



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 13 2014** OFFICE: TEXAS 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, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a special education teacher for I [REDACTED]

[REDACTED] Since October 2008, the petitioner has taught at [REDACTED]

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

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

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

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

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*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 May 21, 2012. In an accompanying introductory statement, counsel stated that the petitioner's “petition for waiver of the labor certification is premised on her Masters Degree in Education and more than seventeen (17) years of inspired, innovative, and progressive teaching experience in both the United States and the Philippines.” Counsel also cited several certificates that the petitioner received, calling them “Awards and Professional Development Certificates, evidencing her distinguished career as an educator.” 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 evidence of exceptional ability is not sufficient to show eligibility for the waiver.

Most of the certificates acknowledge the petitioner's completion of various training and professional development courses. Others mark her attendance at conferences and seminars, and her service at extracurricular events. The certificate most resembling an award, because it does not simply reflect the petitioner's participation in a program or completion of a training course, is a "Certificate of Recognition" from [REDACTED] "for being the Most Patient Teacher this school year 1998-1999 in the [REDACTED]

Counsel stated: "During her time as a teacher at the [REDACTED] high school department in the Philippines, [the petitioner] was instrumental in providing special needs education where before there was no such opportunity. She pioneered the planning and implementation of its Special Education program." Helping to establish a special education program at a single school does not result in broader benefit on a national scale.

Counsel stated that "the United States Congress has specifically identified special education as a critical area" through the passage of the No Child Left Behind Act of 2001 (NCLBA), Pub.L. 107-110, 115 Stat. 1425 (Jan. 8, 2002) and the Individuals with Disabilities Act, 20 U.S.C. § 1400 *et seq.*, and that "[t]hese acts have additionally highlighted science, technology, engineering, and mathematics (STEM) as crucial to the education of America's youth. Therefore, [the petitioner's] niche as a special educator in the STEM field ensures that every child, no matter their instructional needs, has the potential for success." Counsel cited no passage from the NCLBA or from the IDEA relating specifically to the national interest waiver or, more generally, to immigration provisions for teachers. General emphasis on the importance of education does not create specific immigration benefits for foreign teachers. Counsel did not explain how the petitioner's impact as an educator at [REDACTED] extended beyond her own classroom.

The petitioner submitted several letters from administrators and faculty members at [REDACTED], attesting to the petitioner's talent and dedication as a teacher. The letters are complimentary toward the petitioner but emphasize the local impact of her work. Being a competent and respected teacher is not sufficient to meet the *NYS DOT* threshold for the national interest waiver.

The director issued a request for evidence on September 13, 2012. The director stated: "The petitioner must establish that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted background materials regarding STEM education, special education, and 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 USCIS-Texas Service Center has determined my client-teachers' National Interest Waiver self petitions insufficient and accordingly denied a considerable number of cases already." Counsel acknowledged that the director is "required by law" to follow published precedent, but claimed that

“the Service has legal and factual bases to approve Highly Qualified 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. 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 the passage of the NCLBA:

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

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

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

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

Substantial prospective benefit to the national educational interests is not the threshold for the national interest waiver. The plain wording of section 203(b)(2)(A) of the Act requires substantial prospective benefit in addition to a job offer from a U.S. employer. Furthermore, the NCLB Act did not amend the Immigration and Nationality Act or mention the national interest waiver. The statute contains several references to “immigrant children and youth” (e.g., section 301 of the NCLB Act bears the title “Language Instruction for Limited English Proficient Children and Immigrant Children and Youth”), but no references to immigrant teachers. The NCLB Act does not refer to section 203(b)(2) of the Act, and the phrase “national interest” does not appear in its text.

In contrast, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102-232, 105 Stat. 1733 (Dec. 12, 1991) made the national interest waiver available to members of the professions holding advanced degrees, where previously it was available only to aliens of exceptional ability. Following the 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 directly expressed Congressional authority, USCIS will not designate blanket waivers on the basis of occupation. See *NYSDOT* at 217.

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.

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

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 all teachers remain subject to the job offer requirement.

Counsel cited standardized test results showing that [REDACTED] ranked near the bottom” in several categories as of 2012. The petitioner had been teaching for [REDACTED] for several years by 2012, and the lack of evidence of countywide improvement during that time is not consistent with counsel’s assertion that the petitioner’s efforts will result in nationwide improvement or that the petitioner has had “proven success in raising proficiency of her students.” Counsel states that, while [REDACTED] as a whole produced disappointing results, [REDACTED] met its Reading AMO [Annual Measurable Objectives] targets.” Counsel did not explain the relevance of this claim. “CCPS” appears to stand for ([REDACTED]), regarding which the petitioner submitted recent testing statistics. The petitioner is not a reading teacher and has not taught at any school in Carroll County, Maryland.

Counsel also cited the “achievement gap” between underprivileged students and those from more affluent backgrounds, and stated that the Teach for America program, which places minimally trained recent college graduates into classrooms, has produced disappointing results compared to the petitioner’s “proven success.” Counsel, however, also quoted statistics showing that [REDACTED] students continue to perform poorly in comparison to other Maryland students. The record does not show that the petitioner, in her several years at [REDACTED] has perceptibly closed the achievement gap. The claim that she will do so in the future is unsupported speculation.

Counsel cited studies indicating that special education teachers “with more training were more likely to indicate they intended to leave.” Counsel claimed that, “given [the petitioner’s] highly achieved qualifications, she is not one of those with more training more likely to indicate they intended to leave.” The claim regarding attrition among special education teachers amounts, essentially, to a claim that there is (or will be) a shortage within that occupation. The labor certification process is in place to address such shortages. *NYS DOT* at 218.

Counsel stated: “the No Child Left Behind Act of 2001 trumps the Labor Certificate since job opportunities for U.S. workers are guaranteed once No Child Left Behind Act of 2001 is faithfully executed unlike in the Labor Certificate wherein U.S. workers are merely notified of the job offer.” Counsel identified no section of the NCLBA to establish the guaranteed job opportunities that counsel described.

Counsel claimed that it is in the best interest of U.S. students to grant the waiver to the petitioner, because the petitioner is better qualified than U.S. teachers and will therefore provide her students a better education than they would otherwise receive. Apart from being unsupported speculation, this assertion fails to explain how the petitioner’s work would produce national rather than local benefits.

As an “equitable consideration,” counsel stated that the petitioner

is firmly committed to continue teaching at [REDACTED] is currently barred for a two-year period (i.e. from March 16, 2012 to March 15, 2014) from filing any employment-based immigrant and/or nonimmigrant petition . . . arising from [REDACTED] willful violations of the H-1B regulations at 20 C.F.R. Part 655, subparts H and I . . . Thus, through no fault of her own, [the petitioner] would not be able to

continue teaching in [REDACTED] unless her E21 visa petition is approved, not to mention the fact that she has already firmly established a life here in the United States.

The temporary debarment order is not grounds for granting a permanent immigration benefit. The assertion that the petitioner “has already firmly established a life here in the United States” does not establish her eligibility for the national interest waiver. The debarment explains why [REDACTED] is temporarily unable to petition for teachers, but an employer’s inability to file petitions is not grounds for waiving the job offer requirement.

Counsel stated that another [REDACTED] teacher received a national interest waiver, and asked that the present petition “be treated in the same light.” While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. See 8 C.F.R. § 103.3(c). Furthermore, prior counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. The only stated similarity is that the beneficiary of the approved petition is “also a teacher in [REDACTED] Public School System.”

The director denied the petition on March 29, 2013, stating that the petitioner had not established that her work produces benefits that are national in scope or that she has a past record of specific prior achievement with some degree of influence on the field as a whole.

On appeal, counsel repeats the assertion that “[t]he United States Congress has spelled out the national interest with respect to public elementary and secondary school education” by enacting the NCLBA. Counsel claims that “USCIS gave insufficient weight to the NCLB Act,” but counsel has not established that the NCLBA, or “the Obama administration’s current initiatives aimed at enhancing that law,” have any weight in immigrant petition proceedings. Counsel identifies no specific immigration provisions in the NCLBA or related initiatives.

Like the section mentioned above, substantial portions of the appellate brief are copied verbatim, or nearly so, from parts of the response to the request for evidence. These redundant passages do not establish the petitioner’s eligibility or demonstrate errors in the director’s decision.

Counsel claims that *NYSDOT* “requires overly burdensome evidence on the qualification of the self-petitioner, identical to EB-1 extraordinary requirements.” The evidentiary requirements to establish extraordinary ability appear at 8 C.F.R. § 204.5(h)(3). Those requirements are not “identical” to the guidelines in *NYSDOT*, and the director did not deny the petition due to the petitioner’s failure to establish extraordinary ability.

Counsel contends that the director, in the request for evidence,

required vague and overly burdensome evidence more fitting to the cause of an Engineer. USCIS is expected to stipulate clear basis for evidences requested and at least meritoriously rebut the evidences submitted in the initial filing and in the response to Request for Evidence. Here, the Director failed to explain why NCLB

was undermined when the law provides the standards to achieve the national educational interest. Unlike in the *Matter of New York State Dept. of Transportation*, United States Congress legislated NCLB to serve as guidance to USCIS in granting legal residence to ‘Highly Qualified Teachers.’

The relevant points in *NYS DOT* are not specific to engineers. Counsel’s claim that USCIS must “rebut” the petitioner’s previously submitted evidence implies that the petitioner’s evidence established an initial presumption of eligibility that does not actually exist. Counsel asserted that “the director failed to explain why NCLB was undermined,” but counsel identifies no specific legislative or regulatory provisions that exempt school teachers from *NYS DOT* or reduce its impact on them. In stating “Congress legislated NCLB to serve as guidance to USCIS,” counsel claims knowledge of Congressional intent, but cites no source for this knowledge; the statute itself offers no support for counsel’s claim. The unsupported assertions of counsel do not constitute evidence. *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 states:

Our position is that NCLB and the Obama Education Programs have determined the National Educational Interests including the qualification of professionals to achieve it.

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

The existence of federal education policy does not give national impact to the efforts of one schoolteacher, and the petitioner has not established that the hiring of one “Highly Qualified Teacher” increases graduation rates. 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)).

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

Counsel states:

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

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

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

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

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

Counsel asserts that 59% of special education teachers hold a master’s degree or its equivalent, and that 92% of them hold “full certification.” The petitioner’s possession of credentials shared by a majority of her peers does not distinguish her from those same peers.

Counsel claims:

there is more likelihood than not as dictated by experience that replacing ‘Highly Qualified Teachers’ with those having only minimum qualification that these federally

funded schools would fail to meet the high standard required under the No Child Left Behind (NCLB) Law resulting not only [in] closure of these schools but loss of work for those working in those schools.

Counsel identifies no “federally funded school” that has closed as a result of failing to meet NCLBA standards. Attributing this claim to “experience” cannot suffice in this regard. Counsel’s claims are not evidence. *See Matter of Obaigbena* at 534 n.2, citing *Matter of Ramirez-Sanchez* at 506. Also, counsel has not shown that awarding the waiver to the petitioner would prevent school closures on a nationally significant scale. Counsel’s varied appeals to the NCLBA all amount to the claim that the NCLBA created a blanket waiver for highly qualified teachers, but the petitioner has submitted nothing of substance to demonstrate that such a blanket waiver exists.

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. *NYSDOT* 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, 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.

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

ORDER: The appeal is dismissed.