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

(b)(6)

DATE: MAR 3 1 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:

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,

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. 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 taught for since 2006. At the time of filing, the petitioner was working for 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. Specifically, the director determined that the petitioner seeks employment in an area of substantial intrinsic merit. Additionally, the director stated that "USCIS [U.S. Citizenship and Immigration Services] does not . . . dispute that the field is national in scope." The director concluded, however, that the petitioner had not established that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

On appeal, the petitioner submits copies of documents that were previously submitted, a statement describing her personal circumstances and requesting approval of the petition, and a statement in Part 3 of the Form I-290B, Notice of Appeal or Motion, contesting the director's decision.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

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

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

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

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The petitioner has established that her work as an elementary school special education teacher is in an area of substantial intrinsic merit. As will be discussed, however, the director's determination regarding the national scope of the proposed benefit associated with the petitioner's work will be withdrawn. The remaining issue that will be addressed is whether the petitioner has established that she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although 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 labor certification process. *Id.* at 221.

The petitioner filed the Form I-140 petition on March 11, 2013. In Part 4 of the Form I-140, the petitioner answered "no" to whether any immigrant visa petitions had previously been filed on her behalf. The record, however, reflects that filed a Form I-140 petition, with an approved labor certification, on her behalf on July 27, 2009, to classify her as a professional under section 203(b)(3)(A)(ii) of the Act. The Texas Service Center approved the petition on August 4, 2009, with a priority date of October 1, 2008.

In support of the instant petition, the petitioner submitted letters of support from three staff members stated:

> I have known [the petitioner] for the past two years where she serves as the Special Education Resource Teacher at In this position, she also serves as the department chair with the responsibility of coordinating the Individualized Educational Plan Meetings for students. She is instrumental in ensuring that all Special Education Policies and Procedures and . . . support to staff and students are in compliance.
>
> I have observed [the petitioner] during a myriad of formal and informal observation and was impressed with the manner in which she conducted the lessons. The lessons were well planned and executed in a manner to meet the unique needs of students who are challenged. She was very effective in guiding the students through an interactive approach which led to student mastery of the skills.
>
> [The petitioner] is very knowledgeable about the field of education and works collaboratively with the staff and parents to ensure that a well-rounded program is provided to meet the unique needs of our students. In addition, she is actively involved in our school wide initiatives, Student Intervention Team, and the School Based Management Team. She is highly recognized by her colleagues and has represented the school at various educational forums.
>
> [The petitioner's] contributions at have been of the highest caliber and she has earned the respect of everyone as a result of her leadership qualities.

comments on the petitioner's job responsibilities, effectiveness as a special education teacher, knowledge in the field, collaboration with staff and parents, participation in school-related activities, and leadership qualities, but does not indicate how the petitioner's impact or influence as a special educator is national in scope. In addition fails to provide specific examples of how the petitioner's work has influenced the field as a whole. 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. *NYSDOT* at 219, n. 6.

stated:

> [The petitioner] is now presently assigned as a special education chairperson and special education resource teacher at the same time. She is a teacher who possesses the right behavior worthy of emulation and respect from her students. [The petitioner] is a valuable asset to and the students she serves. I have personally seen her go beyond the call and nature of her assignment to help the students she serves. She demonstrates a clear understanding of the knowledge, dispositions and performance associated with assisting students with special needs. She has clear sense of the school's vision and is a team player at As a dependable teacher, she never leaves an assigned task unfinished. She exercises quick and sound judgment in problem solving and in any situation that requires solution. Moreover, she is always willing to help others and stands available and approachable to the students and other teachers. Perhaps most impressive of her is her dedication, passion, and excellence in performing her responsibilities as the Chairperson of our IEP [Individualized Education Plan] Team. She has excellent organization skills and effective strategies in keeping our school in compliance in all matters related to annual reviews, reevaluations, and initial referrals.

points to the petitioner's positive influence on students, her value to the school, effectiveness as a special educator, and qualities such as her dependability, sound judgment, and passion, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond

stated:

> [The petitioner] has performed as a highly professional effective Special Education Chairperson and Resource Teacher. As a special education teacher, she appears to have effective classroom management skills and consistently maintains an outstanding rapport and relationship with her students, colleagues, and parents. Further, [the petitioner] implements research-based instructional practices such as Response to Intervention (RTI) in the classroom. She effectively interprets student data, monitors student progress, and

implements the necessary educational interventions, as needed, to meet individual student needs.

[The petitioner] further brings expertise, knowledge, and enthusiasm to her Special Education Team as a Chairperson. [The petitioner] is an asset to her team members in that she shares and assists both regular and special education teachers who may need support and guidance. She demonstrates creativity in her lesson preparation following curricular programs. Further, [the petitioner's] Individual Education Plans (IEPs) are well written, data-based, and effectively implemented for students in her caseload. For school psychology needs, she has consistently and effectively cooperated and completed required rating scales, interviews, and observations for assessments. As a Special Education Chairperson, she has demonstrated an exemplary performance in keeping the school in compliance in all annual reviews, reevaluations, and initial evaluations, including MEDICAID monthly IEP coordination report forms.

comments on the petitioner's knowledge and expertise, her classroom management skills, positive rapport with others, effectiveness as a special educator, and her ability to maintain compliance with school guidelines. In addition, he discusses the petitioner's positive characteristics such as her professionalism, enthusiasm, cooperation, and creativity. However, his 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 elementary school special education teachers.

The petitioner's references praise her abilities as a special educator 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). On page 3 of the decision denying the petition, the director stated that "USCIS does not . . . dispute that the field is national in scope." The second prong of the national interest waiver test, however, does not require that the *field* be national in scope. Rather, it requires the petitioner to establish that the *proposed benefit* of her employment as a special education teacher will be national in scope. In the present matter, the petitioner has not established that her specific work as an educator will impact the field beyond With regard to the petitioner's special education duties, there is no evidence establishing that the benefits of her work would extend beyond her elementary school students such that her benefits 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 as a whole.

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

1. A "Certificate of Appreciation" from Instructional Supervisor (Kindergarten through Eighth Grade), Department of Special Education, stating: "In recognition of valuable contributions to the Special Education Department, this certificate is presented to [the petitioner] on this 10th day of May, in the year 2011";
2. A "Certificate of Excellence" from the administration of for inspiring every student everyday at (May 3, 2011);
3. A "for super support during MSA [Maryland School Assessment] at (March 2012);
4. A "Personal Success Award" from the administration of congratulating the petitioner for earning a "Lion's Pride Award";
5. A certificate expressing thanks for making "a difference in the life of a child" during the "2010-2011 School Year";
6. A Maryland Educator Certificate;
7. A Master of Education degree from
8. An Official Graduate Transcript fro

Academic records, professional certifications, 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), (C), and (F), respectively. Exceptional ability, in turn, is not a self-evident ground for the national interest 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. 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 – 5) have more than local or institutional significance. There is no documentary evidence showing that items 1 through 8 are indicative of the petitioner's influence on the field of special education as a whole.

The petitioner also submitted certificates of completion from for various training courses relating to her professional development. Although taking courses is a way to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in such training to establish eligibility for the national interest waiver.

The director denied the petition on October 9, 2013. The director determined the petitioner had failed to establish that she has influenced the field of special education as a whole, and that her skills and background have set her apart from others in the field. In addition, the director stated: "The record also does not show that the petitioner's influence has been and will be national in scope." 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 a statement describing her personal circumstances and the difficult challenges facing her family. The submitted information, however, does not demonstrate that the petitioner has impacted the special education field to a substantially greater degree than other similary qualified teachers and that her specific work as an educator has had significant effect outside of

In Part 3 of the Form I-290B, the petitioner states:

> Given the evidence that was provided wherein it was demonstrated that a "job offer" in the form of a Permanent Labor Certification and I-140 petition was already approved on my behalf, but through circumstances beyond my control the benefits of that are withheld from me and the petitioning school system, it should be clear from this evidence that the continued

> requiring of such a petition constitutes a substantial burden on the petitioner/employer school system and that the loss of my services by so doing would be substantially disruptive to my ability to continue providing the services that were otherwise found to have substantial intrinsic merit.

The petitioner mentions "circumstances beyond [her] control" and immigration benefits "that are withheld from [her] and the petitioning school system." The petitioner refers to the debarment provisions of section 212(n)(2)(C)(i) of the Act invoked by the U.S. Department of Labor against owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS could not approve any employment-based immigrant or nonimmigrant petitions filed by [1] The debarment meant that was, temporarily, unable to file its own petition on the petitioner's behalf during the specified period, and thus explains why labor certification was not an option during that time frame. The inapplicability or unavailability of a labor certification, however, 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. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevented from filing a petition on her behalf.

In addition, the petitioner argues that her work has "substantial intrinsic merit" and that "the denial of this petition would . . . undermine and be contrary to the U.S. national interests as [her] work has been found by the USCIS to be otherwise serving." The petitioner, however, does not point to a specific finding by USCIS stating that her work as a special educator serves "U.S. national interests." 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. *Id.* 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.

The petitioner further states:

> In other words the U.S. national interests served by the granting of this petition overwhelm the U.S. national interests that would otherwise be served by the requiring of employer sponsorship. This is particularly true when it is a matter of record that I am already the beneficiary of a permanent labor certification which found that no U.S. workers were available and that the labor markets with respect to my position are not adversely [a]ffected.

The petitioner asserts that a waiver of labor certification is justified because "no U.S. workers were available" and that the labor markets "would not be adversely [a]ffected." The unavailability of qualified U.S. workers and the amelioration of local labor shortages, however, are not considerations

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[1] The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. *See* http://www.dol.gov/whd/immigration/H1BDebarment.htm, accessed on March 19, 2014, copy incorporated into the record of proceeding.

in national interest waiver determinations because the labor 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 labor certification process. *Id.* at 221. In addition, the petitioner's statement that she is "already the beneficiary of a permanent labor certification" indicates that there is a demand for credentialed special education teachers, a demand that the labor certification process can and, in this instance, did address. Specifically, the petitioner is the beneficiary of an approved labor certification that I filed on her behalf on October 1, 2008.

The petitioner continues: "A finding that the U.S. national interests in granting this petition outweigh the national interests inherent to the job sponsorship process is a key and fundamental component of the *Matter of NYSDOT* 'third prong.'" With regard to the third prong of the *NYSDOT* test, as previously discussed, the evidence submitted by the petitioner does not establish that she has affected the special education field to a substantially greater degree than would an available U.S. worker having the same minimum qualifications, or that she has otherwise specifically influenced the field as a whole.

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.