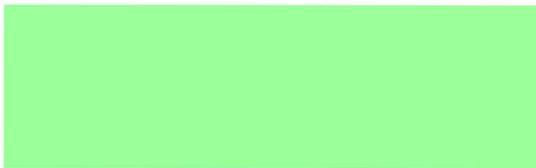


(b)(6)

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

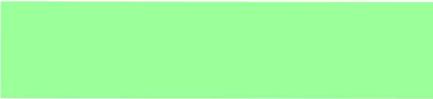
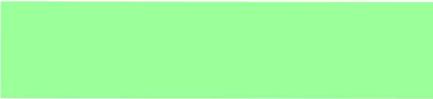


U.S. Citizenship
and Immigration
Services



DATE: **MAY 06 2014** OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:


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 Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an elementary school teacher. At the time she filed the petition, the petitioner taught at [REDACTED] Washington, D.C. 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.

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), Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

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

In re New York State Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 29, 2012. The initial submission included several exhibits, but no discussion of their significance or relevance to the petition. The petitioner’s attorney explained: “so many teachers instructed me to file their NIW [national interest waiver] Petitions, I most humbly beg for your understanding for not being able to submit my detailed cover letter.”

The petitioner submitted letters from teachers and administrators at various schools in Maryland and California where she had taught. These witnesses attested to the petitioner's skills and accomplishments as a mathematics teacher at those schools, but did not claim or demonstrate that the petitioner's work has influenced the field of elementary math education as a whole. Many of the letters are worded as employer reference letters, prepared when the petitioner changed employers. Many letters from [REDACTED] Maryland, date from 2011, and many letters from [REDACTED] California, date from 2007.

Under the heading "Contributions in Education," the petitioner stated:

Formative Assessments (FAST) were given three times in a school year to measure students' achievement in Reading and Mathematics. . . .

These FAST results showed the students' growth from each FAST test to the next. The students' proficiency in the different skills in Math had moved from either basic to proficient or from proficient to advance [sic]. By the third FAST test, the students had reached the advance [sic] level for majority of the skills taught in 4th grade Math. This indicated their readiness for the Maryland State Assessment (MSA).¹

The Maryland Report Card showed that my students' proficiency in Math had greatly improved and continuously increased each year. I was able to pass my students in the Maryland State Assessment for three consecutive years. [REDACTED] is a Title I school. The school has been struggling for years to pass the MSA and make a safe harbor. Most of our students came from under privileged families and had to rely [on] free lunch. The task of teaching these kids to learn and master the necessary skills had not been easy. But with careful planning, analysis of available data, collaboration with peers, and hard work, I have made the difference.

The petitioner submitted documentation of her students' FAST results for 2009-2010 and 2010-2011. The petitioner also submitted bar graphs indicating that her students outperformed those of other teachers at [REDACTED]. The submitted results did not show how her students' results compared to those of students at other schools. Also, the results indicate that the petitioner taught approximately 30-35 students each year; there is no evidence of the petitioner's impact outside of this small group of students. Classroom instruction on this scale does not produce benefits that are national in scope. *See NYSDOT*, 22 I&N Dec. at 217 n.3. Similarly, the petitioner has engaged in volunteer math tutoring, but the number of students who directly benefit from this work is not sufficient to demonstrate national scope or the petitioner's impact on her field as a whole.

The petitioner also provided aggregate figures, comparing the performance of U.S. students against that of students in other countries, and showing differences in test scores between different ethnic groups.

¹ The initials "MSA" stand for "Maryland School Assessment."

The petitioner did not show that her work has affected these numbers or closed the gaps at a national level.

The petitioner documented her past experience and professional training she has undertaken while employed in the United States. These materials demonstrate that the petitioner is an experienced and qualified school teacher, but they do not address the *NYSDOT* guidelines for the national interest waiver. There exists no blanket waiver for teachers, and therefore evidence that the petitioner is a teacher cannot suffice to qualify her for the waiver.

The petitioner submitted a copy of a reading workbook, published in the Philippines in 2002, of which the petitioner was one of five co-authors. The petitioner did not claim to have created similar works in the United States, and the petitioner's recent work has been as a math teacher rather than a reading teacher.

The petitioner submitted copies of certificates showing her receipt of various awards, including an "Outstanding Achievement Award" and a "Beyond the Call of Duty" certificate from [REDACTED]; a "Certificate of Recognition" from the [REDACTED] acknowledging that the petitioner has "served for ten or more years" in U.S. schools; and certificates indicating that she participated in various projects in the Philippines and, later, in the United States.

The director issued a request for evidence (RFE) on December 18, 2012. The director instructed the petitioner to establish that the benefit from her work is national in scope and that she "has a past record of specific prior achievement with some degree of influence on the field as a whole . . . [to] justify projections of future benefit to the national interest."

In response, the petitioner submitted background materials regarding science, technology, engineering, and math (STEM) education and federal education initiatives, as well as a statement that reads, in part:

With the strict implementation of *In the Matter of New York Department of Transportation [sic]*, the USCIS-Texas Service Center has determined National Interest Waiver self petitioner-teachers' evidences as insufficient and accordingly denied the applications.

While USCIS-Texas Service Center has discretion to enforce said precedent . . . , however, please allow us to state that the Service has legal and factual bases to approve teachers' National Interest Waiver applications without offending the principles enunciated in the *Matter of New York Department of Transportation*.

The statement 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." The quoted passage does not state or imply that Congress created the national interest waiver for educators. The

job offer requirement, which specifically applies to school teachers (see sections 203(b)(2)(A) and 101(a)(32) of the Act) is, itself, an integral provision of IMMACT 90. 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.

NYSDOT acknowledges that “Congress did not provide a specific definition of ‘in the national interest’” *Id.* at 216. The petitioner claimed that Congress subsequently provided that definition with the passage of the No Child Left Behind Act of 2001 (NCLBA), Pub. L. 107-110, 115 Stat. 1425 (Jan. 8, 2002):

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

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

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

Most of the statement submitted in response to the RFE consists of variations on the claim that the NCLBA amounts to a legislative mandate for a blanket waiver for highly qualified teachers. The phrase “national interest” does not appear in the text of the NCLBA. The term “best interest,” with respect to children, appears only in provisions relating to homeless students. The NCLBA contains no mention of the national interest waiver or any immigration benefits for foreign teachers, and it did not amend section 203(b)(2)(B) of the Act (which created the waiver). As such, the NCLBA does not amend the Immigration and Nationality Act, or contain a “clear standard on what qualifications must be required from NIW teacher self-petitioners.” The petitioner contended that Congress specifically intended to make the waiver available to “highly qualified teachers” when it passed the NCLBA, and that “favorable decisions for the NIW teachers” is thereby “honoring the Congressional intent in No Child Left Behind Act of 2001.” The petitioner, however, cited no specific language from the statute itself or its legislative history to support this claim.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive

weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). Here, the petitioner has not established that Congress intended to exempt teachers from the job offer requirement, either through section 203(b)(2) of the Act, the NCLBA, or any other federal legislation.

The NCLBA did not amend section 203(b)(2) of the Act or otherwise mention the national interest waiver. In contrast, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, 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*. The petitioner identified no other legislation that directly addresses the national interest waiver in this way. In the absence of a comparable provision in the NCLBA or any other education-related legislation, there is no basis to conclude that the legislation indirectly implied a blanket waiver for teachers. Without clearly expressed Congressional authority, USCIS will not designate blanket waivers on the basis of occupation. See *NYSDOT*, 22 I&N Dec. at 217.

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

The petitioner stated:

The reasonable standard in determining whether the proposed employment is national in scope must not purely be geographical in nature but intellectual consideration as well such as directed to recapture the nation's economic dominance by future American populace. . . .

Syllogistically, hiring 'Highly Qualified Teachers' would produce more graduates than dropouts. By producing graduates and eliminating dropouts, State and Federal Governments would be empowered by mature, intelligent and responsible citizenry.

The petitioner's RFE response statement detailed federal education initiatives and Maryland's statewide efforts to meet federal benchmarks, and indicated that the petitioner "plays a primary role in accomplishing the law's goal of closing the achievement gap." The petitioner did not submit evidence to establish her role in "closing the achievement gap," or to show that the hiring of one

“Highly Qualified Teacher” increases graduation rates. The petitioner had taught in the United States for ten years prior to filing the petition, and she did not show that her work had affected national graduation rates during that time. 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)).

The petitioner submitted a chart showing that fourth grade MSA math scores rose in 2009, 2010, and 2011 while she was working at that school, and then declined to pre-2009 levels in 2012 after she left. The implication is that the petitioner has achieved results that other teachers cannot duplicate. The submitted data do not show that the petitioner had influenced the field in a way that increased test scores for the students of other teachers. The petitioner did not compare her students’ scores to the statewide results for the same period, which would have shown whether her students surpassed the statewide average or remained below it while approaching a level that other teachers had achieved.

The petitioner quoted President Obama as saying: “I’m committed to moving our country from the middle to the top of the pack in science and math education over the next decade.” The petitioner contended that the president has thus “effectively set the critical timeline within which to meet [this] goal. . . . the Chief Executive of the country has himself determined that the national interest would not be served if the petitioner was required to obtain a labor certificate [*sic*] for the proposed employment.” The petitioner did not establish that granting the waiver would make a difference in meeting “the critical timeline,” or that the president’s remarks related in any way to immigration law or policy.

The quotation appears in a submitted copy of *Supporting Science, Technology, Engineering, and Mathematics Education: Reauthorizing the Elementary and Secondary Education Act*, a July 2010 publication of the U.S. Department of Education. That publication included an itemized list of “What we’re proposing.” None of the eight items mentioned the national interest waiver specifically, or immigration in general.

The petitioner claimed that, having “over 20 years of dedicated service in [her] profession,” it is “economically wholesome” to take advantage of her experience “instead of waiting for over 20 years which is beyond the time frame targeted by the President.” This assertion presumes that there are no experienced math teachers in the United States, and therefore it would take 20 years for U.S. teachers to reach the level of experience that the petitioner has already attained. Also, length of experience, by itself, does not convey influence on the field or benefit that is national in scope. Under the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B), ten or more years of experience can partially support a claim of exceptional ability. Exceptional ability, in turn, does not secure eligibility for the waiver.

The petitioner claimed that the labor certification process would pose a “dilemma” because her qualifications exceed the minimum requirements for the position, and “the employer is required by No

Child Left Behind (NCLB) Law . . . to employ highly qualified teachers.” The petitioner did not show that these two considerations are incompatible. Section 9101(23) of the NCLB Act defines the term “highly qualified teacher.” By the statutory definition, a “highly qualified” school teacher:

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

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

The petitioner stated that she had already “presented the following highlights of her career as an educator in the initial filing.” The petitioner then listed nine previously submitted certificates, calling them “Awards and Recognitions.” In the RFE, the director had stated: “Any awards for work in the field must be accompanied by a statement from the institution that granted the award” to establish the significance of the award. The petitioner’s response to the RFE did not include any such statements. Most of the certificates were from schools or districts that employed her, indicating local rather than national significance; others were from [REDACTED] in recognition of her work on specific projects or her length of employment in the United States.

The record shows that the petitioner worked for [REDACTED] from 2007 to 2011, at which time [REDACTED] terminated her employment owing to the expiration of her H-1B nonimmigrant status. When she filed the petition, the petitioner indicated that she intended to continue working at [REDACTED] but her RFE response indicated:

She is firmly committed to continue teaching at [REDACTED]. However, [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 pursuant to the terms of a settlement agreement it had entered into with the United States Department of Labor. . . . 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 petitioner left [REDACTED] in 2011, before the debarment order took effect. Since that time, she has worked for a different school that is not covered by the Department of Labor’s debarment order. The temporary debarment order (which has since expired) 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 director denied the petition on November 20, 2013, stating that the petitioner had not established that the benefit from her employment would be national in scope, or that she has influenced her field as a whole.

On appeal, the petitioner submitted information regarding three other named teachers, represented by the same attorney, who received national interest waivers. The appellate brief then listed “the same arguments” that the attorney claimed to have successfully used “in response to legal issues raised in the RFE Notices issued” to those three teachers.

The petitioner does not submit, and we have not reviewed, the records of proceeding for the three identified approved petitions. Therefore, we cannot determine whether or not the service center properly approved those petitions. Service center approvals are not binding precedents under 8 C.F.R. § 103.3(c). Eligibility for the waiver under *NYSDOT* is “specific to the alien.” *Id.* at 217. The assertions identified as “[t]he same arguments” are general statements about the NCLBA and other instruments of education policy.

The appellate brief includes the following statement, which is similar to claims put forth in response to the RFE:

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 Math 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.

The petitioner claims, above, that USCIS should waive the job offer requirement “if it is established that the alien will substantially benefit prospectively the national educational interests of the United States.” The plain text of section 203(b)(2)(A) of the Act, however, states: “Visas shall be made available . . . to qualified immigrants who . . . will substantially benefit prospectively the national . . . educational interests, or welfare of the United States, and whose services . . . are sought by an

employer in the United States.” In this way, Congress specified that substantial prospective benefit to the interests of the United States is not sufficient for the waiver; an intending immigrant who offers such benefit must still be “sought by an employer in the United States.” The NCLB Act did not establish a lower standard for teachers, and neither did “the Obama administration’s current initiatives aimed at enhancing that law.”

Elsewhere in the appellate brief appears an even more direct claim of legislative intent: “United States Congress legislated NCLB to serve as guidance to USCIS in granting legal residence to ‘Highly Qualified Teachers.’” The NCLBA is not an immigration statute, and it contains no mention of the national interest waiver or any immigration benefit for teachers. It did not directly create a blanket waiver for teachers, and the petitioner has not shown that indirectly implies such a blanket waiver. The petitioner does not quote or cite to any specific section of the NCLBA to support the above claims. The petitioner’s core contention, therefore, lacks evidentiary support. *See Matter of Soffici*, 22 I&N Dec. at 165. The claim that other petitions were approved based on these same assertions does not establish the validity of those assertions.

The petitioner states that the director’s “decision did not present even one comparative candidate having at least the equivalent accomplishment as that of [the petitioner] to support its determination.” The burden of proof rests on the petitioner, not the director. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). There is no presumption of eligibility, and there is no requirement that the director must identify and produce a “comparative candidate” whose qualifications equal or surpass those of the petitioner.

The petitioner claims: “a new thought process must be designed by USCIS with respect to NIW petitions by ‘Highly Qualified Teachers’ instead of routinely applying the *Matter of New York State Dept. of Transportation* generically.” As a precedent decision, *NYSDOT* is binding on all USCIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). The petitioner claims that *NYSDOT*, which concerned a bridge engineer, “obviously is good in far as NIW cases filed by Engineers are concerned but does not give justice to other professionals especially since the facts are definitely distinct from each other.” The three-part national interest test in *NYSDOT* is, by design, broad and flexible. It does not include specific evidentiary requirements that only an engineer could satisfy, and its application is not, and was not intended to be, limited to engineers.

The petitioner claims that *NYSDOT* “requires overly burdensome evidence on the qualification [*sic*] of the self-petitioner, identical to EB-1 extraordinary requirements when the law makes it available to those either ‘with an advanced degree’ or ‘exceptional ability.’” The evidentiary requirements to establish extraordinary ability, at 8 C.F.R. § 204.5(h)(3), are neither identical nor similar to the guidelines in *NYSDOT*. Concerning the assertion that the waiver is “available to those either ‘with an advanced degree’ or ‘exceptional ability,’” those qualifications make one eligible to apply for the waiver, but do not guarantee or compel the approval of that application.

The petitioner states that her occupation is national in scope because “the teacher assumes a front-line role and an effective teacher is the lynchpin of success for” federal education initiatives. This

assertion, however, concerns the collective and aggregate role of the nation's teachers; it does not demonstrate or imply that one teacher, individually, produces benefits at the national level.

Other assertions on appeal repeat, word-for-word, claims the petitioner previously made in response to the RFE, such as the assertion that "hiring 'Highly Qualified Teachers' would produce more graduates than dropouts," and that approval of the waiver would be "economically wholesome to the American nation instead of waiting for 20 years which is beyond the time frame of 'a decade' targeted by the President."

The petitioner has not supported the core claim that the NCLBA and other federal initiatives created an implied waiver for teachers, or that her own level of expertise and experience will have a national impact on the field of education.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYS DOT*, 22 I&N Dec. 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.

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

ORDER: The appeal is dismissed.