



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 25 2014

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 immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. On May 12, 2014 the petitioner filed a motion to reopen and reconsider. On June 3, 2014, we reopened the appeal and afforded the petitioner 30 days to supplement the record. The petitioner responded. We will dismiss the reopened appeal.

The petitioner, a horseman, horse trainer, farrier and riding coach, seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. 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 does not qualify for classification as an alien of exceptional ability and that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

In a brief submitted on motion and in the appeal brief, the petitioner asserts that he meets at least three of the categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii), and that he has demonstrated eligibility for the national interest waiver.

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.

II. EXCEPTIONAL ABILITY

As stated above, the petitioner seeks classification as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following categories of evidence, at least three of which an

individual must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

- (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability
- (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought
- (C) A license to practice the profession or certification for a particular profession or occupation
- (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability
- (E) Evidence of membership in professional associations
- (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

If a petitioner has submitted the requisite evidence, U.S. Citizenship and Immigration Services (USCIS) determines whether the evidence demonstrates “a degree of expertise significantly above that ordinarily encountered” in the arts. 8 C.F.R. § 204.5(k)(2). In *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), the court set forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court’s reasoning persuasive to the classification sought in this matter. Although the court upheld our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.¹ The court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), those concerns should have been raised in a subsequent “final merits determination.” *Id.* at 1121-22.

The court stated that our evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which we did),” and if the petitioner failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed to satisfy the

¹ Specifically, the court stated that we had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

regulatory requirement of three types of evidence (as we concluded).” *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

A. Evidentiary Criteria

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

The director stated that no evidence was submitted for this criterion. The petitioner’s appellate brief and motion do not contest the director’s finding or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 2011) (plaintiff’s claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that he meets this regulatory criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

The petitioner submitted the following:

1. A December 1, 2011 letter from [REDACTED]
2. A February 16, 2012 letter from [REDACTED]
3. A May 31, 2012 letter from [REDACTED]
4. A May 20, 2012 letter from [REDACTED]
5. A May 21, 2012 letter from [REDACTED]
6. A February 17, 2012 letter from [REDACTED]

With regard to the above letters (items 1 – 6), they do not specify the dates and number of years of the petitioner’s full-time employment. In addition, none of the preceding individuals state that the petitioner was employed by them full-time. This regulatory criterion specifically requires the submitted evidence to consist of letters from current or former employers.

The petitioner submitted a February 21, 2012 letter from [REDACTED] Manager, [REDACTED] stating that the petitioner worked there as Assistant Manager from 1994 – 1996 and that his duties included general stable management; exercising and riding horses; training young and difficult

horses; maintaining the stables and grounds; building Cross Country and Showjumping courses, and running horse shows.

The petitioner submitted a March 23, 2013 letter from [REDACTED] stating that the petitioner was employed “at [REDACTED] from 1996-1999 as Apprentice qualifying as [REDACTED] to myself [REDACTED] owner of [REDACTED].” An apprenticeship constitutes a training position rather than “full-time experience in the occupation.” The regulation at 8 C.F.R. § 204.5(g)(1) states: “Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.” As the preceding regulation references training separate from experience, the petitioner’s apprenticeship represents training rather than full-time experience in the occupation. Moreover, the petitioner’s three years at [REDACTED] is not sufficient to meet this criterion.

The petitioner submitted a February 22, 2012 letter from [REDACTED] Co-owner, [REDACTED] stating: “I was associated with [the petitioner] . . . [f]rom the period February 1993 to end year 2000 culminating with my sponsorship towards his EVENTING career from period January 1998 to November 2000.” Mr. [REDACTED] states that he “was associated with” the petitioner from 1993 through 2000, but does not comment specifically on the petitioner’s full-time employment experience for [REDACTED] during that period. In addition, Mr. [REDACTED] mentions his sponsorship of the petitioner’s eventing (an equestrian sport in which competitors must take part in each of several contests, usually cross-country, dressage, and show jumping) career from January 1998 to November 2000. Mr. [REDACTED] further states that petitioner helped “with the development of eventing courses for shows.” The plain language of this criterion, however, requires “full-time experience in the occupation for which he or she is being sought.” The letter from Mr. [REDACTED] does not specify the hours the petitioner worked, and there is no documentary evidence showing that the petitioner seeks employment as a developer of courses for horse shows in the United States. Furthermore, the petitioner’s work for [REDACTED] and [REDACTED] overlaps with the petitioner’s apprenticeship with [REDACTED].

The petitioner submitted a June 11, 2012 letter from [REDACTED] but her initial letter did not specify the petitioner’s dates of employment or full-time experience. In response to the director’s request for evidence, the petitioner submitted an unsigned March 27, 2013 letter from Ms. [REDACTED] stating: “[The petitioner] has now begun working with us for at least 4 hours per day 6 days a week. When I last wrote he was only working approximately 4 hours a week.” The petitioner’s initial four hours per week in June 2012 and subsequent 24 hours per week in March 2013 do not constitute full-time experience. In addition, the petitioner’s 24 hours per week in March 2013 postdates the filing of the petition on June 19, 2012, and cannot establish his eligibility as of that date. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision further provides, adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

In the appeal brief, the petitioner asserts that he has “experience of over fifteen years in the field” and that “at no point has [the petitioner] ever stopped working in the field.” The petitioner points to a general job description from [REDACTED] for horse trainers and states that his work is “far beyond full time.” The preceding job description provides general information about the occupation and cannot establish that the petitioner worked full-time. In addition, the letters submitted by the petitioner do not establish at least ten years of full-time experience in his occupation. 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 submitted letters do not meet the plain language requirements of this regulatory criterion in that they do not establish at least ten years of full-time experience as of June 19, 2012, the date of filing. Accordingly, the petitioner has not established that he meets this regulatory criterion.

A license to practice the profession or certification for a particular profession or occupation

The director stated that no evidence was submitted for this criterion. The petitioner’s appellate brief and motion do not contest the director’s finding or offer additional arguments. The issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this regulatory criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

In response to the director’s request for evidence, the petitioner submitted a 2012 Form 1099-MISC, Miscellaneous Income, reflecting non-employee compensation from [REDACTED] in the amount of \$17,255.00. The plain language of this regulatory criterion requires evidence demonstrating that the petitioner has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. The petitioner offers no documentary evidence as a basis for comparison showing that his level of remuneration demonstrated exceptional ability relative to others in the field. Furthermore, the petitioner has not established what amount of the preceding compensation that he had earned as of the filing of the petition on June 19, 2012. Again, the petitioner must demonstrate eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The director found that the petitioner had not established that he meets this regulatory criterion. The petitioner’s appellate brief and motion do not specifically contest the director’s finding or offer additional arguments. The issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9.

In light of the above, the petitioner has not established that he meets this regulatory criterion.

Evidence of membership in professional associations

The petitioner submitted evidence of his membership in the [REDACTED] and the [REDACTED]. With regard to the [REDACTED] the petitioner submitted "Membership Search Results" dated April 10, 2013 indicating that he was a "Professional Senior" member, but there is no documentary evidence demonstrating that the petitioner was a member of the USEF as of the filing of the petition on June 19, 2012. Again, the petitioner must demonstrate his eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The director determined that the preceding associations are not professional. The director stated:

Section 101(a)(32) of the Act, states that a profession "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The regulation [at 8 C.F.R. § 204.5(k)(2)] defines "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."

Although the statute and regulations define the term "profession," they do not define the term "professional." In addition, the criteria at 8 C.F.R § 204.5(k)(3)(ii) relate to aliens of exceptional ability, a classification that is not exclusive to members of the professions, and this criterion does not distinguish "professional" from "trade." *Compare* 8 C.F.R § 204.5(h)(3)(iii), (vi). Accordingly, the petitioner's membership in the ADA and the USEA are sufficient to meet this regulatory criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

The petitioner submitted an "Attendance Certificate" for attending the [REDACTED] in October 1999. The preceding certificate is documentation of the petitioner's attendance at the conference, not evidence of recognition for achievements and significant contributions to the industry or field.

In addition, the petitioner submitted various newspaper articles from the 1990s indicating that he placed among the top four riders in various local adult shows, and in junior provincial and junior national equestrian events for young riders. In the appeal brief, the petitioner asserts that he was "a former member of the [REDACTED]" In support of his claim, the petitioner submitted a May 31, 2012 letter from his father asserting that the petitioner "was to be short listed to partake in the [REDACTED]" and a February 22, 2012 letter from [REDACTED] asserting that the petitioner "was chosen for the eventing team that represented [REDACTED] in the year 2000." The petitioner, however, failed to submit evidence of his participation in equestrian events at the [REDACTED] or documentation from the [REDACTED] confirming his membership on the [REDACTED] team that competed in [REDACTED]. 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)). In his February 21, 2012 letter, [REDACTED] states: “[The petitioner] was invited to ride for the [REDACTED] team at the [REDACTED] for 2000. It was a huge disappointment to all of the riders who were invited when the sporting body would only pay for the horses to go but not the riders. Due to a lack of funds the team did not participate in the Games.”

The plain language of this regulatory criterion requires “[e]vidence of recognition for achievements and significant contributions to the industry or field.” Although the petitioner’s riding achievements were recognized in regional shows and in competitions for junior riders, there is no documentary evidence showing that his competitive results and alleged membership on the [REDACTED] in 2000 have affected his sport in such a way that they equate to “significant contributions to the industry or field.”

The petitioner’s appeal brief asserts that “the letters mentioned above [under the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B)] also demonstrate the level of achievement and recognition [the petitioner] has acquired through his time in the professional horse training field and his expertise in the sub-field of dressage.” This decision will address the letters in more detail below in our national interest waiver discussion. With respect to this criterion, although the letters comment on the petitioner’s activities and expertise as a horse trainer and farrier, they do not constitute “recognition for achievements and significant contributions” in the professional horse training field or in the sport of dressage. In addition, none of the letters provide specific examples of how the petitioner’s horse training methodologies rise to the level of significant contributions to the industry or field. Moreover, in the sections of the appeal brief and motion brief where the petitioner claims eligibility for this regulatory criterion, the petitioner does not point to any specific letters mentioning his contributions, or explain how such letters meet the requirements of this criterion. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009).

In light of the above, the petitioner has not established that he meets this regulatory criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

C. Conclusion

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” 8 C.F.R. § 204.5(k)(2); *see also Kazarian*, 596 F.3d at 1119-20. Although we conclude that the evidence is not indicative of a degree of expertise significantly above that ordinarily encountered in the petitioner’s

field, we need not explain that conclusion in a final merits determination.² Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established eligibility as an alien of exceptional ability pursuant to section 203(b)(2)(A) of the Act and the petition may not be approved.

III. NATIONAL INTEREST WAIVER

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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service 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 Dept 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 he 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 he 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.

With regard to the first prong of the national interest waiver test, the director found that the activities of a horse trainer and horseman were not of substantial intrinsic merit. The petitioner, however,

² The AAO conducts 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). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). See also section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

submitted evidence showing the popularity of his sport and the importance of his area of work in both the United States and South Africa. As the documentation submitted by the petitioner is sufficient to demonstrate that he seeks employment in an area of substantial intrinsic merit, the director's finding on this issue is withdrawn.

Regarding the second prong of the national interest waiver test, the director found that the proposed benefits of the petitioner's work would not be national in scope. The petitioner, however, submitted two letters from [REDACTED] indicating that the petitioner seeks to compete internationally for the United States in an Olympic equestrian event. As the documentation submitted by the petitioner is sufficient to demonstrate that the proposed benefits of his work are national in scope, the director's finding on this issue is also withdrawn.

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 his past record justifies projections of future benefit to the national interest. *NYSDOT* at 219. The petitioner's subjective assurance that he 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.*

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 he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he 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.

As previously discussed, the petitioner submitted news articles listing his results as a junior rider and letters of support discussing his competitive achievements, activities in the field, and expertise as a horse trainer and farrier. The director denied the petition on August 21, 2013. The director acknowledged the petitioner's submission of the letters of support and news articles, but determined that they failed to show that the petitioner's past accomplishments were sufficient to demonstrate eligibility for the national interest waiver. The director stated that the petitioner had not established that he "has benefited his field to a greater degree than other skilled horse trainers with similar qualifications." In addition, the director found that the petitioner failed to submit evidence showing that he "has influenced the field or will present a significant benefit to the field to a greater extent than U.S. workers having the same qualifications." The director therefore concluded that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

In the appeal brief, the petitioner does not point to specific evidence to overcome the above findings by the director. Instead, the petitioner states: "[W]e would refer to the letters provided by [the petitioner's]

employers and colleagues as the sufficient evidence to substantiate all assertions.” Again, a passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. at 435. Nevertheless, we will discuss several of the letters to illustrate the nature of the petitioner’s references’ claims.

states:

As [the petitioner] learned and practised natural hoof care; trimming and shoeing horses’ feet. As part of his Apprenticeship he had to learn and master corrective shoeing on all horses of all disciplines, levels and age for it is a vital part of

He was a committed hard working individual with commendable high work ethics, and has a passion for working with horses. He was very teachable and practical, combined with a natural feel for horses, which made him a highly skilled farrier and rider.

Mr. mentions that the petitioner was “a highly skilled farrier and rider,” but special or unusual knowledge or training does not inherently meet the national interest threshold. *NYS DOT* at 221. Any claim 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 employment certification process. *Id.* In addition, Mr. does not explain how the petitioner’s work has affected practices at a number of equestrian facilities or has otherwise influenced the field as a whole.

states:

During the years I knew him [the petitioner] was a very hard working person. He got on with everyone in our sport (Eventing). Represented his province on 3 different occasions. Was very talented and has years of experience riding different horses.

[The petitioner] was a qualified farrier and very reliable and honest. His love of horses was well known. He was a very good competitor with good principals.

Ms. points to the petitioner’s hard-working nature, his compatibility with others, his representation of in equestrian competitions, his qualification as a farrier, his talent and experience with different horses, and his other personal qualities, but does not provide specific examples of how his work has led to advancements in his field or has otherwise affected the sport of eventing as a whole.

states:

During his three year period of employment, [the petitioner] proved himself to be an invaluable asset to

[The petitioner] worked in general stable management, maintaining, exercising and riding horses of all ages and disciplines. His duties also included training of young and difficult horses. He had to maintain the stables as well as arena and ground management. He was also managing a staff compliment of twenty five people.

Another very important part of his duties were to build Cross Country and Showjumping courses. He was also very able and capable at running and assisting me in Eventing and Showjumping shows. [The petitioner] has an extraordinary skill as an Event rider with a passion for horses and the sport, so his involvement in shows, building of courses and everyday work made him a very successful and popular manager. I must point out that he was a very hard worker and not frightened to put in long hours and a lot of effort.

His skills are exceptional and he has achieved the status in proving himself to be conscientious, meticulous and disciplined; a very important trait in this industry. He is very practical minded and achieved everything he set his mind and focus on. [The petitioner] was particularly good at dealing with difficult, temperamental horses – seeming to have a natural understanding of them.

Mr. [REDACTED] comments on the petitioner's job duties, his skills as an event rider, his personal traits, and ability to understand and deal with difficult horses, but there is no documentary evidence showing that the petitioner's work at [REDACTED] has influenced the field as a whole.

[REDACTED] states:

I was associated with [the petitioner] [f]rom the period February 1993 to end year 2000 culminating with my sponsorship towards his EVENTING career from period January 1998 to November 2000.

Over the years we were very proud to have [the petitioner] in our "fold" as he was always willing to help with the development of eventing courses for shows, and he was an extremely competitive competitor. We felt that he became very experienced with regards to the standard of course that he would develop – even up to national standards, to a degree that he could be left to organise and run the whole show/event.

He was always willing to assist other riders with their technique and handling of ill disciplined horses. His "people" skills and patience was absolutely top shelf and I failed to ever see him become bad tempered with any person or animal. Being patient also rubs off on the animals with which one is working.

Mr. [REDACTED] mentions his sponsorship of the petitioner's eventing career, the petitioner's development of eventing courses for [REDACTED] equestrian shows, the petitioner's willingness to assist other riders, and his patience with other people and animals, but does not provide specific examples of how the petitioner's work has affected the field as a whole.

states:

[The petitioner's] riding abilities have been well above the norm and as a result he has represented the province on numerous occasions in the discipline of Eventing. He has always gotten on well and been respected by his fellow competitors for the way he has conducted himself. [The petitioner] has ridden a lot of different horse[s] during his competing time in and done very well.

Mr. comments on the petitioner's riding abilities and competitive experience, but does not explain how the petitioner's work has influenced the field as a whole. Any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYS DOT* at 220-221.

states:

I . . . have the [the petitioner's] family currently renting on my property. [The petitioner] has a concept about horses that is phenomenal. I was so impressed with his skills that I felt compelled to make my ranch available in order to accommodate his field of expertise. It just made sense; [the petitioner] has the skill, I have the land.

For the record this family, especially [the petitioner] has made a lot of improvements on my ranch, and has been an asset. His knowledge in animals is invaluable and this family has showed me the real meaning of commitment and passion towards people and animals.

Mr. comments on the petitioner's equestrian skills and knowledge, but does not provide specific examples of how the petitioner's work has affected the field as a whole. Again, special or unusual knowledge or skills do not inherently meet the national interest threshold. *Id.* at 221.

asserts that the petitioner "has shown exceptional skill" in his field, but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.). In addition, Mr. states that the petitioner and the horses and riders he has trained have performed at the "highest level" in the field. Mr. however, does not explain how the petitioner's work as a competitive horseman, farrier, or horse trainer has influenced the field as a whole.

states:

I raise (warmblood stallions and I have been a breed judge for the in the United States for the past ten years.

[The petitioner] was introduced to me by neighbors five months ago when he and his family moved to Texas from California. I was extremely interested in becoming acquainted with

[the petitioner] because of his background as an advanced rider and trainer of horses in South Africa.

* * *

I asked [the petitioner] to observe my stallions and provide his comments on how their care and training might be improved. His contributions in this regard have been of tremendous value. He has been providing invaluable advice and actual training of my youngest stallion, resulting in significant improvement in the overall quality of his performance and future standing. Also, [the petitioner] has an amazing talent for vastly maximizing the condition and performance of any horse by adjusting their shoeing based on his evaluation of their stance and movement. His skills and talent as a farrier are of the quality of the finest farriers I have observed anywhere in the United States or Germany.

Mr. [redacted] mentions that the petitioner has provided advice and training for his horses, but does not provide examples of how the petitioner's training methods or farrier techniques have had a specific impact beyond the horses that he has trained, or the ranches and equestrian centers where he has worked. The petitioner's specific influence on the equestrian field as a whole is not documented in the record.

In her initial letter dated June 11, 2012, [redacted] states:

I bought an extremely well bred [redacted] whose name is [redacted] of the USA. After buying [redacted] I saw the potential of taking him as far as the Olympics. I then purchase[d] [redacted] mother and have her at this moment with foal due March of 2013, the father is [redacted] who won a bronze medal in the [redacted] Olympic Games I was told of [the petitioner] and his past abilities as an exceptional horseman and trainer, and after conducting my own research I immediately called him. I cannot explain how he has taken [redacted] in a matter of months from nothing to a horse that is jumping happily at least four feet. . . . I have no doubts that [redacted] and [the petitioner] as a team can easily obtain all the hurdles and goals that anyone can put in front of them.

[The petitioner] is deeply needed by not only me and [redacted] but also the new foal in March. . . . I know, as does my husband, that granting [the petitioner] and his family, a waiver is defiantly [sic] in the national interest, as his contributions to the sport and to training in general would be a wonderful addition.

Mrs. [redacted] comments on the petitioner's work with [redacted] but does not provide specific examples of how the petitioner's work has affected practices throughout his sport or the horse training industry. The petitioner must demonstrate not only that his work is useful to his employers and their horses, but also that it has influenced the field as a whole.

In her subsequent letter dated March 27, 2013, Mrs. [redacted] states:

Since mid-June [redacted] has come leaps and bounds with [the petitioner's] training. We (or should I say he) has brought our [redacted] of the USA, forward to be eligible for the [redacted] that will be held in May of [2014]. [redacted] of the USA at his first show in our area for eventing took second place out of approximately 23 horses entered. After seeing the accomplishments that [the petitioner] was able to do, I took a trip with [the petitioner] and a few other people and purchased 2 more [redacted]. The first [redacted] who is a gelding that is 6 years old as is [redacted]. . . . Thomas after one show so far this year is eligible for the Area V eventing Championships and is in [redacted] place out of 2,013 other horses. (It was not [redacted] best show; I expect more from him this coming weekend).

* * *

[The petitioner] has now begun working with us for at least 4 hours per day 6 days a week. When I last wrote he was only working approximately 4 hours a week. The reason for the increase is [the petitioner] has proven himself in many ways to be a valuable asset to the [redacted]. With [the petitioner's] help, [redacted] and myself have become involved with the [redacted]. The [redacted] and the [redacted]. I have personally been working with Dr. [redacted] and Dr. [redacted] along with the [redacted] to help bring Olympic riders and Olympic horses together. So far in this quest we have paired [redacted] (which I own 60 percent) and [redacted] (who was short listed last year for the Olympic Games). Just recently another rider who is Olympic caliber [redacted] who has been paired with a 7 year [redacted] out of England, named [redacted] that again I had been asked to help our United States Olympic team and own 50 percent of [redacted]. [redacted] had also been short listed for the last Olympic Games).

* * *

My plans have blossomed and grown and [the petitioner] has been a big help in leading me down some of the right roads. We are now branching out our facilities and have purchased an equestrian farm in [redacted] FL (which is known now as the equestrian capital of the United States). This new farm in Florida will give us the opportunity to work with [redacted] and our Olympic Coach himself [redacted]. This will also give [the petitioner] the opportunity to fine tune his skills by eventing and learning with the best.

Mrs. [redacted] comments on the petitioner's activities and on competitive results for horses [redacted] and Thomas that post-date the filing of the petition on June 19, 2012. In addition, Mrs. [redacted] mentions her expectations for the future. Speculation about possible future impact of the petitioner's work is not evidence, and cannot establish eligibility for the national interest waiver. Again, the petitioner

must demonstrate eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Member of the states:

During the whole application process, [the petitioner] provided documentation that indicating [sic] he meets the criteria for the waiver. He has at least 10 years of full-time experience as a horse trainer/farrier, has memberships to multiple professional associations, and evidence of high level achievements in his field, including being a former member of the South African Olympic Equestrian team. Based on the evidence provided, it appears that the application [the petitioner] filed should be favorably adjudicated.

Congressman points to the petitioner's ten years of full-time experience as a horse trainer/farrier, his memberships in professional associations, and the petitioner's achievements in the field, including the claim that he was a member of the team. As previously discussed, full-time occupational experience, membership in professional associations, and recognition for achievements and significant contributions are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(B), (E), and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the national interest waiver. See section 203(b)(2)(A) of the Act. 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. *NYS DOT* at 218, 222. Therefore, even if the petitioner had established that he meets the requirements for classification as an alien of exceptional ability, which he has not, an individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying exceptional ability classification does not demonstrate eligibility for the additional benefit of the waiver.

On motion, the petitioner points to the letters from Mr. Mrs. and Congressman as evidence that the petitioner "serves the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications." As previously discussed, none of their letters is sufficient to demonstrate that the petitioner's work has influenced the field as a whole.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B*, 21 I&N Dec. 1136 (BIA 1998).

The submitted letters do not identify specific contributions or their impact in the field, and thus have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. at 17.); *see also Visinscaia*, 2013 WL 6571822, at *6 (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. 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”). *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”). Furthermore, almost all of the letters of support are from those who worked directly with the petitioner. Although such letters are important in providing details about the petitioner’s work, they cannot by themselves establish the influence of the petitioner’s work beyond his immediate circle of acquaintances.

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 his 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. While 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* 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.

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.