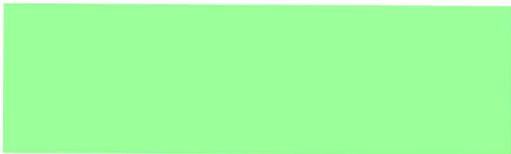
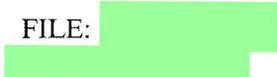


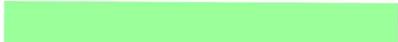
(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **JUL 02 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before us at the Administrative Appeals Office on appeal. We 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 an alien of exceptional ability in the sciences, the arts, or business, or as a member of the professions holding an advanced degree. The petitioner seeks employment as a Mandarin (Chinese) language teacher. 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 personal statement.

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 stated that the petitioner qualifies as a member of the professions holding an advanced degree, but did not elaborate on this finding. We will revisit this issue further below. The director denied the appeal based on one issue, specifically: 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, Pub. 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) (*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 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 March 1, 2013. The petitioner filed the petition electronically, without supporting exhibits. On Part 6, line 9 of the petition form, the petitioner stated that she intended to work at [REDACTED] California. The petitioner did not identify the employer, but the stated address belongs to the [REDACTED] California.

The director issued a request for evidence on April 25, 2013. Noting that the petitioner had identified a specific intended workplace, the director requested “a full copy of [the petitioner’s] contract with this organization.” The director also instructed the petitioner to “establish, through documentary evidence . . . a past record of specific prior achievement, which justifies projections of future benefit to the national interest.”

In response, the petitioner indicated that she taught Mandarin in [REDACTED] from 1979 to 1991. She stated: “After my family moved to [REDACTED] in 1992, I continued teaching Chinese in private tutoring”; she claimed to have worked as a self-employed tutor and translator from 1992 to 2004. From 2004 onward, the petitioner stated that she worked solely as a part-time assistant nurse (an occupation she has not indicated that she intends to pursue in the United States). The petitioner submitted a copy of a note, in English and Mandarin, from one of her [REDACTED] students, thanking her for her “priceless help with the scholarship testing.”

The petitioner stated that her “phonetic methodology . . . [is] suitable for all learners at different ages with various culture backgrounds to catch accurate Mandarin pronunciation.” The petitioner asserted that she “can teach any age group/individuals [in] different settings and [is] willing to serve nation wide in schools, communities or government organizations wherever the needs are.”

The petitioner submitted no documentation from the [REDACTED]. Instead, the petitioner stated: “The need for Chinese teachers in the US is national in scope which warrants me to have a wider search for a permanent employment position with the most intrinsic merits and benefits. Therefore, the original proposed employment with the school at [REDACTED] in [REDACTED] California [sic] has not been considered further by me.” On Form ETA-750B, Statement of Qualifications of Alien, the petitioner identified an address in [REDACTED] Iowa, where she intended to reside.

The petitioner submitted copies of her Taiwanese teaching credentials; materials relating to her participation in [REDACTED]; and documentation of awards and certificates that the petitioner received relating to various activities she performed as a teacher in [REDACTED] before 1992.

The petitioner submitted a letter from Dr. [REDACTED] leader of the [REDACTED] at [REDACTED], Australia. Dr. [REDACTED] stated:

[The petitioner] worked with me as a Chinese Teacher when I was the Principal of [REDACTED] associated with [REDACTED] in 1997-1999. With rich experience in teaching, she could work with the proposed age groups and support both adults and children. [The petitioner] designed the curriculums focusing on the needs of individual students and arranged an active learning environment to ensure students achieving the objectives of learning. . . .

[The petitioner] suggested that proper methodology is very critical to achieve teaching objectives and would help students wanting to learn and keep learning. . . . Her unique teaching way makes learning active and effective.

The record contains no documentation from the [REDACTED] or the [REDACTED] to establish the terms or extent of the petitioner's claimed work there. The petitioner herself referred to all of her teaching experience in Australia as self-employment.

The director denied the petition on June 28, 2013. The director discussed the petitioner's evidence and concluded that "[t]he petitioner appears to be well-qualified to function as a teacher. . . . However, it does not seem plausible that the benefit conferred by the petitioner's activities might be national in scope." The director noted the lack of evidence that the petitioner has published or otherwise disseminated her work, which would expand her potential impact and influence. The director concluded that the direct impact of the petitioner's teaching work "will be predominantly local in nature." The director also stated that the petitioner's record of past employment does not establish a degree of influence on the field as a whole that would show that a waiver of the job offer requirement would be in the national interest.

On appeal, the petitioner states: "A nationwide demand for qualified Chinese instructors in the U.S. is great and national in scope." The petitioner has not submitted any evidence of this claimed shortage. 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)). Furthermore, the labor certification process exists to address worker shortages, and therefore a claimed worker shortage is not grounds for a national interest waiver.¹ See *NYS DOT*, 22 I&N Dec. at 218.

Also, while a solution to a nationwide shortage of Mandarin instructors would be national in scope, the admission of one teacher would not end that shortage. The petitioner states that she has not yet decided where she would work; "[i]t could be any of the States, so it is truly national in scope." While the petitioner's intended employment "could be [in] any of the [s]tates," as a practical matter it would only take place in one location at any given time. The classroom activities of an individual teacher lack national scope. See *id.* at 217 n.3. Eligibility for the waiver under *NYS DOT* rests on factors specific to the alien seeking the waiver. *Id.* at 217. USCIS lacks authority to designate blanket waivers for entire specialties. *Id.*

The petitioner claims: "Most Chinese teachers coming from either China or Taiwan origin can only master one of two systems: In writing, either Simplified or Traditional system; in speaking, either Pinyin or Zhuyin System." The petitioner, in contrast, claims expertise in all of these systems. The petitioner has submitted no evidence to support this claim, and therefore it has no weight. See

¹ Section 203(b)(2)(B)(ii) of the Act made a shortage-based waiver available to certain physicians, but that provision does not apply in the present proceeding.

Matter of Soffici, 22 I&N Dec. at 165. Also, by statute, exceptional ability is not, by itself, sufficient grounds for granting the waiver, because the statutory job offer requirement applies to aliens of exceptional ability. 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 U.S. is an issue under the jurisdiction of the Department of Labor. See *NYS DOT*, 22 I&N Dec. at 221.

The petitioner has not worked as a teacher for several years, and she has not submitted any evidence to show that she influenced her field when she was a teacher. The waiver application rests, essentially, on the unsupported claim of a shortage of Mandarin teachers. Such a claim is not a sufficient basis for a national interest waiver of the job offer requirement. An employer seeking the petitioner's services can apply for labor certification and file a petition on her behalf. All other things being equal, a lack of qualified U.S. workers would improve the chances of approval of the labor certification. The petitioner's evident desire to immigrate to the United States first, and find an employer later, is not a national interest issue and does not warrant a waiver of the statutory job offer requirement.

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 be national in scope. *NYS DOT*, 22 I&N Dec. 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.").

As is clear from the statute, it was not the intent of Congress that 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, 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.

Review of the record reveals an additional ground for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

There are two ways to qualify for classification under section 203(b)(2) of the Act: (1) as a member of the professions holding an advanced degree, or (2) as an alien of exceptional ability in the sciences, the arts, or business. The petitioner has not specified which of these classifications she seeks.

The director's decision includes the summary conclusion that "the alien petitioner qualifies as a member of the professions holding an advanced degree." The record, however, does not include sufficient evidence to support that finding.

School teachers are members of the professions. See section 101(a)(32) of the Act; 8 C.F.R. § 204.5(k)(2). It remains to be shown that the petitioner holds an advanced degree. To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

8 C.F.R. § 204.5(k)(3)(i). The petitioner does not claim to hold any United States degree, or any foreign advanced degree. The petitioner documented two bachelor's degrees from [REDACTED] University; one in Chinese (awarded 1980), and one in English (awarded 1986). The petitioner did not submit an academic evaluation to establish that her degrees are equivalent to United States baccalaureate degrees. Experience letters establish her employment as a teacher from 1979 (before she held any degree) to 1990. Without evidence to establish the equivalency of her degrees, however, there can be no finding that the petitioner has at least five years of progressive post-baccalaureate experience as a teacher.

For the above reasons, the record does not contain sufficient evidence to establish that the petitioner qualifies for classification as a member of the professions holding an advanced degree. The petitioner made no affirmative claim of exceptional ability in the sciences, the arts, or business, and the director made no initial finding in that regard. Therefore, the record does not establish that the petitioner qualifies for the immigrant classification she seeks.

We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.