

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: NOV 18 2014 OFFICE: TEXAS SERVICE CENTER [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "R. Rosenberg".

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 a special education teacher for [REDACTED]. He began teaching at [REDACTED] in 2007. 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 legal brief and a personal statement.

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, 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 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 10, 2013. In an accompanying statement, the petitioner provided details about his past teaching career, and addressed the three prongs of the *NYSDOT* national interest test. The intrinsic merit of the petitioner’s occupation is not in dispute. *NYSDOT* identified classroom instruction as an example of a meritorious occupation that lacks national scope. *Id.* at 217, n.3. The petitioner did not address this finding in the precedent decision, stating instead that “the effects of educational practices and reforms will always be universal and national in scope.” The petitioner asserted that his efforts “are not limited only to [redacted] but have reverberated nationally.” The petitioner asserted that he has raised the standardized test scores of the students in his class, and stated: “If I am

able to do it in [REDACTED] where academic challenges are evident, I could do the best of my performance anywhere in the U.S. as well.” If the petitioner were to begin teaching in a new jurisdiction, the students there would begin to benefit directly from his work, but the petitioner has not shown that future students in Baltimore would continue to benefit as well. General assertions about the benefit of nationwide improvements in test scores do not establish individual eligibility without evidence that the petitioner, individually, is responsible for those improvements at a national level.

Beyond his classroom activities, the petitioner stated:

[T]he educational website, www.[REDACTED] . . . that I conceptualized and created has a national reach. It is a stop-by for educators who want to browse or download educational resources, such as educational ideas, lesson plans and classroom activities. With the skills I have in writing and communication, and knowledge of technical and technology management and website content . . . , the benefit of promoting and communicating will be greatly emphasized for the well-being of the people of the United States.

On the other hand, my active participation in the [REDACTED] organization, [as its] vice-president and its website creator . . . has not only involved planning, event preparation, information dissemination locally. [Its] web portal . . . has reached other educators across other states in the United States. . . .

As a writer of work-texts, literary works . . . [and] editor and book layout artist and cover designs of two published books in the United States by [REDACTED] . . . what I have contributed . . . will always have an impact and appeal to the readers across [the] United States and abroad.

The petitioner is one of three credited authors of [REDACTED] published in 2002 by [REDACTED] in the Philippines. He is also one of three authors of [REDACTED], published in 2003 by the same publisher. The record contains no further information about these books. The publication of instructional materials can have national scope, but the petitioner has not shown that he has published such materials in the United States, or that his employer has instructed or authorized him to engage in work of this kind.

The petitioner was also editor-in-chief of [REDACTED] while he was a student at the [REDACTED] and a writer for [REDACTED] “A Publication of the [REDACTED]” These materials from the Philippines have no demonstrated relevance to the petitioner’s intended work as a special education teacher.

The petitioner’s publications in the United States have had no demonstrable connection to his work in special education. In the respective prefaces to the books, the petitioner described [REDACTED] as “a collection of the author’s insights, thoughts, dreams and experiences –

written in a versified form of twelve lines,” and [REDACTED] as “a collection of the composer’s musical compositions that include responsorial psalms (which words have been adapted from the [REDACTED] and other compositions.” On Form I-140, the petitioner specified that he seeks employment-based classification as a special education teacher, rather than as a poet or composer of religious music. These activities, therefore, are not relevant to the application for the national interest waiver.

The two books by [REDACTED] The petitioner did not submit excerpts from the texts of these books, but their titles strongly suggest religious content. Letters from Mr. [REDACTED] indicate that he is the petitioner’s uncle by marriage. Mr. [REDACTED] did not claim to have any expertise in special education; rather, he described himself as “now retired from a technical career of installation and maintenance of heating, ventilation and air conditioning equipment.” Any impact these books may have had would not be in the field of special education, and their impact would result primarily from the text rather than from the editing, layout, and cover designs.

The petitioner has served as webmaster for some education-related web sites, including the site for [REDACTED] and the site for [REDACTED]. Like virtually all public web sites, these sites are, in principle, viewable throughout the United States, but this does not establish that the benefit from those web sites is, or will be, national in scope. The web sites for [REDACTED] and [REDACTED] pertain, respectively, to a state organization for teachers of a particular national origin, and to a local public middle school. The petitioner has not established that these sites receive significant traffic from outside of their respective constituencies. A printout from the [REDACTED] website includes the disclaimer “Unofficial Website.”

The petitioner has presented [REDACTED] as a general resource for teachers and students, which can produce national-level benefits. The petitioner stated that the web site “is a stop-by for educators who want to browse or download educational resources, such as educational ideas, lesson plans and classroom activities,” but he did not show that his web site includes any such content. 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 has submitted only a partial printout of the web site’s home page, consisting primarily of an essay entitled “A Teacher’s Reflection.” The evidence submitted, therefore, does not show that the petitioner has ever run a fully operational web site for a national audience, or that running such a web site would be part of his employment with [REDACTED].

Regarding the third prong of the *NYSDOT* national interest test, the petitioner stated:

[My] educational achievements, skills and knowledge, dedication and valuing of education in its core, volunteerism without regard [for] returns, the inner calling and the innate drive to do service, the perseverance and happiness as a teacher, and the

experiences meant to make the best results in the lives of my students may differentiate me from any U.S. worker for the job available. . . .

[A] thirst for knowledge and desire to know skills far . . . beyond operational understanding of music, technology, the arts, the education and the sciences make an effective and efficient combination in my persona as an educator and a teacher. They make me [a] dynamic, flowing, understanding, resolved, persistent believer that students regardless of abilities and disabilities will always learn – because there is always a way.

The petitioner submitted copies of several documents relating to his professional credentials, including evidence of training and volunteer work, and a number of certificates. Some certificates note specific achievements or honors, such as his selection as [REDACTED] Teacher of the Year for 2011, while others are more general certificates of appreciation or participation. The petitioner did not explain how any of these materials establish that his work has influenced the field as a whole, or will continue to have such influence in the future.

The petitioner submitted several letters from individuals who worked with him in the Philippines or at [REDACTED]. These individuals attested to the petitioner's talent, dedication, and contributions to his employers and community, but they did not indicate that the petitioner has had the wider impact and influence necessary to qualify for the national interest waiver under *NYSDOT*. Other individuals, including [REDACTED] are not educators, but attested to the petitioner's volunteer work, religious activity, and community work.

Dr. [REDACTED], chief of the Field Effectiveness Division of the Philippines Department of Education, Region VII, stated that the petitioner "has explored creating his own website, educational resource in nature," the contents of which "are specified and downloadable, free of charge and most of them his own creations and writings. . . . Practically, his website's reach is for everyone with access to the internet and computers." As noted above, the petitioner has not shown what content is available on his website, and he has not established that other educators have relied on those materials, resulting in an overall improvement in education.

The director issued a request for evidence on August 13, 2013. The director stated that the petitioner's "evidence does not state how his current employment as a special education teacher in the school district is national in scope." The director advised that the petitioner must establish that he "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submits a proposal for "The Creation of a Non-Profit Foundation with a Focus on Effective High-School-Life-Skills-Program Implementation in the Classrooms and in the Schools across the United States." The petitioner described elements of the foundation's proposed program, including an 11-module training program, followed by monitoring of the schools where the newly trained teachers would work.

The petitioner did not claim that this foundation already exists. Rather, he describes the foundation's future activities, while acknowledging that the project now exists only as a proposal, and would take approximately three years to implement. The petitioner did not claim to have any prior experience in creating or running a foundation of the kind that he described in response to the request for evidence. Therefore, the record provides no basis for us to conclude that the newly proposed venture would succeed.

Furthermore, the petitioner's initial submission included no mention of this program at all. Rather, he based his waiver application on the assertion that he would work as a special education teacher for [REDACTED]. The petitioner submits no evidence that the foundation would be an outgrowth of his work for [REDACTED], or that [REDACTED] is even aware of this new proposal.

A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); see also 8 C.F.R. § 103.2(b)(1) and *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which require that foreign workers seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even if the petitioner had established that the foundation qualifies him for the waiver (which he has not done), that foundation apparently did not exist even as a proposal when the petitioner filed the petition in June 2013. His subsequent development of the proposal cannot retroactively qualify him for that earlier priority date.

The director denied the petition on January 14, 2014, stating that the petitioner had established the intrinsic merit of education, but had not shown that the benefit from his intended employment would be national in scope. The director found that the petitioner "did not give any detailed evidence as to [his] past record of achievement in [his] field that has impacted it as a whole."

On appeal, the petitioner states, via the appellate brief:

[The petitioner] will in fact perform a role that is superior in degree [to that of] any US worker, who would have the same qualifications that he has. As a Special Education Teacher par excellence, he has [an] impeccable and solid educational background in his field and area of expertise. . . . [The petitioner] is indeed an epitome of a genuine Special Education Teacher that can create a climate for the advancement of students especially those with special needs and disabilities.

Even if the petitioner had established exceptional ability, defined at 8 C.F.R. § 204.5(k)(2) as "a degree of expertise significantly above that ordinarily encountered," exceptional ability is not, on its face, a basis for the waiver. Section 203(b)(2)(A) of the Act states that aliens of exceptional ability are subject to the job requirement. Furthermore, the record does not establish that the petitioner's abilities are "superior . . . [to] any US worker" as claimed on appeal. The petitioner's annual evaluations show three possible ratings: "Proficient," "Satisfactory," and "Unsatisfactory." The

petitioner's evaluations from [REDACTED] show a combination of "Proficient" and "Satisfactory" ratings. These ratings are certainly favorable, but they do not suggest that the petitioner is in the upper echelons of all special education teachers in the United States, as implied in the brief.

The petitioner, in the brief, contends that "his work as a special education teacher . . . has a great national influence on the field of teaching." The petitioner does not elaborate, and submits no evidence to support this claim. Instead, the petitioner asserts: "[REDACTED] for the past three years has increased its performance in Math and Reading. . . . If I am able to do it in [REDACTED] where academic challenges are evident, I could do the best of my performance anywhere as well." Speculation about future influence is not evidence of influence, and the petitioner has not submitted evidence about the claimed improvement in [REDACTED], or evidence that he, individually, is largely responsible for the claimed citywide improvement.

The brief discusses the petitioner's proposal for a non-profit foundation. For reasons already discussed, his proposal for an organization that does not yet exist cannot qualify him for benefits with a June 2013 priority date.

The petitioner "invok[es] the intent and spirit of the Humanitarian Relief based on USCIS Memorandum on November 15, 2013 for Filipino nationals." The petitioner, here, refers to a USCIS press release, "USCIS Reminds Filipino Nationals Impacted by Typhoon Haiyan of Available Immigration Relief Measures," which reads, in part:

USCIS understands that a natural disaster can affect an individual's ability to establish or maintain lawful immigration status in the United States. Therefore, Filipino nationals impacted by Typhoon Haiyan may be eligible to benefit from the following immigration relief measures:

- Change or extension of nonimmigrant status for an individual currently in the United States, even when the request is filed after the authorized period of admission has expired;
- Extension of certain grants of parole made by USCIS;
- Extension of certain grants of advance parole, and expedited processing of advance parole requests;
- Expedited adjudication and approval, where possible, of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship;
- Expedited processing of immigrant petitions for immediate relatives of U.S. citizens;
- Expedited adjudication of employment authorization applications, where appropriate; and
- Assistance to LPRs stranded overseas without immigration or travel documents, such as Permanent Resident Cards (Green Cards). USCIS and the Department of State will coordinate on these matters when the LPR is stranded in a place that has no local USCIS office.

All of the measures described above are temporary. The press release did not indicate or imply that the available humanitarian relief includes permanent immigration benefits. It did not mention the national interest waiver or imply that the waiver was among the forms of relief available. By statute, the standard for the waiver is the national interest, rather than humanitarian considerations such as a natural disaster in the petitioner's home country.

The petitioner has submitted ample documentation of his work as a teacher in the Philippines and in the United States; his experience and dedication are not in dispute. What the petitioner has not established is the claim that his past work stands out from that of other teachers to an extent that justifies an exemption from the job offer requirement that, by statute, normally attaches to the immigrant classification that the petitioner has chosen to seek.

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 his 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 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, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.