



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 13 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 employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions with the defined equivalent of an advanced degree. The petitioner seeks employment as an elementary physical education 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 the defined equivalent of 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 petitioner's foreign bachelor's degree (evaluated as being equivalent to a U.S. baccalaureate degree) and progressive post-baccalaureate experience are the defined equivalent of a master's degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

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

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

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

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

In re New York State Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (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 June 28, 2012. On Part 6, line 4 of the petition form, the petitioner stated that she “will work” in [REDACTED]. On line 8 of Form ETA-750 Part B, Statement of Qualifications of Alien, the petitioner identified her prospective employer as the [REDACTED].

Although these two documents (both prepared by counsel) contradict one another, the petitioner signed both of them, thereby attesting to their accuracy under penalty of perjury.

Employment verification letters from [REDACTED] state overlapping employment dates. A November 22, 2011 letter from [REDACTED] stated the petitioner's employment dates as August 13, 2007 through November 11, 2011, while a March 14, 2012 letter from [REDACTED] stated that the petitioner "started her employment August 17, 2011." On Form G-325A, Biographic Information, the petitioner indicated that she moved to [REDACTED] in August 2011.

In an introductory statement that accompanied the petition, counsel stated that the petitioner's "petition for waiver of the labor certification is premised on her degree in Secondary Education and more than nineteen (19) years of inspired, innovative, and progressive teaching experience in both the United States and the Philippines." Counsel also listed several "awards and outstanding contributions to the field of education and her community." Academic degrees, experience, and recognition for achievements and contributions can support a claim of exceptional ability in the sciences, the arts, or business, under the USCIS regulations at 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B), and (F), respectively. Exceptional ability, however, does not establish eligibility for the waiver, and therefore partial evidence of exceptional ability is not sufficient to show eligibility for the waiver.

The petitioner's claimed awards comprise nine certificates and one trophy. Five of the nine certificates are "Certificates of Appreciation" from [REDACTED] where the petitioner worked from 2007 to 2011, acknowledging her efforts on behalf of its students. The inscription on the trophy plaque reads: "Presented to [the petitioner] For Outstanding Contributions to the [REDACTED] Library 2010." The record does not specify the nature of the contributions. The petitioner received the remaining four certificates in the Philippines between 1996 and 2004, as described below:

- From [REDACTED] "for wholehearted invaluable service as Trainer and Choreographer of the [REDACTED] students during Auditorium [sic]";
- From the [REDACTED] "for the invaluable service which contributed to the resounding success of the [REDACTED] 2004" (the record provides no further information to describe the event or the nature of the petitioner's contribution to it);
- From [REDACTED], "for having actively participated in the Seminar Workshop on Gender Sensitivity and Sexual Harassment"; and
- From the Gymnastics Association of the Philippines, "For Attending the [REDACTED]"

Counsel did not explain how any of the listed certificates establish more than local impact or distinguish her from other teachers.

Counsel described the petitioner's teaching style and stated that her "caring, sincere, patient, and nurturing nature fills a critical mentor role in a growing child's life." These assertions concern her effect on her own students, which is inherently local in nature. Counsel contended that the petitioner's work has wider significance because the federal government supports anti-obesity initiatives, and the petitioner's "daily endeavors, therefore, are directly aligned with and actively work towards advancing the national interests of the United States." Counsel did not cite any evidence to show that the petitioner's teaching efforts since 2005 (when she began teaching in the United States) have advanced anti-obesity efforts on a national level.

The petitioner submitted copies of annual teacher evaluations from [REDACTED] from 2008 to 2011, showing that she consistently earned "Satisfactory" ratings at [REDACTED]. The petitioner also documented favorable classroom observations from [REDACTED] and from her previous employer, [REDACTED].

The petitioner submitted letters from administrators, teachers, former students, and parents of current and former students at various schools and school districts where she has worked, attesting to her skill as a teacher and her dedication to her students. Some of the letters, while addressed to USCIS, are worded as standard recommendation letters. For example, [REDACTED] stated that the petitioner "will be an asset to your school system."

The director issued a request for evidence (RFE) on January 15, 2013. The director acknowledged the substantial intrinsic merit of the petitioner's occupation, but instructed the petitioner to submit documentation to meet the other two prongs of the *NYSDOT* national interest test. The director stated: "The petitioner did not submit sufficient evidence to establish that her contributions as a Physical Education Teacher will impart national-level benefits." The director indicated that the petitioner must also "submit evidence to establish that the petitioner's past record justifies projections of future benefit to the nation."

In response, the petitioner submitted background materials regarding federal education initiatives, as well as a statement from counsel. Counsel stated that, using a "strict implementation of *In the Matter of New York Department of Transportation*, the Immigration Service has determined National Interest Waiver self petitioner-teachers' evidences as insufficient and accordingly denied the applications." Counsel asserted that the director "has discretion to enforce said precedent," *i.e.* *NYSDOT*. Following published precedent decisions is not a matter of discretion. Rather, such decisions are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). Counsel stated: "the Service has legal and factual bases to approve teachers' National Interest Waiver applications without offending the principles enunciated in the *Matter of New York Department of Transportation*."

Counsel quoted remarks made by then-President George H.W. Bush when he signed IMMACT 90: “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 interpreted this passage to mean that Congress created the national interest waiver for educators, but the job offer requirement for which the petitioner seeks a waiver was, itself, an integral provision of IMMACT 90, specifically applicable to scientists, engineers, and educators as members of the professions. President Bush’s quoted remarks did not specifically mention the national interest waiver, and there is no evidence that the remarks referred particularly to the waiver, rather than to IMMACT 90 as a whole. The national importance of education as a concept, or educators as a class, does not lend national scope to the work of a single schoolteacher.

Counsel asserted that section 203(b)(2)(B)(i) of the Act does not contain clear guidance on eligibility for the waiver, and claimed that Congress subsequently filled that gap (with respect to educators) with the passage of the No Child Left Behind Act of 2001 (NCLBA), Pub.L. 107-110, 115 Stat. 1425 (Jan. 8, 2002):

Congress has in effect remarkably engraved the missing definition upon the concept of ‘in the national interest,’ centered on the ‘Best Interest of American School Children.’ More importantly, U.S. Congress also provided the means to achieve this now defined ‘in the national interest,’ i.e., ‘Hiring and Retaining Highly Qualified Teachers.’ Interestingly, “NCLB Act” also specified the ‘Standard of a Highly Qualified Teacher.’

Indeed, the “NCLB Act” has elucidated the previously dark avenue for educator-national interest waivers.

With this, the Service now has a definite working tool in defining what is ‘in the national interest’ including the clear standard on what qualifications must be required from NIW [national interest waiver] teacher self-petitioners, as mandated by No Child Left Behind Act of 2001. There is no longer vagueness or obscurity like what happened in the New York State Department of Transportation case, which left the Immigration Service with over-reaching discretion in imposing even the impossible from NIW teacher self-petitioners.

Much of counsel’s statement consists of variations on the claim that the NCLBA amounts to a legislative mandate for a blanket waiver for highly qualified teachers. For instance, counsel stated:

Although the No Child Left Behind Act of 2001 is not an immigration law per se, it could not be denied that said law applies to ‘Highly Qualified International Educators,’ recruited from overseas and have been faithfully serving the noble objectives. Legally speaking, when read in consonance with Immigration Act of 1990 (IMMACT 90), the No Child Left Behind Act of 2001 must be understood as responsive to the declarations of IMMACT 90 in the sense of providing a more

specific set of implementing rules for its effectuation, instead of being trapped *In the Matter of New York Department of Transportation*.

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). Counsel cited no language from the NCLBA or its legislative history to support the claim that the NCLBA “must be understood” as a response to IMMACT 90 and *NYSDOT*. The NCLBA defines the term “highly qualified teacher,” but it does not contain the phrase “highly qualified international teachers” or create special immigration provisions for them; the NCLBA makes no distinction between foreign and domestic “highly qualified teachers.” Likewise, the phrase “national interest” does not appear in the text of the NCLBA. The term “best interest,” with respect to children, appears only in provisions relating to homeless students.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int’l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). Here, the petitioner has not established that Congress intended to exempt teachers from the job offer requirement, either through section 203(b)(2) of the Act, the NCLBA, or any other federal legislation.

The NCLBA did not amend section 203(b)(2) of the Act or otherwise mention the national interest waiver. In contrast, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. 102-232, 105 Stat. 1733 (Dec. 12, 1991) made the national interest waiver available to members of the professions holding advanced degrees, where previously it was available only to aliens of exceptional ability. Following the publication of *NYSDOT*, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95, 113 Stat. 1312 (Nov. 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Thus, Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so on two occasions, first to correct an omission of language, and later in direct response to *NYSDOT*. Counsel identified no other legislation that directly addresses the national interest waiver in this way. In the absence of a comparable provision in the NCLBA or any other education-related legislation, there is no basis to conclude that the legislation indirectly implied a blanket waiver for teachers. Without clearly expressed Congressional authority, USCIS will not designate blanket waivers on the basis of occupation. See *NYSDOT* at 217.

The NCLBA and other federal initiatives establish that the federal government places a priority on improving the quality of education, but counsel did not establish that any of these programs had the express or implied result of changing immigration policy toward teachers. Section 203(b)(2)(A) of the Act remains in effect, and therefore teachers, “highly qualified” or otherwise, remain subject to the job offer requirement.

Counsel cited a recent emphasis on science, technology, engineering and mathematics (STEM) education. The petitioner is a physical education teacher, not a STEM teacher. Counsel claimed that the petitioner “plays a primary role in accomplishing the law’s goal of closing the achievement gap in the core areas of Reading, Science and Math through the well established [L]atin principle ‘Mens Sana in Corpore Sano,’” but the petitioner submitted no evidence that her work as a physical education teacher has consistently improved her students’ grades in academic subjects.

Counsel’s assertions regarding the general importance of education, claimed problems in the educational system, and childhood obesity address the “intrinsic merit” prong of the *NYSDOT* national interest test. The director has already acknowledged that the petitioner has satisfied that prong. Further discussion along the same lines cannot satisfy the remaining prongs of the *NYSDOT* test.

Counsel’s efforts to establish that the petitioner’s work produces benefits that are national in scope rest on general assertions about the field of education rather than on the impact one could reasonably expect from a single teacher. For example, counsel stated that an increase in graduation rates would benefit the national economy, but did not establish that one physical education teacher can affect graduation rates on a large enough scale to have a discernible effect at a national level.

Counsel stated that the petitioner had previously “presented the following achievements,” and then listed the certificates described earlier. Counsel did not establish the significance of these certificates or show that they demonstrated the petitioner’s impact beyond the school systems where she worked at the time she earned them.

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

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

Section 9101(23)(A)(ii) of the NCLB Act further indicates that a teacher is not “Highly Qualified” if he or she has “had certification or licensure requirements waived on an emergency, temporary, or provisional basis.” Counsel did not explain how the above requirements are incompatible with the existing labor certification process, and the petitioner submitted no evidence that the labor certification has resulted in the widespread employment of teachers who are less than “highly qualified.” The minimum degree requirement is the same for labor certification as it is for a highly qualified teacher, *i.e.*, a bachelor’s degree, which is the only postsecondary degree the petitioner holds.

The director denied the petition on July 13, 2013, stating that the petitioner had met only the first (intrinsic merit) prong of the *NYSDOT* national interest test and that “[n]o credible evidence was submitted to suggest that the beneficiary’s proposed [employment] would have benefit beyond the [redacted] or that her record [of] past achievements [in] the field of teaching justifies projections of future benefit to the national interest.”

On appeal, counsel asserts that *NYSDOT* offers little specific guidance as to what serves the national interest. Counsel contends that “[t]he obscurity in the law that *NYSDOT* sought to address has been clarified”:

[T]he United States Congress has spelled out the national interest with respect to public elementary and secondary school education through the No Child Left Behind Act of 2001 . . . which came into effect upon its enactment in 2001 – that is, more than a decade after *IMMACT 90* and *MTINA* were enacted and three years after *NYSDOT* was designated as a precedent decision. . . .

Accordingly, the *NCLBA* 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 education sector. . . .

In effect, therefore, the United States Congress, with the enactment of the *NCLB Act*, has preempted the *USCIS* with respect to the parameters that should guide its determination whether a waiver of the job offer requirement based on national educational interests is warranted. Otherwise stated, the requirement of a job offer or labor certificate for the occupation of Highly Qualified Middle School Special Education Teacher in a public school district should be waived if it is established that the alien will substantially benefit prospectively the national educational interests of the United States, as these interests are enunciated in the *NCLB Act* and the Obama Education Programs.

[I]n the instant case, *USCIS* gave insufficient weight to the *NCLB Act* because it confined its consideration of that law to the first *NYSDOT* factors.

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

who offers such benefit must still be “sought by an employer in the United States.” The NCLBA did not establish a lower standard for teachers.

The lack of a statutory definition of the phrase “national interest” does not supersede the unambiguous statutory language at section 101(a)(32) of the Act, which states that school teachers are members of the professions, and section 203(b)(1)(A) of the Act, which states that members of the professions with advanced degrees are subject to the job offer requirement. Counsel has provided no support for the assertion that Congress passed the NCLBA for the direct or indirect purpose of clarifying the definition of “national interest” (a phrase that does not appear in the text of the NCLBA), or with the unspoken intention of changing immigration policy.

The Immigration and Naturalization Service (the Service) addressed the lack of a definition of “national interest” when it promulgated the regulations at 8 C.F.R. § 204.5(k):

Some commenters also asked that the phrase “in the national interest” be defined. One commenter suggested that the phrase should apply to any alien who would substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. The Act itself requires this showing of all aliens seeking to qualify as “exceptional,” but adds the “national interest” test to permit a job offer waiver for certain aliens who have already satisfied the “prospective national benefit” test. The Service, therefore, cannot equate the two standards. Congress has not provided a more particular definition of the phrase in the national interest. The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the standard must make a showing significantly above that necessary to prove “prospective national benefit.” 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 will be judged on its own merits.

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991). A condensed version of the above passage appeared in *NYSDOT* at 216-17. The quoted passage rebuts counsel’s contention on appeal that the “prospective national benefit” test is identical to the “national interest” test. The phrase “as flexible as possible” in the above passage formed the foundation for another of counsel’s assertions:

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

Counsel has not corroborated the claim that “USCIS is now required . . . [to] grant[] waivers to ‘Highly Qualified Teachers.’” See *Matter of Obaigbena*, 19 I&N Dec. 534 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506. Elsewhere in the appellate brief, counsel contends that “the Chief Executive of the country has himself determined that the national interest would not be served if the petitioner was required to obtain a labor certificate for the proposed employment.” The record contains no evidence that the president has made such a determination. Counsel quotes speeches and refers to policies which, like the NCLBA, discuss the importance of education but say nothing about the national interest waiver specifically or immigration policy in general.

Regarding the petitioner’s individual qualifications, counsel states:

USCIS-Texas Service Center has not specified what constitutes ‘unusual significance’ in the field of education. It concluded that “in this case, it has not been shown that the petitioner’s individual accomplishments are of such an unusual significance that he qualifies for a waiver of the job offer requirement.” There is no clarity on this particular requirement and yet, the Director has easily dismissed the incomparable accomplishments of [the petitioner] as submitted in her Case File.

The passage that counsel placed in quotation marks does not appear in the director’s decision. Counsel does not explain how the petitioner’s achievements are “incomparable.” Counsel continues:

By requiring the petitioner to submit evidence of ambiguous nature is ‘unduly burdensome’ and in effect tantamount to requiring ‘impossible evidence’ since nobody has control over who and how her works are accessed and used, in the same way that it is impossible to realistically determine that [the petitioner] “will serve the national interest to a substantially greater degree than would . . . similarly trained U.S. workers.[”]

NYSDOT does not require the petitioner to have control over others’ use of her work. Rather, it requires evidence of influence beyond a local level, on the field as a whole. *NYSDOT* indicates that the best available gauge of likely future benefit is an inference drawn from one’s past contributions to one’s field. See *id.* at 219.

Counsel lists the petitioner’s “awards and commendations,” the same certificates submitted with the initial filing of the petition and listed again in response to the RFE. Some of these certificates do not pertain to teaching physical education at all. The others, in counsel’s words, concern the petitioner’s contributions “to the success of her students” and “to her individual classes.” These certificates emphasize the local nature of the petitioner’s contributions. The record contains no evidence that the petitioner has influenced the field of physical education as a whole, for example by innovating new methods that other teachers have adopted on a national scale. Competency and positive evaluations do not establish eligibility for the national interest waiver.

Counsel contends that factors such as “the ‘Privacy Act’ protecting private individuals” make it “impossible” to compare the petitioner with other qualified workers, and asserts: “the Immigration Service should have presented its own comparable worker and deliberated its point in the proceeding, allowing the petitioner to rebut such a solid finding of fact.” The *NYS DOT* guidelines are not an item-by-item comparison of an alien’s credentials with those of qualified United States workers. That decision indicated that the petitioner must establish a record of influence on the field as a whole. *Id.* at 219, n.6. To do so does not require an invasive review or comparison of other teachers’ credentials. Regarding the assertion that USCIS “should have presented its own comparable worker,” there is no presumption of eligibility that the director must overcome in order to justify denying the petition. The burden of proof rests with the party seeking an immigration benefit. Section 291 of the Act, 8 U.S.C. § 1361.

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

After addressing the petitioner’s specific qualifications, counsel again attempts to make the case for a blanket waiver for teachers, claiming that “U.S. workers in the teaching industry are not as competitive in the job market as against their foreign counter-parts”; that the NCLBA “trumps the Labor Certificate since job opportunities for U.S. workers are guaranteed once No Child Left Behind Act of 2001 is faithfully executed”; and that schools that fail to hire highly qualified teachers face “closure” as a result of losing federal funding. Counsel cites no source for these claims. 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, as expressed in *NYS DOT* at 217, it is not USCIS’s role to establish blanket waivers based on occupation. That authority belongs to Congress, as shown by its addition of section 203(b)(2)(B)(ii) to the Act. Therefore, by urging the creation of such a blanket waiver in an appellate brief, counsel seeks a degree of relief that USCIS is not in a position to provide.

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 the petitioner’s influence be national in scope. *NYS DOT* at 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

As is clear from a plain reading of the statute, engaging in a profession (such as teaching) does not exempt professionals from the requirement of a job offer. Congress has not established any blanket

waiver for teachers. 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 statutory job offer requirement will be in the national interest of the United States.

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

ORDER: The appeal is dismissed.