

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAR 18 2014** Office: TEXAS SERVICE CENTER

IN RE:

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, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree.¹ According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a special education teacher. The petitioner has worked for [REDACTED] since June 2007. At the time of filing, the petitioner was teaching at [REDACTED] for [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 did not qualify for classification as a member of the professions holding an advanced degree, and that the petitioner had 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 additional documentary evidence and a statement in Part 3 of the Form I-290B, Notice of Appeal or Motion, contesting the director's decision. In her statement, the petitioner asserts that she "has more than five years of progressive post baccalaureate experience in the specialty" and that her role with [REDACTED] serves the national interest.

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 regulation at 8 C.F.R. § 204.5(k)(3)(i) states:

¹The petitioner was initially represented by attorney [REDACTED]. In this decision, the term "previous counsel" shall refer to [REDACTED].

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.

The petitioner submitted evidence that she received a Bachelor of Science degree in Psychology from the [REDACTED] in 2003. The petitioner also submitted a January 16, 2012 "Expert Opinion Evaluation" report prepared by [REDACTED], Professor of Operations Management and Management Science, [REDACTED] stating that the petitioner has "at least seven years of post-baccalaureate progressive work experience in education."

The director found that the petitioner had not established she has progressive post-baccalaureate experience equivalent to an advanced degree under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Specifically, the director stated that the petitioner had not demonstrated "five years of progressive post-baccalaureate experience in the specialty." The petitioner, however, submitted various letters from [REDACTED] staff and other documentary evidence indicating that she has been employed by [REDACTED] as a teacher since 2007. On appeal, the petitioner submits a "Letter of Employment Verification" from [REDACTED] and Form W-2 Wage and Tax Statements for [REDACTED] for 2007 through 2012. In addition, the petitioner previously submitted a letter from [REDACTED] stating that the petitioner worked as a kindergarten teacher at the [REDACTED] "from May 2005 until April 2006." The petitioner also submitted certificates of participation and attendance for professional development courses that she completed in [REDACTED] and the Philippines from 2005 through 2010. The letters from [REDACTED] staff and the numerous professional development certificates the petitioner submitted are sufficient to demonstrate her advancing levels of responsibility and knowledge as an educator. As the evidence the petitioner submitted establishes that she has more than five years of progressive post-baccalaureate experience in teaching, the director's finding is withdrawn. The petitioner therefore qualifies as a member of the professions with progressive post-baccalaureate experience equivalent to an advanced degree.

The remaining issue to be determined 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.

The petitioner has established that her work as an elementary school special 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.

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.*

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 U.S. Department of Labor through the alien employment certification process. *Id.* at 221.

The petitioner filed the Form I-140 petition on June 19, 2012. In a June 14, 2012 letter accompanying the petition, previous counsel stated that the petitioner's national interest waiver "is premised on her bachelor's degree in Psychology plus at least eight (8) years of progressive professional experience as Special Education teacher, the recognition and grants earned through her diligent efforts . . . and testimonials from superiors and colleagues." Academic degrees, occupational experience, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F), respectively. Exceptional ability, in turn, is not a self-evident ground for the waiver. See section 203(b)(2)(A) of the Act. 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. *NYSDOT* 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.

In his letter accompanying the petition, previous counsel did not mention the *NYSDOT* guidelines or explain how the petitioner meets them. The record does not show how the petitioner's work will impact the field beyond [REDACTED]. With regard to the petitioner's teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her elementary school students such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as a special education teacher beyond the students at her school and, therefore, that her proposed benefits are national in scope. In addition, the record lacks specific examples of how the petitioner's work as a special educator has influenced the field on a national level. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted various letters of support from administrators, school staff, and parents discussing her work as a 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.

In her April 2013 letter, [REDACTED] Managing Principal, [REDACTED] stated:

I have known [the petitioner] for approximately seven years, during which time I have served as her immediate supervisor. Throughout this period, [the petitioner] has consistently demonstrated a conscientiousness and genuine commitment to the students at [REDACTED] Elementary students [sic]. [The petitioner], currently serves as a Resource Teacher, providing special education services to all students in grades Kindergarten through 2. During her tenure at [REDACTED] [the petitioner], has utilized the Maryland State Curriculum and students' Individualized Education Programs (IEPs) to teach them at their instructional levels. [The petitioner] utilizes data to drive instruction; differentiates instruction based on the noted accommodations and modifications as outlined in the IEP, in addition to, student readiness levels and learning styles. She is also responsible for documenting student progress.

[The petitioner] also serves as the Literacy representative for our school. Her additional responsibilities include: providing professional development for teachers regarding system initiatives and programs, ensuring our school completes district-mandate[d] assessments in a timely manner, supporting the Managing Principal in analyzing data to make instructional decisions, and assumes other duties as assigned in a manner of excellence.

[The petitioner] performs in a proficient manner in her current assignment. She collaborates with her colleagues, attends professional development sessions, submits the required documentation in a timely manner, and has a good rapport with students, parents, and colleagues.

[REDACTED] comments on the petitioner's job responsibilities and proficiency as a teacher, but does not indicate how the petitioner's impact or influence as a teacher is national in scope. In addition, Ms. [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 past 6 years in my capacity as Professional Developer at [REDACTED] where she has worked full-time as a Primary Special Educator. [The petitioner's] punctuality and attendance have been superior. She has a superior work ethic and is well liked by our staff and students. Working with our youngest students that have a broad range of learning and/or behavioral disabilities requires a teacher that is patient, knowledgeable and compassionate to their needs.

* * *

Some of her duties here at [REDACTED] include:

- Working with students on a daily basis, both in the classroom setting or in a small group
- Testing students and completing detailed reports on the results of the assessments
- Participating in weekly Child Study Team meetings with parents and other team members
- Completing all student reports in a timely manner and entering the data into Maryland On-line Data System
- Maintaining daily lesson plans and data reports on students in her caseload
- Maintaining a model classroom

[The petitioner] has also developed strong relationships with the parents of her students and works with them in school on strategies to support their students at home. She has outstanding communication skills and is always positive in her interactions with everyone at [REDACTED]. She also serves in the capacity of Literacy Representative for the school where she attends monthly meetings and then supports the staff by providing information and/or professional development relating to the [REDACTED] Literacy Framework for instruction and oversees the on-line data monitoring for our school using the Wireless Generation Assessment Program. [The petitioner] has also served in the capacity of Co-Testing Coordinator for the past two years.

[REDACTED] points to the petitioner's punctuality, superior attendance, patience, knowledge, compassion, teaching duties, strong parental relationships, communication skills, and service as Literacy Representative and Co-Testing Coordinator, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond [REDACTED] and [REDACTED].

[REDACTED]

[The petitioner] serves as a Special Educator for grades PK-2 in our school, [REDACTED]. Over the school year that I have worked with her, she has demonstrated excellent relations with both her students and colleagues. She submits her reports and documentation in a timely manner, and is always in communication with parents regarding their children's performance. She strives to help her students achieve their academic and IEP goals. I have noticed her diligent efforts in providing accommodations and supplementary aids as needed by her students with disabilities. Her attitude at work is always professional.

[REDACTED] points to the petitioner's positive relationships with students and staff, promptness in submitting reports and documentation, consistency in communicating with parents about student performance, efforts to help students reach their goals, and professional attitude, but her observations fail to demonstrate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified special education teachers.

Resource Special Educator, Yorkwood Elementary School, stated:

I have worked with [the petitioner] for the past two years here in School. I have known her as our school's Inclusion teacher and Resource Special Educator for the primary levels.

Over the past two years, [the petitioner] has had the wonderful opportunity to instruct a diverse group of preschool and elementary students. She demonstrates effective teaching techniques and instructional methods. She educates all types of learners, and fosters a fun and engaging learning environment, all of which comply with MSDE [Maryland Stated Department of Education] standards. One of her greatest strengths as an educator is meeting each student's unique needs by developing a personal understanding of each one of them. She achieves this by seeing and assessing students as individuals.

comments on the petitioner's effectiveness as an educator and ability to develop a personal understanding of her students, but her observations fail to demonstrate that the petitioner's work has had an impact beyond or has otherwise influenced the field as a whole.

The preceding references praise the petitioner's abilities as a special education teacher and personal character, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the school 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* at 217, n.3.

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

1. A "2012 Outstanding Teacher" certificate from the administration of in recognition of outstanding service to her students;
2. An "Honor Graduates" list from the indicating that she graduated
3. A Certificate of Appreciation from the University of San Carlos during the 2002-2003 school year;
4. A certificate from the recognizing the petitioner for having taken the "Oath of Office" as Secretary General of the (2002);
5. A certificate from the recognizing the petitioner for having taken the "Oath of a Full-Fledge Junior Jaycee" (2002);
6. A Certificate of Participation from the U for her "presence during the Parliamentary Procedure Seminar" (1999);

7. A Certificate of Recognition from the [REDACTED] for “leadership in organizing the [REDACTED] (2003);
8. A May 3, 2011 letter of appreciation from the [REDACTED] thanking the petitioner for her “dedication to the youth of [REDACTED]”
9. A May 2009 letter of appreciation from the [REDACTED] thanking the petitioner for [REDACTED]
10. A Certificate of Appreciation from the principal of [REDACTED] “for dedicated service to our students” (2010);
11. Earnings statements;
12. Maryland Educator Certificates;
13. A “Professional Teacher” certificate from the Republic of the Philippines, Professional Regulation Commission, Board for Professional Teachers;
14. A “Professional Identification Card” from the Republic of the Philippines, Professional Regulation Commission, Manila;
15. A “Certification of Good Standing” from the Republic of the Philippines, Professional Regulation Commission, Manila;
16. A “Complete Listing of Those Who Passed Licensure Exam for Teachers” in the [REDACTED] [REDACTED] identifying the petitioner among thousands of individuals who attained their elementary level license (October 10, 2005);
17. A Praxis Series Examinee Score Report;
18. A Certificate of Membership for the [REDACTED], Manila, Philippines;
19. Academic records and transcripts; and
20. Employment verifications.

Again, academic records, occupational experience, professional certifications, salary information, membership in professional associations, and recognition for achievements are all elements that can contribute toward 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). *NYSDOT* 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 1 – 10) have more than local, regional, or institutional significance. There is no documentary evidence showing that items 1 through 20 are indicative of the petitioner’s influence on the field of education at the national level.

The petitioner submitted various certificates of participation 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 Annual Evaluation Reports, Performance Review Reports, and Formal Observation Reports from [REDACTED]. The petitioner,

however, failed to demonstrate how the evaluations reflect that she has impacted the field to a substantially greater degree than other similar qualified educators and how her specific work has had significant impact outside of the institutions where she has taught.

The petitioner submitted documentation indicating that she received donations through [REDACTED] with matching gifts from the [REDACTED]. The funded classroom projects included [REDACTED] and [REDACTED].

In addition, the petitioner submitted documentation showing that she was among thirteen educators from [REDACTED] Facilitators on November 1st and 3rd, 2010. The petitioner, however, does not explain how the submitted documentation demonstrates her influence on the field as a whole.

The petitioner submitted President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; information about Public Law 94-142; an article in *Encyclopedia of the Supreme Court of the United States* about *Brown v. Board of Education*, 347 U.S. 483 (1954); a copy of Section 1119 of the No Child Left Behind Act (NCLBA); a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; a September 26, 2011 article in *Education Week* entitled "Shortage of Special Education Teachers Includes Their Teachers"; 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; 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?"; a report entitled "Special Education Teacher Retention and Attrition: A Critical Analysis of the Literature"; an abstract for a report entitled "SPeNSE: Study of Personnel Needs in Special Education"; 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"; 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* 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 an elementary school special education teacher has affected the field as a whole.

The director denied the petition on August 21, 2013. The director indicated that the petitioner had not shown that the proposed benefits of her work as a teacher will be national in scope. The director also determined that the petitioner had not demonstrated that she will benefit her field to a greater extent than would an available U.S. worker having the same minimum qualifications, or that her work has otherwise influenced the field as a whole. The director therefore concluded that the petitioner failed to

establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits three additional letters of support from [REDACTED] School staff.

In her September 16, 2013 letter, [REDACTED] states:

[The petitioner] is an exemplary special educator, she differentiates instruction to meet the needs of our diverse learners, assesses students and recommends strategies to support their learning in school and in the home. She provides consultation services to the regular educators in our school. As there is a national shortage of special educators, particularly those who choose to work in urban settings, [the petitioner's] work is instrumental in closing the achievement gap for African American students who are also counted in the special education and Title I sub-groups Our school has experienced the shortage in special educators as we currently have substitute teachers working as special education resource teachers, supporting the need for us to retain highly qualified educators, such as [the petitioner].

[REDACTED] mentions the petitioner's teaching duties at [REDACTED] and comments on the "shortage of special educators" nationally and in urban areas. However, the unavailability of qualified U.S. workers or the amelioration of local labor shortages are not considerations in national interest waiver determinations because the alien employment certification process is already in place to address such shortages. *Id.* at 218. Again, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221.

[REDACTED] states:

When our country adopted the No Child Left Behind legislation, the goal was by 2014 to have all children reading by grade 3 – in each state, in each school district, in each school, in each classroom, but where do you begin to make that kind of national impact? The answer is that it begins with each teacher working with each student to help them reach their individual potential and become productive responsible citizens of this great nation.

With regard to the national impact of the petitioner's work, [REDACTED] asserts that achieving the NCLBA reading goal "begins with each teacher working with each student to help them reach their individual potential." However, as previously discussed, *NYS DOT* specifically identified an elementary school teacher as an example of an occupation where the individual worker would not produce benefits that are national in scope. *See NYS DOT* at 217, n.3. With regard to following the guidelines set forth in *NYS DOT*, by law, the USCIS does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c). Ms. Allen's observations do not establish that the NCLBA has modified or superseded *NYS DOT*, and she identifies no specific legislative or regulatory provisions

that exempt school teachers from *NYSDOT* or reduce its impact on them. 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*. The petitioner, however, has not shown that the NCLBA contains a similar legislative change.

[REDACTED] Instructional Team Associate and Individualized Education Program Chairperson, [REDACTED], points to President Barack Obama's call for universal preschool, the importance of certified early childhood programs as a solution for reversing poor student achievement, and how improving early childhood education will help to increase the qualifications of U.S. military recruits and to prepare students for future roles in business. However, assertions regarding the need for early childhood educational reform in the United States only address the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. [REDACTED] observations fail to demonstrate how the petitioner's specific work has influenced the field of special education as a whole.

[REDACTED] further states that "the work of [the petitioner] contributes greatly to our country's wellbeing, as directly impacting [sic] our national economy and global competitiveness." However, [REDACTED] does not explain how the actions of one elementary school special education teacher would contribute substantially to the national economy or U.S. global competitiveness. Again, the impact of a single early childhood special educator is so attenuated in the field that it would not yield a national effect. See *NYSDOT* at 217, n.3. Moreover, there are no blanket waivers for early childhood special education teachers; USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *NYSDOT* at 217.

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 professional 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 in Part 3 of the Form I-290B, the petitioner asserts that she “is a dually certified, highly qualified educator who specializes in Special Education particularly in the field of Early Childhood.” Section 9101(23) of the NCLBA defines the term “Highly Qualified Teacher.” Briefly, by the statutory definition, a “Highly Qualified” elementary 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
- has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, or (in the case of experienced teachers not “new to the profession”) demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation.

In addition, the petitioner previously submitted information from the U.S. Department of Labor’s *Occupational Outlook Handbook* describing the minimum qualifications necessary to become a special education teacher:

Public school teachers are required to have a least a bachelor’s degree and a state-issued certification or license.

* * *

Education

All states require public special education teachers to have at least a bachelor’s degree. Some of these teachers major in elementary education or a content area, such as math or chemistry, and minor in special education. Others get a degree specifically in special education.

* * *

Some states require special education teachers to earn a master’s degree in special education after earning their teaching certification.

* * *

Licenses

All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.

* * *

Requirements for certification 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.

Many states offer general special education licenses that allow teachers to work with students across a variety of disability categories. Others license different specialties within special education.

Teachers are often required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

Some states allow special education teachers to transfer their licenses from another state. However, some states require even an experienced teacher to pass their own licensing requirements.

The petitioner has not established that the NCLBA's "Highly Qualified" standard involves requirements that are 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" educator. The labor 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. *NYSDOT* at 218, n.5.

The petitioner further states that "she serves in a Title I school . . . where close to 100% of the students are African American" and that her work "closes the achievement gap of students in the most vulnerable parts of the country." The petitioner, however, has failed to establish that her efforts have significantly closed the achievement gap in I [redacted] or nationally. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT* 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”). 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*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.