assertions regarding the need for educational reform in the United States only address the "substantial intrinsic merit" prong of *NYS DOT*'s national interest test.

In addition, counsel quotes a study that concluded the "Teach For America" program "rarely had a positive impact on reading achievement." The petitioner, however, is a physical education teacher, not a reading teacher. In addition, the record does not include a copy of the study quoted by counsel. Once again, the unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena* at 534, n.2; *Matter of Laureano* at 3, n.2; *Matter of Ramirez-Sanchez* at 506. Regardless, counsel does not show that the petitioner's individual teaching efforts, after several years in the United States,

have set her apart from other physical education teachers with regard to raising student achievement nationally or in the school systems where she has worked.

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

Middle 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 middle school teachers to have at least a bachelor’s degree. Many states require middle school teachers to major in a content area, such as math or science. Other states require middle school teachers to major in elementary education.

* * *

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

Licenses and Certification

All states require teachers in public schools to be licensed, or certified, as it is frequently referred to.

* * *

Certification of middle school teachers varies considerably from state to state. In some states, they are certified to teach elementary school grades, which are typically first through 6th grades or first through 8th grades. In other states, they are certified to teach middle school grades, which include 6th through 8th grades. Still other states provide middle school teachers with a secondary school or high school certification, which often includes 7th through 12th grades.

Requirements for certification also vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, which is typically gained through student teaching. Some states require a minimum grade point average.

States typically require candidates to pass a general teaching certification test, as well as a test that demonstrates their knowledge of the subject they will teach.

Teachers are often 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.

See <http://www.bls.gov/ooh/education-training-and-library/middle-school-teachers.htm#tab-4>, accessed on December 18, 2013, copy incorporated into the record of proceeding. The petitioner has not established that the "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." Moreover, the petitioner's level of education and experience are not required for "highly qualified" status under the NCLBA.

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." Citing the TFA study, 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 does not explain how a study on a small subset of entry-level teachers is relevant to the competitiveness of U.S. teachers in general. Regardless, 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 asserts that the labor certification process poses a “dilemma” for the petitioner because she possesses qualifications that “could not be articulated in conformity with the process’ regulations.” Counsel’s assertion, however, is not supported by the evidence in the record. 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*, 22 I&N Dec. at 218, n.5.

Counsel contends that a waiver would ultimately serve the interests of United States teachers, because if schools “fail to meet the high standard required under the No Child Left Behind (NCLB) 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 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. *NYS DOT*, 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. *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* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.