



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

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

MATTER OF S-I-Z-D-

DATE: DEC. 2, 2016

CERTIFICATION OF TEXAS SERVICE CENTER DECISION

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

The Petitioner seeks classification as a member of the professions holding an advanced degree to work as a science teacher. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer would be in the national interest. The Petitioner appealed the matter to us. We withdrew the Director's decision and remanded the matter for further consideration and entry of a new decision.

The Director issued a notice of intent to deny the petition, to which the Petitioner responded. The Director subsequently issued a new decision denying the petition and certified it to us for review. The Petitioner does not offer a brief or further evidence for consideration.

Upon *de novo* review, we will affirm the Director's decision denying the petition.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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) National interest waiver. . . . the Attorney General¹ 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.

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).

Matter of New York State Department 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 demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or 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.

While the national interest waiver hinges on prospective national benefit, a petitioner’s assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

(b)(6)

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II. ANALYSIS

In Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the Petitioner identified his proposed job title as “Teacher,” and indicated he would teach various science and engineering courses to “secondary and post-secondary school students.”² According to the Petitioner’s Form ETA-750B, Statement of Qualifications of Alien, he has been employed as a “Chemist/Biomedical Engineer” at [REDACTED] from April 1996 to the present. In the initial decision denying the petition, the Director did not acknowledge or discuss the Petitioner’s intended occupation as a high school science teacher, but instead focused on his employment as a chemist at [REDACTED]. We therefore remanded the matter to the Director for consideration of the Petitioner’s intended teaching work.

On remand, the Director found that the Petitioner holds the foreign equivalent of a U.S. baccalaureate degree in chemical engineering and has progressive post-baccalaureate experience in that specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Director determined that the Petitioner qualified for classification as a member of the professions holding an advanced degree. The Director further found that the Petitioner’s proposed work as a high school science teacher has substantial intrinsic merit. The two findings at issue in this matter are (1) whether the Petitioner established that the benefits of such work are national in scope as required under the second prong of the *NYSDOT* national interest waiver analytic framework, and (2) whether he demonstrated that his past record of achievement is sufficient to meet the third prong.

A. National in Scope

The Director found that the proposed benefit of the Petitioner’s work as a bilingual high school science teacher would not be national in scope. With regard to the Petitioner’s duties as a science teacher, he has not established that the benefits of his work would extend beyond his students and school district such that they will have a national impact. *NYSDOT* provided the following examples of meritorious occupations that lack national 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. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. The Petitioner’s response to the Director’s notice of intent to deny included information about teacher shortages and federal government initiatives to improve science, technology, engineering, and mathematics (STEM) education. However, general arguments or

² The Petitioner later clarified that he intends to work as a bilingual high school science teacher.

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information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot alone establish that an individual benefits the national interest by virtue of engaging in the field. *Id.* at 217. Such information addresses only the “substantial intrinsic merit” prong of *NYS DOT*’s national interest analysis. Here, the Petitioner has not shown that his work will have an impact beyond the locality where he intends to teach. Accordingly, we agree with the Director’s determination that the proposed benefit of the Petitioner’s employment as a teacher would not be national in scope.

B. Serving the National Interest

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. The Director determined that the Petitioner’s impact and influence on the field of teaching did not satisfy the third prong of the *NYS DOT* national interest analysis.

The Petitioner submitted letters of support from two of his supervisors at [redacted] that discuss his work for the company. [redacted] the company president, stated that the Petitioner “has been employed by [redacted] as a Chemist since April of 1996” and that “[t]he main duty of his job is manufacturing ultrasound and conductivity gels and disinfectants to be used in the medical field.” [redacted] did not explain how the Petitioner’s work has affected the field of chemistry, secondary education, or STEM teaching.

[redacted] plant manager at [redacted] indicated that the Petitioner’s “experience working in the fields of chemistry, physics, biochemistry and engineering, coupled with his passion for these topics and love for teaching will undoubtedly grant underprivileged students with an incredible advantage they so desperately need.” In addition, [redacted] noted that the Petitioner’s “fluency in Spanish will also allow him to educate this country’s growing number of Spanish-speaking students, who will benefit from being able to learn in a language they understand.” Any statements that a petitioner possesses useful skills or a unique background, however, relate to whether similarly trained workers are available in the United States and are an issue under the jurisdiction of the U.S. Department of Labor (DOL) through the labor certification process. *Id.* at 221. [redacted] further stated: “[The Petitioner’s] contribution to public education in the fields of science and math will provide immediate relief to those school districts, such as [redacted] NJ, that are currently facing a shortage of educators in these subject area[s].” DOL addresses worker shortages through the labor certification process, and therefore a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *Id.* at 218. Further, [redacted] described the Petitioner’s potential to contribute to the field of education, but did not indicate that he has had a past influence the field as a whole.

The Petitioner also provided evidence relating to his teaching credentials, including an “Examinee Score Report” from the [redacted] showing his scores on various [redacted] tests between 2001 and 2003. Additionally, the Petitioner submitted a copy of a 2005 “Official Statement of Status of Eligibility” indicating that he was “eligible for a Florida Educator’s

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Certificate” to teach chemistry, and a certificate from the State of New Jersey stating that he was “eligible to seek employment in positions requiring the Provisional Certificate” as a “Teacher of Physical Science.” The record further includes evidence that in 2001, the Petitioner received a tentative job offer from [REDACTED] in New Jersey. This evidence does not demonstrate that the Petitioner has had an influence on the field of education.

In this matter, the Petitioner has not established by a preponderance of the evidence that he has a past record of demonstrable achievement with some degree of influence on the field of chemistry or education as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Accordingly, we uphold the Director’s determination that the Petitioner has not met the third prong of the *NYSDOT* national interest framework.

III. CONCLUSION

The Petitioner has not shown that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, he has not established 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).

ORDER: The certified decision of the Director, Texas Service Center, is affirmed, and the petition is denied.

Cite as *Matter of S-I-Z-D-*, ID# 188550 (AAO Dec. 2, 2016)