



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF D-C-H-

DATE: DEC. 21, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a singer and voice teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 she qualifies for classification as a member of the professions holding an advanced degree, but has not established that a waiver of a job offer would be in the national interest. On appeal, the Petitioner submits a brief and additional evidence.

I. LAW

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.

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## II. ISSUES

The Petitioner received a Master of Fine Arts degree in Music Education from [REDACTED] in Sweden. Accordingly, the Director determined 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.” *Matter of New York State Dep’t of Transp. (NYS DOT)*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998), 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 demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show 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 a singer, voice teacher, musical director, conductor, arranger, and producer is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the Petitioner’s work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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.* Furthermore, 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. At issue is whether the petitioner’s contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

## III. FACTS AND ANALYSIS

### A. National in Scope

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on May 5, 2014. She indicated that her work as a dramatic and lyrical soprano and voice teacher is in the national interest of the United States. The second prong of the *NYS DOT* national interest analysis requires that the

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benefit arising from the Petitioner's work will be national in scope. The Director determined that the Petitioner had met this requirement. For the reasons discussed below, the Director's determination on this issue is withdrawn. We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The Petitioner asserted that she "has performed extensively and to great acclaim in Europe, the United Kingdom and the United States." With respect to her work in the United States, the Petitioner stated:

[The Petitioner] is not only an accomplished performer, but is also deeply involved with her community with which she selflessly shares her abilities by, for example, teaching young students and performing for the frail and elderly. She has also founded a number of musical performing groups including [REDACTED] and [REDACTED] and continues to direct their performances in various venues.

[The Petitioner] has not only performed in her immediate geographical community of [REDACTED] and Up-State New York but has also performed and received accolades from communities as far away as Maine, Pennsylvania, Connecticut and Massachusetts.

On appeal, the Petitioner states that she has performed along the "northeastern seaboard" in "New York, Maine, Massachusetts, Pennsylvania, Virginia, and Connecticut." For example, the Petitioner has performed at the [REDACTED]

[REDACTED] The Petitioner, however, has not shown that her singing performances and direction of the [REDACTED] performers demonstrate prospective benefits on a national level. The Petitioner's assertion that her music performances could have a national impact does not sufficiently establish the national scope of their proposed benefit.

In regard to the Petitioner's work as a music teacher, she has not shown that her employment in this capacity will provide benefits that are national in scope. *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.

*Id.* at 217, n.3. *NYSDOT* specifically identifies a teacher as an example of a meritorious occupation that lacks national scope. With regard to following the guidelines set forth in *NYSDOT*, by law, U.S. Citizenship and Immigration Services (USCIS) does not have the discretion to ignore binding

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precedent. See 8 C.F.R. § 103.3(c). The Petitioner has not established that her voice instruction and music lessons will produce national benefits in the field of music.

In response to the Director's request for evidence (RFE), the Petitioner mentioned previous unpublished decisions in which we determined that an individual's music performances were national in scope. The Petitioner, however, did not provide copies of these unpublished decisions in the classification sought. 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The Petitioner has not offered evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Further, while 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In addition, the Petitioner stated:

[The Petitioner's] individual impact is national in scope because she has brought and is continuing to bring never before or rarely performed classical vocal music to the United States. In doing so, she has introduced the American audience to great works by composers with whom they may not have been previously acquainted including even some relatively unfamiliar American composers.

Specifically, the Petitioner indicated that she "has been working to bring to the United States the vocal music of [REDACTED], a classical composer who both composed his music in the concentration camp at [REDACTED] and then perished at [REDACTED]." The Petitioner's response to the Director's RFE included a brochure reflecting that she was planning three concerts in New York to present Mr. [REDACTED] music. According to the brochure, the first and second concerts were scheduled for [REDACTED] 2015 at [REDACTED] and [REDACTED] 2016 at [REDACTED]. The location of the third concert in [REDACTED] 2016 had not yet been determined.

With regard to the Petitioner's performance engagements, she has not shown how they translate into national benefits for the United States. While introducing the works of classical composers to the audiences at [REDACTED] and [REDACTED] has intrinsic merit and satisfies the first prong of the *NYSDOT* national interest analysis, the Petitioner has not shown how her planned events demonstrate prospective benefits on a national level. The record does not demonstrate that her proposed employment is within a framework that has a national impact, such as the proper maintenance of bridges and roads already connected to the national transportation system that was the subject of *NYSDOT*. See *NYSDOT*, 22 I&N Dec. at 217. Accordingly, the Petitioner has not established that the proposed benefits of her work will be national in scope.

#### B. Serving the National Interest

The Petitioner initially submitted documentation pertaining to her exceptional ability as a singer and teacher. For example, the Petitioner provided her Master of Fine Arts degree in Music Education,

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multiple letters detailing her experience as a singer and music instructor, and a monetary award received by the Petitioner to fund her work. Academic records, letters detailing occupational experience, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F), respectively. However, in this matter, the Petitioner must also demonstrate eligibility for the additional benefit of the national interest waiver.

We note that 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. Pursuant to section 203(b)(2)(A) of the Act, 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*, 22 I&N Dec. 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. Without evidence showing that the Petitioner’s work has influenced the field as a whole, we cannot conclude that she has demonstrated eligibility for the national interest waiver. See *NYSDOT*, 22 I&N Dec. at 219, n. 6.

The Petitioner provided various reference letters discussing her activities in the field. The Director’s decision acknowledged the Petitioner’s submission of the reference letters and quoted from several of them. On appeal, the Petitioner asserts that the Director did not properly consider the evidence and “merely cherry-picked quotations from various of [*sic*] her references – seemingly in isolation from each other – without examining her overall contributions as an artist and her entire case as a whole.” The Petitioner’s appeal brief specifically mentions the letter from [REDACTED] Supervisor for the [REDACTED] New York, who thanked the Petitioner for her “efforts to bring music to our region” through coordination of the [REDACTED]. The appeal brief does not specifically identify any other references’ quotations that the Director should have considered. With respect to Mr. [REDACTED] letter, his comments demonstrated the Petitioner’s impact on the local arts community, but they did not establish that her musical contributions have affected the field as a whole. Additional reference letters are addressed below. Although we discuss only a sampling of the letters submitted in support of the petition, we have reviewed and considered each one.

For example, [REDACTED] stated that the Petitioner taught him “to read music and to sing solos in front of live audiences, as well as acapella with the [REDACTED] and with our church choir. Except for her outstanding talent and discipline as a teacher/performer, I doubt any of this would have been possible for someone of my age - now 81.” Another student of the Petitioner’s, [REDACTED] a retired doctor of veterinary medicine, asserted that the Petitioner “brings special gifts to the teaching of music.” Mr. [REDACTED] further stated: “As to her value to the community, I myself have participated in several music festivals that she produced and sponsored for the [REDACTED].” While these letters demonstrate that the Petitioner is admired as both an educator and

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organizer of music events in her local community, there is no documentary evidence showing that the performances she coordinated have had a national influence on her musical genre or have otherwise affected the field at a level that would justify a waiver of the job offer requirement.

In addition to the letters of support from her adult music students, the Petitioner provided reference letters from several parents whose children attended her music lessons. A letter from [REDACTED] and [REDACTED] stated: “[The Petitioner] has strengthened our daughters’ piano technique, their understanding of composer notation and their command of the classical repertoire. . . . She has also prepared them for successful exam performances at [REDACTED] for the past three years.” Furthermore, [REDACTED] asserted: “[The Petitioner] is an inspiring instructor challenging our daughter to develop and expand her skill as a singer. She has transformed our daughter’s interest into a talent encouraging a search of her natural ability.” Additionally, [REDACTED] stated: “[The Petitioner] has taught my daughter . . . piano for the past two years and voice lessons over the past year. My experience has been extremely positive. [The Petitioner] is very talented as a teacher of music and my daughter looks forward to her lessons.”

In regard to the Petitioner’s music lessons and instruction, she has not submitted any documentary evidence showing the impact of her work extends beyond the students under her tutelage. While the above references praise her talents and abilities as an instructor, they do not provide any specific examples of how her work has influenced the field of music education as a whole. For example, the submitted evidence does not indicate that Petitioner has a successful track record of introducing novel music education programs nationwide, or developing widely adopted music education curricula.

With respect to the Petitioner’s talent as a vocalist, [REDACTED] an opera conductor, asserted that the Petitioner “is an artist of quite exceptional talent and promise” and that she has “a remarkable voice backed up by and excellent technique and an intense performing personality.” In addition, [REDACTED] a composer, stated: “With a remarkable vocal technique and overwhelming personality, with passionate touch of inspiration and dedication, that was the way [the Petitioner] performed my [REDACTED] for soprano solo.” Furthermore, the Petitioner submitted a letter addressed to her from [REDACTED] Promotion Manager, [REDACTED], [REDACTED] commenting on an [REDACTED] 1998 performance given by the Petitioner. Ms. [REDACTED] stated: “I am just writing to you to congratulate you and [REDACTED] for a fantastic concert last night. The audience clearly enjoyed the drama and intrigue in the music, and the presentation and liveliness of the performance.” The aforementioned individuals offer praise for the Petitioner’s singing talent, but they do not provide examples of how her work has influenced the field as a whole. Again, an individual cannot qualify for the national interest waiver just by demonstrating exceptional ability in her field.

The submitted documentation included evidence of the Petitioner’s singing performances and recitals in Europe in the late 1990s, including [REDACTED] The [REDACTED]

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Petitioner, however, did not provide the attendance figures for her performances or any other documentary evidence of their widespread influence. In addition, the Petitioner submitted compact disc recordings of her performances of [REDACTED] and [REDACTED]. The Petitioner also provided an untitled compact disc of soprano and organ music performed by herself and Dr. [REDACTED] but the Petitioner did not submit evidence showing the sales figures for her music recordings or other documentation of their impact on the field.

Dr. [REDACTED] a professor in the Academy of Music and Drama at the [REDACTED] Sweden, stated:

We have done recitals together in Sweden, England and France. We have also made recordings together and throughout our collaboration, one of the most important governing factors has been the creativity and the inventiveness related to contemporary music for soprano and organ. [The Petitioner] has an incredible voice with a wide range and enormous dynamic potential. Together we have performed new compositions by major composers, including [REDACTED] and [REDACTED]. This repertoire is very challenging and within the scope of this genre [the Petitioner] brings great knowledge and unique skills.

Dr. [REDACTED] mentioned his recitals and recordings with the Petitioner, but did not provide specific examples of how their work has influenced others in the soprano and organ contemporary music field. In addition, Dr. [REDACTED] indicated that the Petitioner “brings great knowledge and unique skills” when performing “new compositions by major composers.” Any assertion that a petitioner possesses useful skills, or a “unique background” relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYS DOT, 22 I&N Dec. at 221.*

In addition, Dr. [REDACTED] asserted: “[The Petitioner] has also championed and found historically important music from concentration camp prisoners during the Second World War, such as [REDACTED] and [REDACTED]. We have performed this challenging music and presented it to a broader audience to great critical acclaim.” He did not, however, identify any specific examples of critical acclaim garnered by the Petitioner that would demonstrate her influence on the field as a whole. USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att’y Gen., 745 F. Supp. 9, 15 (D.D.C. 1990)* (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

Dr. [REDACTED], a faculty member at the [REDACTED] described his collaboration with the Petitioner “in a recital of 20th century music for soprano and organ at [REDACTED] in [REDACTED]” and asserted that she “has been making a significant contribution to our cultural music scene by introducing little-known but worthy modern compositions to a broader audience, here and throughout the United States.” While the record reflects that the Petitioner has performed at several venues in the northeastern United States, there is

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no evidence (such as concert bookings or music sales) demonstrating she has reached a broader audience “throughout the United States” or that her work has otherwise had a national effect.

Dr. [REDACTED] a concert pianist and faculty member at the [REDACTED] and [REDACTED] [REDACTED] indicated that he has known and worked with the Petitioner for seven years. With regard to the Petitioner’s advocacy for new music, Dr. [REDACTED] asserted:

[The Petitioner] has continued to challenge herself and her audiences with new and often rarely-heard works. She has championed and recorded the music of French composers [REDACTED] Mr. [REDACTED] even wrote [REDACTED] a large and exciting vocal work, for her, and they premiered the work together. [The Petitioner] has also brought attention to the under-appreciated vocal music of [REDACTED] a Jewish composer who perished in the Holocaust. In addition, she has given American audiences the chance to experience the amazing Scandinavian song repertoire, which is so rarely sung in this country. Her work with this entire repertoire has been a wonderful addition to the musical life of her community.

Dr. [REDACTED] indicated that the Petitioner has performed “new and often rarely-heard works,” has “brought attention to the work of [REDACTED]”, and “has given audiences the chance to experience the amazing Scandinavian song repertoire,” but there is no documentary evidence demonstrating the Petitioner’s national influence on the music field or that her performances have otherwise affected the field as a whole.

[REDACTED] a professional classical singer, pianist and composer residing in New York, stated:

[The Petitioner’s] talents as a musical director, stage director as well as voice teacher were . . . very apparent in her 2013 production of [REDACTED] in which her students put on a wonderful and entertaining production. For once, a Baroque opera was actually fun to watch with all the subtle comedic bits brought out wonderfully. It should be noted that [the Petitioner] herself wrote new spoken dialogue for this production, making an otherwise long and formal opera entirely accessible and entertaining for everyone. This is the great gift which she has to offer: a catalyst for accessible classical music. . . . With her skills, she has been able to introduce the community to great works of art in a way that is neither snobbish nor pandering.

There is no evidence that the Petitioner’s production of [REDACTED] performed by [REDACTED] residents, has influenced other opera productions or has otherwise affected the field as a whole. In addition, Mr. [REDACTED] mentioned that the Petitioner is “a conductor of two groups of singers called ‘[REDACTED]’ and ‘[REDACTED]’ groups that she founded . . . which are comprised entirely of amateur singers,” but the record does not indicate that either group has had a national impact or has influenced the music field.

Furthermore, Mr. [REDACTED] described the Petitioner’s “unique role” as one who not only introduces classical music to community members but engages them in it. He stated: “This is how she has

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changed our musical landscape – by transforming the very lives and souls of our citizenry.” While Mr. [REDACTED] statements demonstrate the intrinsic merit of the Petitioner’s work, there is no evidence showing that she has influenced the field as a whole or that her work has otherwise had a national effect.

In addition to the letters of support, the Petitioner submitted a [REDACTED] 1998 article in [REDACTED] entitled “[REDACTED]” With respect to the Petitioner, the article stated: “Rising to the challenge, [the Petitioner] demonstrated the ability to convey emotional turmoil and infused her singing with a telling range of expression and gesture, but the French words were not always clearly articulated.” The Petitioner also provided a [REDACTED] 1976 article in [REDACTED] entitled “[REDACTED]” about a free lunchtime recital premiering [REDACTED] for soprano solo.” The article stated that the Petitioner “delighted in the long flowing lines, filling the Cathedral with glorious tone” and that she “was totally in control of the score and deserved the unexpected applause which came at its conclusion.” With regard to the material in [REDACTED] the Petitioner did not provide any circulation data showing the distribution of the publications, and the articles do not indicate that her work has influenced the operatic field as a whole.

The Petitioner’s evidence also included an article in [REDACTED] (a local newspaper serving the municipalities of [REDACTED] about the [REDACTED] production of [REDACTED] The Petitioner also provided local newspaper articles mentioning her concerts at the [REDACTED] and the [REDACTED] The local newspaper coverage, however, does not show the Petitioner’s wider impact on the field.

The Director denied the petition on April 20, 2015. The Director indicated that the Petitioner had not shown that her work had influenced the field or provided a benefit to the United States that was substantially greater than that of others in the field with the same minimum qualifications. The Director therefore concluded that the Petitioner had not established that a waiver of a job offer would be in the national interest.

On appeal, the Petitioner submits additional reference letters in support of the petition. For example, [REDACTED] who performed in the Petitioner’s choir, indicates that she has witnessed “the hard work, dedication and benefit to our society that [the Petitioner] provides . . . to the countless musicians and performers she employs and the joy she brings her volunteer choir.” In addition, [REDACTED] a resident of [REDACTED] explains that the Petitioner is “making a significant contribution to the music world in our state through her students and projects.” Furthermore, [REDACTED] whose daughter was taught by the Petitioner, asserts: “[The Petitioner] has influenced young and old (or older), as she teaches me piano now, and also instructs and directs a group of adult singers, called [REDACTED]” Additionally, [REDACTED] a member of the [REDACTED] states that the Petitioner “has made amazing contributions to Music in New York” producing “recitals and music theater locally” and training both youth and adults. Lastly, [REDACTED] attests that the Petitioner is “committed to making the world

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around her a better place through music.” While the submitted letters demonstrate that the Petitioner is a talented musician and an effective teacher who is a valued member of her community, they do not provide examples of how Petitioner’s work has influenced the field as a whole.

The Petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int’l, Inc.*, 19 I&N Dec. at 795 (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and “is not required to accept or may give less weight” to evidence that is “in any way questionable”). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner’s eligibility. *Id.* *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”). As the submitted reference letters did not provide examples indicating that the Petitioner’s work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

The Petitioner also provides an article entitled “” by . The article discusses the importance of arts to the community and offers quotes in support of the arts from various prominent individuals. General arguments or information concerning the importance of a given field of endeavor cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such assertions and information address only the “substantial intrinsic merit” prong of *NYSDOT*’s national interest analysis.

Furthermore, the Petitioner mentions a November 20, 2014, memorandum from Jeh Johnson, Secretary of the U.S. Department of Homeland Security, to León Rodríguez, Director of USCIS, entitled “Policies Supporting U.S. High-Skilled Businesses and Workers.” With respect to the national interest waiver, the memorandum states: “This waiver is underutilized and there is limited guidance with respect to its invocation. I hereby direct USCIS to issue guidance or regulations to clarify the standard by which a national interest waiver can be granted, with the aim of promoting its greater use for the benefit of the U.S. economy.” The memorandum does not call for increasing the number of performing artists or music teachers eligible for the national interest waiver. Instead, the memorandum focuses on “foreign inventors, researchers, and founders of start-up enterprises wishing to conduct research and development and create jobs in the United States.” The Petitioner has not shown that the memorandum supports her eligibility as a performing artist and teacher. Regardless, USCIS has not yet issued any new guidance or regulations clarifying the national interest waiver eligibility standards in response to the Secretary’s memorandum, and the memorandum does not itself set forth any specific guidance. A concern about underutilization of the national interest waiver benefit in general is not indicative that any particular decision USCIS has previously issued constituted an error of law or policy.

In the present matter, there is no documentary evidence showing that the Petitioner's work has helped benefit the U.S. economy or the performing arts such that it has had, or will have, a national effect.

In addition, the Petitioner asserts that the Director's decision "seeks to fit [the Petitioner's] work into a framework that is ill-suited for an artist." The existing *NYSDOT* guidelines require the Petitioner to establish the national scope of her benefits and that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications, and she has not done so in this matter. See *NYSDOT*, 22 I&N Dec. at 217-18. With regard to following the guidelines set forth in *NYSDOT*, we do not have the discretion to ignore binding precedent. See 8 C.F.R. § 103.3(c).

#### IV. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the benefits of the Petitioner's work are national in scope, that she has influenced the field as a whole, or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The Petitioner has not shown 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. Although the Petitioner need not demonstrate notoriety on the scale of national acclaim, she must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." See *NYSDOT*, 22 I&N Dec. at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is a 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.

Cite as *Matter of D-C-H-*, ID# 14784 (AAO Dec. 21, 2015)