



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: NOV 28 2014 OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

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

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

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

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

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the 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 with post-baccalaureate experience equivalent to an advanced degree. The petitioner seeks employment as an elementary school teacher for [REDACTED] From February 2007 up to the time she filed the petition, the petitioner was a Head Start teacher at [REDACTED] Maryland. 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 the defined equivalent of 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 letter.

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 with post-baccalaureate experience equivalent to 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.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The

petition included two copies of this form, but the petitioner did not sign part 16 of the form to declare, under penalty of perjury, that the information on the form is true and correct.

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 July 16, 2013. An accompanying statement reads, in part:

[USCIS] 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*. . . .

Firstly, Immigration Act of 1990 (IMMACT 90) which enacted . . . the 'National Interest Waiver['] included 'educators' as among the targets of this legislation, [and] specifically stated – '**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.**'

(Petitioner's emphasis.) The quoted language comes not from the statute itself, but from comments made by then-President George H.W. Bush as he signed the legislation. IMMACT 90 did in fact create the national interest waiver, and the president mentioned "educators" in his remarks, but it does not follow that a blanket waiver for educators was either the intent or the result of the legislation. The same statute plainly subjected professionals – including "scientists and engineers and educators" – to the job offer requirement. IMMACT 90 promotes the immigration of educators, but the default mechanism for doing so is the job offer requirement and labor certification process, not the national interest waiver.

The petitioner contended that the *NYS DOT* decision provided no specific definition of the "national interest," and that Congress filled this void with the passage of the No Child Left Behind Act of 2001 (NCLBA), Pub. L. 107-110, 115 Stat. 1425 (Jan. 8, 2002):

Through the No Child Left Behind Act of 2001, **the United States Congress has in effect remarkably engraved the missing definition upon the concept of 'in the national interest,' which centered it 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.**' . . .

With this, the Service now has a definite working definition of 'in the national interest' including the clear standard on what qualifications must be required from NIW [national interest waiver] teacher self-petitioners, as mandated by No Child Left Behind Act of 2001. . . .

This means that the act of honoring the Congressional intent in No Child Left Behind Act of 2001 by the Immigration Service resulting [in] favorable decisions for the NIW teachers, is sanctioned under INA § 203(b)(2)(B)(i).

(Emphasis in original.) None of the phrases that the petitioner presented in quotation marks are actually quotations from 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).

With respect to the petitioner’s claims regarding congressional intent, 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. Congress’s only direct statement on the matter has been to apply, not waive, the requirement. There is no support for the claim that the NCLBA amounts to Congress’s definitive statement on waiving the job offer requirement for “highly qualified teachers.”

The NCLBA did not amend section 203(b)(2) of the Act or otherwise mention the national interest waiver. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 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. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYS DOT*, the petitioner has not established that the NCLBA indirectly implies a similar legislative change. 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.

“Highly Qualified Teachers,” as a class, play a significant collective role in implementing the provisions of the NCLBA. It does not follow, however, that every such teacher individually qualifies for special immigration benefits as a result, or that collective benefit justifies a blanket waiver for every such teacher, when the waiver otherwise rests on the specific merits of individual intending immigrants.

The petitioner submitted copies of several certificates that she has received over the course of her career. She stated that these certificates are “evidence of recognition for achievements and significant contributions to the field,” which is a criterion for classification as an alien of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(F). By statute, an alien of exceptional ability remains, by default, subject to the job offer requirement at section 203(b)(2)(A). Therefore, partial evidence of exceptional ability is not necessarily sufficient to establish eligibility for the waiver. The petitioner must show that the contributions thus recognized demonstrate influence on the field as a whole. The certificates in the record do not rise to this level. Instead, they recognize contributions at the local level, such as participation in seminars, coaching students in academic competitions, and serving as a “demonstration teacher” for training purposes. Several of the certificates recognize “perfect attendance,” which demonstrates diligence but is not a contribution to the field.

The petitioner submitted letters from faculty, administrators, students, and parents of students at various schools where she has taught. The letters contained praise for the petitioner's skill and dedication, but did not indicate how the petitioner's work has had an impact beyond the schools where she has taught.

The director issued a request for evidence on September 27, 2013. The director stated that the petitioner had shown that she is qualified to teach for [REDACTED] but had not established "a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted a statement that repeats and expands upon the assertions in the statement submitted with the initial filing of the petition. The petitioner acknowledged that "the No Child Left Behind Act of 2001 is not an immigration law per se," but repeated the claim that the NCLBA nevertheless reflects Congress's specific intention to waive the job offer requirement for highly qualified teachers. The petitioner cited no specific section of law to support this claim. As noted previously, when Congress has sought to change the law relating to national interest waivers, it did so by amending the Act, with statutory language that specifically referred to the waiver. The petitioner quoted language from the NCLBA that made no mention of immigration, foreign teachers, or the national interest waiver, and the petitioner identified no passage in the statute that would supersede section 203(b)(2)(A) of the Act.

The petitioner discussed the importance of "closing the achievement gap between high- and low-performing students," but offered no evidence that her work in the United States since 2007 has made significant progress toward closing that gap on a national level.

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 NCLBA 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.

The petitioner states that the labor certification standards are inadequate because they require "just a bachelor's degree," but that is also the minimum degree requirement for a highly qualified teacher (and the highest academic degree that the petitioner holds). The petitioner did not explain how the above requirements are incompatible with the existing labor certification process, and she submitted no evidence that the labor certification process has resulted in the widespread employment of teachers who are less than "highly qualified." 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 cites various background materials regarding the importance of math and science education, but the petitioner does not specialize in teaching math and science. Even if she did, Congress has created no blanket waiver for math and science teachers.

Regarding her own qualifications, the petitioner listed all the exhibits that had previously accompanied the initial filing of the petition, but she did not explain the relevance of these materials or show that they meet the *NYSDOT* standards for the waiver.

The director denied the petition on April 14, 2014, stating that the petitioner had established the intrinsic merit of her occupation, but had not satisfied the other two prongs of the *NYSDOT* national interest test. The director acknowledged the petitioner's claims regarding the NCLBA, but found that possessing "qualifications and experience above the bare minimum that is required for the job she seeks" is not sufficient to qualify the petitioner for the waiver.

On appeal, the petitioner asserts, via a legal brief, that USCIS "has granted National Interest Waiver Petitions [for other] Highly Qualified Teachers." The petitioner then lists her supporting exhibits and the exhibits submitted with the other petitions. The petitioner does not submit copies of the materials submitted with the approved petitions. Unlike the Administrative Appeals Office, service centers do not routinely issue written approval decisions to explain the specific reasons behind a given approval. Therefore, we cannot review the specific reasons underlying the approvals, or determine whether the other petitions were approved in error. Service center approvals are not binding precedent decisions under 8 C.F.R. § 103.3(c), and therefore the cited approvals have no weight in the present proceeding. The approval of individual petitions does not demonstrate that every foreign teacher who meets the NCLBA's definition of a "highly qualified teacher" is therefore entitled to a national interest waiver.

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, not to mention subsequent legislations intended to provide guiding principles to implement . . . IMMACT 90." 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 has cited no primary source in the statute or legislative history to support the claim that "Congress legislated NCLB to serve as guidance to USCIS in granting legal residence to 'Highly Qualified Teachers.'" As such, the petitioner's unsupported assertion carries no weight. See *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner claims to be “an effective teacher in raising student achievement in STEM” (science, technology, engineering and math), but submits no evidence to support this claim. The petitioner states: “The fact that [REDACTED] did not meet its 2012 AMO [annual measurable objectives] target for Reading proficiency underscores the importance of having effective teachers of Reading/Language Arts in each classroom.” By 2012, the petitioner had been working for [REDACTED] for five years. The district’s continued low ranking suggests that, even at the local level, the petitioner’s efforts have not resulted in measurable overall improvements; the record does not show that the petitioner has transformed [REDACTED] into a model for other districts to emulate, or that the petitioner has had unusual success even within her own school system. The petitioner does not explain how her future work will “clos[e] the achievement gap” on a national scale when there is no evidence that her past work has done so at the county level.

In a subsequent letter, the petitioner requested an extension of employment authorization because several members of her family depend on her income in order to meet educational and medical expenses. The present proceeding does not concern an application for work authorization, and our jurisdiction in this case is limited to the appeal that is before us.

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 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. Congress has not established any blanket waiver for teachers. 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.