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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 29 2015 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on motion to reopen. We will grant the motion and affirm the denial of the petition.

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 primary Montessori teacher in . The petitioner began teaching at a school in Maryland, in 2008. 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. We dismissed the petitioner's appeal on May 15, 2014. A fuller discussion of the underlying issues appears in our appellate decision.

On motion, the petitioner submits a brief and additional evidence.

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.

In our decision dismissing the petitioner's appeal, we upheld the director's determination that the petitioner had not established eligibility for the national interest waiver. The petitioner's evidence was not sufficient to demonstrate that she meets the second and third requirements specified in *NYSDOT*.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

On motion, the petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) has previously approved national interest waiver petitions for three "highly qualified teachers." The petitioner submits Form I-797, Notice of Action, approval notices for three individuals whose national interest waiver petitions were approved by the Texas Service Center. In addition, the petitioner lists exhibits submitted in support of her own petition, as well as materials submitted

with the three approved petitions. However, the assertion that her case merits the same outcome as the three approved petitions is unwarranted. We have not reviewed the approved petitions or their records of proceeding. Therefore, we cannot determine whether the other petitions were approved in error, or whether the present petition compares favorably to the approved petitions.

Moreover, prior USCIS 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. Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court, and we are not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La. Mar. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The approval of individual petitions does not demonstrate that every foreign teacher who meets the No Child Left Behind Act's definition of a "highly qualified teacher" is therefore entitled to a national interest waiver. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

The petitioner's motion does not address our determination on appeal that the benefits of her work are not national in scope. *NYSDOT* specifically identifies a schoolteacher as an example of a meritorious occupation that lacks national scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. In addition, the petitioner has not established that her work as a primary Montessori teacher will benefit the United States to a substantially greater degree than U.S. educators with the same minimum qualifications. There is no documentary evidence demonstrating that the petitioner's work has impacted the field beyond her classroom or has otherwise influenced the field as a whole. The petitioner's motion to reopen does not include any new facts or other documentary evidence to overcome the grounds underlying our previous findings.

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. *Id.* 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 individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. 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. 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 affirm our prior decision 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: Our decision of May 15, 2014, is affirmed. The petition remains denied.