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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: JUL 3 1 2015

FILE #: [redacted]
PETITION RECEIPT #: [redacted]

IN RE: Petitioner:
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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) 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 the equivalent of an advanced degree. The petitioner seeks employment as a bilingual French educator. At the time of filing, the petitioner was working as Assistant Head French Curriculum Program Coordinator at the . 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 with progressive post-baccalaureate experience equivalent to an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief in which she alleges that the director abused his discretion in denying the petition by disregarding her prior achievements.

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.

The director denied the petition based on the finding that the petitioner had not 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." *In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), 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 establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish 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 bilingual French educator is in an area of substantial intrinsic merit and that the proposed benefits of her development of teaching seminars for , a network of French-American and international schools, would be national in scope. It remains, then, to determine whether the petitioner 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 this 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. In evaluating the petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

II. ANALYSIS

The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on March 10, 2014. The director determined that petitioner's influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to her academic records, her professional credentials, and information reflecting the value of bilingual education, the petitioner submitted three letters of support from , Head of School at the In his initial letter dated March 7, 2014, Mr. stated:

> [The petitioner] first joined in September 2001 and has played an important role since then at our institution and in bilingual education as a whole. . . . She is an extraordinary bilingual educator who has served in many capacities at , including two years as French Curriculum Program Coordinator (Assistant Head).

With regard to the petitioner's work as a teacher and French Curriculum Program Coordinator at the she has not shown that the impact of her work as an educator extends beyond the students at the school or has otherwise affected the field as a whole. We note that *NYSDOT*, 22 I&N Dec. at 217, n.3 specifically identifies a schoolteacher as an example of a meritorious occupation that lacks the required national impact for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act.

further stated:

> [The petitioner's] exceptional pedagogical skills have been recognized not only by but by the an international consortium of French-American and International schools in the U.S. and Canada. . . . Through the [the petitioner] has contributed to international teaching seminars on Assessing Oral Language, Developing Reading Comprehension Strategies, Improving Problem-Solving Skills, and Implementing the Scientific Method in the Lower School. She has also contributed to bilingual education endeavors in many other ways, not only at , but also at other institutions around the world, including in Europe and Africa.

Mr. asserted that the petitioner "has contributed to international teaching seminars on Assessing Oral Language, Developing Reading Comprehension Strategies, Improving Problem-Solving Skills, and Implementing the Scientific Method," but the petitioner did not submit documentary evidence of any of the seminar course materials that she created, authored, or copyrighted. 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)). Regardless, there is no evidence showing that the petitioner's seminar materials have altered how French is being taught nationally or have otherwise influenced the field as a whole. In addition, while Mr. asserts that the petitioner has "contributed to bilingual education endeavors in many other ways . . . at other institutions around the world, including in Europe and Africa," he did not identify the other institutions or the ways in which the petitioner's work for them has influenced the field as a whole.

Mr. continued:

> [The petitioner's] extraordinary ability directly contributes to the improved academic outcomes, skill development, and increased brain health shown by recognized research to benefit the lives of individual students, the educational system, and the health and well-being of U.S. citizens. The body of research on this subject is well established and includes

> findings that immersion programs such as the one to which [the petitioner] contributes improve the performance of English-speaking students compared to their monolingual peers, including enhancing reading and math skills. Other findings show that bilingualism results in increased ability to observe and manage non-verbal cues, giving such students an advantage in resolving conflict.

While developing bilingual immersion programs meets the "substantial intrinsic merit" prong of *NYSDOT*'s national interest analysis, it is not alone sufficient to demonstrate eligibility for the national interest waiver. General information regarding the importance of a given field of endeavor cannot by itself establish that an individual benefits the national interest by virtue of engaging in the field. *See NYSDOT*, 22 I&N Dec. at 217. We do not dispute the importance of bilingual education in our nation's schools. At issue in this matter, however, is whether the petitioner's individual contributions in the field are of such significance that she merits the special benefit of a national interest waiver.

In response to the director's request for evidence, the petitioner submitted additional letters from Mr. . In his letter dated October 14, 2014, Mr. stated that the petitioner "has contributed to the success of in a number of positions, including as a Preschool Teacher (3 years), Resource Librarian (3 years), Grade 3 Teacher (4 years), and Assistant Head of French Curriculum (2 years)," but did not provide specific examples of how the petitioner's work has influenced the field as a whole.

In his letter dated October 16, 2014, Mr. stated: "[The petitioner] contributed to the national development of bilingual French-English education through developing education tools and collecting data for national organizations such as the " The petitioner, however, did not submit any documentary evidence showing that her education tools have measurably improved student performance nationally, that the data she collected has influenced the field of bilingual education, or that her work has otherwise affected the field as a whole. Mr. also mentioned the petitioner's "unique understanding in the field of bilingual education for special needs students" and that she developed and shared her understanding "through collaboration with bilingual French-English schools throughout the country." Mr. however, did not identify the schools, discuss the specific ways in which "the rewards of her expertise are reaped by bilingual students and teachers nationwide," or provide actual examples of how the petitioner's work with special needs students has otherwise influenced the field of French bilingual education as a whole.

Lastly, Mr. stated that the petitioner's pedagogical techniques have contributed to the growth and well-being of ' students, but there is no documentary evidence to support his assertion that "students throughout the United States . . . are influenced by [the petitioner's] teaching, and the curriculum tools she has developed." Again, 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. at 165. In addition, 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); s*ee also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from

practitioners in the field). The petitioner has not submitted any documentary evidence showing that the impact of her work for and is indicative of her influence on the field as a whole.

The petitioner submitted a letter from , North American Pedagogical Coordinator for , stating that the petitioner "organized with efficiency" training sessions that Ms. presented for teachers from Seattle and from Portland. While the petitioner efficiently organized the aforementioned training sessions, the petitioner has not shown that her administrative duties for Ms. regional workshops were indicative of influence on the field as a whole. There is no documentary evidence demonstrating that the petitioner's work for Ms. had an impact beyond the workshops' trainees.

Ms. further stated that the petitioner "collaborated with teachers and division heads from the North-American network on many projects," "developed assessment tools," and collected research data, but did not provide specific examples of how the petitioner's work has influenced the field as a whole. For example, Ms. did not identify the specific assessment tools that the petitioner developed or explain how they have affected bilingual teaching practices throughout the field. There is no documentary evidence showing that the petitioner's work has impacted student achievement nationally or has otherwise influenced the field of bilingual French education as a whole.

Finally, Ms. asserted that the petitioner's "knowledge and use of technology, as well as her knowledge of bilingual schools have helped our North-American network to thrive." Any assertion that the 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. *NYSDOT*, 22 I&N Dec. at 221.

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,* 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (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 beneficiary'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 demonstrate 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's academic records, twelve years of occupational experience, and professional teaching certifications are factors that can contribute toward a finding of exceptional ability. *See* 8 C.F.R.

§ 204.5(k)(3)(ii)(A), (B), and (C). However, in this instance the petitioner already qualifies as a member of the professions with progressive post-baccalaureate experience equivalent to an advanced degree. 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 demonstrating that the petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a bilingual French educator, therefore, does not by itself qualify the petitioner for the national interest waiver.

III. CONCLUSION

We concur with the director's decision and find that the direcotor did not abuse his discretion in denying the petition. Considering the letters and other evidence in the aggregate, the record does not establish that the petitioner's work 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 by the petitioner. Although the petitioner need not demonstrate notoriety on the scale of national acclaim, the petitioner must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *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 an approved labor certification will be 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 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, that burden has not been met.

ORDER: The appeal is dismissed.