

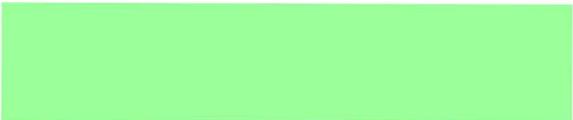


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 18 2014** OFFICE: NEBRASKA 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, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before us at the Administrative Appeals Office 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 an alien of exceptional ability in the sciences, the arts, or business. The petitioner seeks employment as a long distance runner. 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 has not established that (1) he qualifies for classification as an alien of exceptional ability, and that (2) 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 legal statement and copies of previously submitted letters.

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.

### I. Exceptional Ability

The first issue in this proceeding is whether the petitioner qualifies for classification as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six criteria, at least three of which an alien 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; and

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

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

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). *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sets 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.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on October 1, 2012. In Part 6 of the petition form, the petitioner indicated that he seeks employment both as a runner and as a coach, but the record contains no evidence regarding his intended future coaching work, and no evidence that he has worked as a coach in the past. A cover letter submitted with the petition reads, in part:

The documentation we have submitted meets the criteria for second preference for exceptional ability aliens/national interest waiver:

- 1) published articles in major media about [the petitioner] and relating to his field of endeavor;
- 2) evidence of contributions of major significance in his field of endeavor
- 3) evidence of the showcasing of her [*sic*] work in the field in more than one country

- 4) evidence of performance in a lead, starring or critical role for organizations or establishments with distinguished reputations.

The criteria listed above do not appear in the regulations at 8 C.F.R. § 204.5(k)(3)(ii), pertaining to exceptional ability. Rather, they quote or paraphrase criteria found in the regulations at 8 C.F.R. §§ 204.5(h)(3) and 214.2(o)(3)(iii), relating, respectively, to immigrant and nonimmigrant petitions for aliens of extraordinary ability.

The petitioner's initial submission included witness letters (to be discussed further below, in the context of the national interest waiver) and news articles showing that the petitioner finished first or otherwise placed highly in various long-distance races in 2011 and 2012. A printout from All-Athletics.com indicated that the petitioner's "Men's Overall Ranking" as of June 19, 2012 was [REDACTED]

On June 18, 2013, the director issued a request for evidence (RFE), listing the exceptional ability standards from the regulation at 8 C.F.R. § 204.5(k)(3)(ii). The director stated that the petitioner had met only one of the six regulatory standards, specifically the "recognition for achievements" criterion at 8 C.F.R. § 204.5(k)(3)(ii). In response, the petitioner submitted new letters and evidence, including an updated printout from All-Athletics.com, showing that the petitioner's "Men's Overall Ranking" had declined to [REDACTED] as of July 16, 2013, down more than a thousand places since June 2012. The petitioner claimed to have satisfied the following three additional criteria:

*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. 8 C.F.R. § 204.5(k)(3)(ii)(B)*

The petitioner did not claim or establish any past experience as a running coach. All of his claimed past experience is as a runner.

In a letter submitted with the petition, [REDACTED], chief executive officer of [REDACTED] and [REDACTED] stated that the petitioner is her company's "team captain." She stated that she "came to know [the petitioner] in 2008 when he was running for [REDACTED] less than five years before the petition's October 2012 filing date.

The petitioner's response to the RFE included the assertion that the petitioner "has been running and training for over ten years in a field which ordinarily does not have a single employer," thereby engaging the "comparable evidence" clause at 8 C.F.R. § 204.5(k)(3)(iii).

The petitioner submitted a second letter from Ms. [REDACTED], dated July 7, 2013, stating: "I knew about [the petitioner's] running ability through his Aunt in December 2001. At that time, he was under a contract with [REDACTED]. Once he left [REDACTED] in 2009, I signed him quickly. . . . I swear and confirm that [the petitioner] has . . . been running full time for well over ten years as a professional runner." The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires the employer(s) to attest to the employment

experience. The record does not establish that Ms. [REDACTED] is in a position to attest to the beneficiary's employment before 2009.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In this instance, the required evidence is a letter from [REDACTED] confirming that the petitioner was under contract and competing prior to 2009. The petitioner has not submitted that required evidence or demonstrated that it does not exist or cannot be obtained. Likewise, the petitioner has not submitted secondary evidence or established that it does not exist or cannot be obtained. Instead of two or more affidavits from parties who have direct personal knowledge of the petitioner's employment before 2009, the petitioner submitted one letter from a witness whose direct knowledge of the petitioner's work began in 2008 at the earliest. Conversations with the petitioner's unnamed aunt do not give Ms. [REDACTED] direct personal knowledge of the beneficiary's pre-2009 activities.

With regard to the claim that running is "a field which ordinarily does not have a single employer," we note that Ms. [REDACTED] referred to the petitioner as "a loyal employee."

The director denied the petition on November 1, 2013, stating that the petitioner had documented "approximately five (5) years of experience." The director acknowledged Ms. [REDACTED] claim that the petitioner was previously "under contract with [REDACTED] but found this claim to be unsupported because "no letter of reference was submitted from [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)).

The appellate statement includes this assertion: "The letter from [REDACTED] indicated [the petitioner's] experience and that she had sponsored his nonimmigrant visa based on his experience. A letter from [REDACTED] is not necessary to confirm what an expert in the filed [sic] had already established when she placed him under contract as a professional runner." The issue here is not why Ms. [REDACTED] placed the petitioner under contract and petitioned for him as a nonimmigrant. Rather, the regulations at 8 C.F.R. § 204.5(g)(1) and (k)(3)(ii)(B) require evidence of past experience to take

the form of “letter(s) from current or former employer(s).” Ms. [REDACTED] was not the petitioner’s employer prior to 2009 and therefore she is not in a position to attest to his earlier employment.

The petitioner has not submitted letters from current and former employers showing that he has at least ten years of full-time experience in the occupation sought.

*Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D)

In the petitioner’s initial submission, the only information regarding his compensation was that he won \$17,500 for his second-place finish at the 2011 [REDACTED]. In the RFE, the director instructed the petitioner to submit evidence to establish that the petitioner’s remuneration demonstrates exceptional ability.

The petitioner’s response to the RFE includes uncertified partial copies of federal income tax returns, showing gross income of \$31,700 in 2011 and \$42,600 in 2012 as a “marathon runner.” The cover letter submitted with the RFE response stated that these tax returns show that the petitioner has earned his income “solely from running and he has already [been] found to be one of [the] top runners in his field.” The letter also included the claim that “it is unusual for a runner to live from his competitive earnings alone without some other form of sponsorship.” The record does not support these claims. *See Matter of Soffici*, 22 I&N Dec. at 165. With respect to the “sponsorship” assertion, the petitioner did not show that sponsorships normally go to less skilled athletes, rather than to highly skilled athletes whose higher profile would benefit the sponsors.

The tax returns show the petitioner’s gross income in 2011 and 2012, but the petitioner did not establish that his remuneration was at a level that demonstrates exceptional ability as the regulation requires. The petitioner did not show that his earnings are significantly above what is ordinarily encountered in his occupation.

To support the claim that the petitioner “has already [been] found to be one of [the] top runners in his field,” the petitioner submitted a letter from [REDACTED] who identified himself as chair of the [REDACTED]. Mr. [REDACTED] listed the petitioner’s first, second, and third place finishes from 2010 to 2013, and stated: “His performances during the last four years have shown that he is one of the top road racers based in the United States.” Mr. [REDACTED] did not mention the petitioner’s earnings or provide any basis to compare them with those of other runners.

In the November 2013 denial notice, the director stated: “The evidence does not reference the earnings of other professional runners, or how [the petitioner’s] earnings compare to others, with or without some form of sponsorship.”

On appeal, the petitioner states that the director’s finding was in error, because [REDACTED] had called the petitioner “one of the top road racers based in the United States. . . . [The petitioner’s]

earning[s] are only from racing and therefore if he is at the top of his field [sic] his earnings are also of that nature, for this sport.” This assertion does not meet the regulatory requirements. The petitioner must demonstrate that his compensation demonstrates exceptional ability. It cannot suffice to assert that the petitioner is exceptional and that, therefore, his earnings must reflect exceptional ability. This assertion presumes the conclusion that the petitioner seeks to prove, *i.e.*, his exceptional ability in his field.

The petitioner has not established that his remuneration demonstrates exceptional ability.

*Evidence of membership in professional associations.* 8 C.F.R. § 204.5(k)(3)(ii)(E)

In response to the RFE, [REDACTED] stated that the petitioner “has been a member in good standing of the [REDACTED] since 1/14/2012.”

In denying the petition, the director stated that Mr. [REDACTED] “letter is not on official letter head from the [REDACTED] and therefore, this membership cannot be verified.”

On appeal, the petitioner submits a copy of Mr. [REDACTED] letter on the organization’s letterhead (the date and content of the letter are unchanged). The appellate statement includes the assertion that the best evidence of the petitioner’s membership is not the organization’s letterhead, but his “participation in the running events . . . [sponsored] by [REDACTED] [sic] which is the National Governing Body for Track and Field, Long Distance Running and Race Walking.”

The submission of the new letter addresses the specific concern that the director raised in the denial notice. The petitioner has established that he is a member of the [REDACTED]

The question of whether this membership demonstrates exceptional ability would be an issue for the final merits determination. Because the petitioner has not satisfied the plain wording of at least three of the regulatory standards at 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct a final merits determination in order to determine that the petitioner has not established that he qualifies as an alien of exceptional ability.

Throughout the proceeding, the petitioner has pointed to his performance at various races, stating that his first, second, and third place finishes demonstrate that he is an exceptional runner. The director took this information into account, finding that the petitioner has received recognition for achievements under 8 C.F.R. § 204.5(k)(3)(ii)(F). The regulations, however, do not state that an athlete who has won several competitions necessarily qualifies as exceptional.

Clearly, the winner of a given race tends to be the best runner in that particular race, but the record does not show that the petitioner has competed in high-profile races that routinely attract top runners. As the petitioner has acknowledged, amateurs routinely participate in marathons and other long

distance foot races. For them, the race is a hobby or a personal challenge rather than an occupation or field of endeavor, and therefore there is no valid comparison between such amateurs and those, like the petitioner, who run for a living.

The petitioner's own documentation shows that his "Men's Overall Ranking" was [REDACTED] when he filed the petition, and has fallen since that time. This ranking is the closest thing in the record to an objective evaluation of the petitioner's standing in his field. The record does not show how many runners are included in the ranking, but the raw number [REDACTED] does not intrinsically suggest that he is among the "top runners in his field" as the petitioner has claimed. The petitioner has not established a degree of expertise significantly above that ordinarily encountered among those who run for a living rather than for recreation.

The petitioner has not met at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, the petitioner has not established exceptional ability in the sciences, the arts, or business.

## II. National Interest Waiver

The second and final issue in this proceeding is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The petitioner cannot qualify for the national interest waiver without an underlying finding of exceptional ability, but the director addressed the merits of the waiver claim and we will therefore discuss the issue here.

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).

Supplementary information to regulations implementing the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] 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 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.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The cover letter submitted with the petition includes a discussion of the three prongs of the *NYSDOT* national interest test:

- 1) [The petitioner's] proposed employment is in an area of substantial intrinsic merit as the area of outstanding athletic achievement artistic [*sic*] is of importance and the ability of [the petitioner] to train and compete freely in the United States fosters an important national goal of promoting athletic excellence and freedom;
- 2) The proposed benefit will be national in scope as [the petitioner] has competed nationally and internationally and will continue to do so;
- 3) The significant benefit derived from [the petitioner's] participation in the "national interest" field of endeavor "considerably" outweighs the "inherent" national interest in protecting US workers through the labor certification process as there are no US workers of [the petitioner's] unique talent and background in his field who we [*sic*] be harmed as his achievement is always determined by his competitive excellence.

The petitioner's initial submission included several witness letters. Many of the witnesses' comments concerned the petitioner's success as a runner, for instance identifying races that he has won. Because winning races is not a sufficient basis for a national interest waiver, our discussion of the letters will focus on other claims.

[REDACTED] stated:

[The petitioner] has not only led our team in running, but he has also led our team in several community service events (see attached article). The running community, media, and I highly praise him. Moreover, his athletic contributions to our United States Wounded Warrior Program were also impressive. For example, in 2010 after [the petitioner] came in [REDACTED] (out of 30,000 runners) at the world's largest [REDACTED] . . . [the petitioner] offer[ed] encouraging words to U.S. Wounded Warriors and children who participated in the race. Several of the children and Wounded Warriors came up to

me after the race and told me how [the petitioner] and our team mates['] words of encouragement made them want to better themselves at the [redacted] and beyond.

Ms. [redacted] mentioned an "attached article" regarding "community service events." The petitioner submitted copies of several articles about races in which the petitioner participated, but the articles do not mention "community service events" except in passing, such as the proceeds from some events going to charity.

[redacted] general manager and race director of the [redacted] (in which the petitioner finished first in 2011), stated:

I have found [the petitioner] to be a responsible athlete and he has also been a great champion speaking on behalf of [redacted] and [redacted] our title sponsor. He has taken time to speak to middle school children here in Miami who participate in our [redacted] to encourage them to lead an active and healthy lifestyle.

[redacted] a photographer and journalist who has "been involved with the local running community since 1983," stated that the petitioner "brings a positive impact to the local running community through his running ability," and that he "brings along the ability to share a different culture from his native country of Ethiopia with the residents of the [sic] Washington, DC who may have not been beyond the state lines."

Dr. [redacted], executive director of [redacted] signed a letter on the petitioner's behalf, dated August 4, 2011. [redacted] office manager of the [redacted] signed an almost identical letter dated August 18, 2011; both contain the same misspelling of "San Diego" as "San Diageo." The letters contain the following passages:

[The petitioner] would be an ideal role model for all minorities in the United States in general and for about one million Ethiopian immigrants in particular. . . . The importance of the ideal role model<sup>1</sup> for the youth will be particularly important and may even be crucial since at present a substantial number of them are negatively influenced and do not earn their livelihood through hard work. . . .

[H]is overriding goal is noble. He wishes for the opportunity to represent the United States in an international marathon competition and win the race for his personal satisfaction and for the country's national glory.

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<sup>1</sup> In Ms. [redacted] letter, the phrase "ideal role models" replaces "the ideal role model."

A similar assertion appears in a letter from Dr. [REDACTED] associate professor at [REDACTED]

[The petitioner's] contribution as a positive role model to minorities in general and to about one million Ethiopians in particular is fairly obvious. Since at present a substantial number of minorities are incarcerated partly due to lack of positive role models, [the petitioner] will be extremely useful in this regard. Finally his goal of representing the United States in an international marathon competition is admirable.

Dr. [REDACTED] whose academic field is "Finance and Economics," claimed no expertise in the above matters, and cited no evidence to show that the petitioner's presence in the United States since 2010 has had any demonstrable effect on minority incarceration rates. Without such evidence, the claim that the petitioner will eventually have such an effect amounts to unsupported speculation.

In the June 2013 RFE, the director acknowledged the intrinsic merit of the petitioner's occupation, and instructed the petitioner to submit documentary evidence to establish that the benefit from the petitioner's work will be national in scope, and to establish the petitioner's influence on the field as a whole.

In response, Ms. [REDACTED] stated:

The [REDACTED] and the Wounded Warrior Transitional Command has specifically asked [the petitioner] and the [REDACTED] team to run this race every year in an effort to help encourage United States Wounded Warriors like myself to stay active and in the present vs. committing suicide. . . .

In an effort to be proactive about this issue, [the petitioner] gives back to the sport by running this race and by personally motivating, training and encouraging wounded warriors to participate in the Warrior Games. . . . This is something that [the petitioner] has been passionate about since 2010 after his first visit to Walter Reed Medical Facilities. . . .

As a wounded warrior/service disabled veteran, coach and agent, I can honestly say that not only is [the petitioner] a world class athletes [*sic*], he (1) constantly gives back to troops every year at his own expense (2) he encourages soldiers to: get up, active and out as he show cases his talent on the road and at the expo. But most importantly, he (3) leads from the front hoping that everyone follows in an effort to bring awareness to PTSD [post-traumatic stress disorder] and the suicide rate of US soldiers who fight for the right to be free. . . .

[The petitioner] has changed lives by helping wounded warriors overcome challenges and barriers. I can honestly say that he has encouraged me to lace up my spikes and compete in the next 2014 Warrior Games.

The petitioner did not submit the requested documentary evidence to show how he has influenced his field as a whole. His employer's personal assertions are anecdotal, and they do not establish that the petitioner has had a discernible impact on the problems that Ms. [REDACTED] described, or that the petitioner's impact has exceeded that of other long distance runners who have competed in the [REDACTED] and similar events.

In the denial notice, the director stated:

[Y]ou have not submitted any documentation of your employment as a coach, therefore, your employment as a professional runner must be determined to meet [the national scope] prong. . . . It is not enough for a professional runner to compete at the national and international levels if the benefit is not to the national interest. Running and placing at races at these levels is obviously an achievement to be proud of, however, it has not been determined that the nation benefits from your success. . . .

[The evidence submitted] has not sufficiently documented that you have a degree of influence on your field as a whole, or that you would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

The petitioner's appellate statement includes a discussion of the broad appeal of track and field competitions, and the assertion that "[r]oad running is unique among athletic events because in many cases first time amateurs are welcome to participate in the same event as members of running clubs and even current world-class champions." The petitioner has established that there is wide public interest in marathons and other long distance foot races, and that some high-profile events attract national and international attention. These events, in turn, focus on the competitors, without whom there would be no events. The "national scope" prong of the *NYSDOT* national interest test revolves not around the petitioner's individual achievements, but on traits inherent in his occupation, whether or not he manifests those traits.

The appellate statement addresses the third *NYSDOT* prong with this assertion:

The quality of the beneficiary's talent and his ability to compete and win in these national events are unusual. . . . The evidence submitted [demonstrates] through his achievements that he is superior to other individuals in the field. He would not have won the races he competed in if he was not superior in his abilities. . . . It is because he is one of the best that he will in fact serve critical US needs in promoting US athletics nationally and internationally.

The above assertion lacks clarity and detail. The petitioner relies, essentially, on the assertion that he should receive the national interest waiver because he has won, or nearly won, several races. The general assertion that the United States gains prestige when an American wins a long distance foot

race is not sufficient to warrant blanket approval of waivers for foreign runners who win such races. The record shows that many of these events involve thousands of competitors. By nature, every race run to completion has a winner. The petitioner does not explain how the United States benefits more when he, rather than another runner, wins a particular race, or how his involvement is more influential on the field than that of other successful long distance runners.

The petitioner submits a copy of Ms. [REDACTED] July 7, 2013 letter, indicating that the petitioner “has changed lives by helping wounded warriors overcome changes and barriers.” The record does not establish that the petitioner’s impact in this regard has been significant at a national level or influenced his field as a whole. The record offers no objective means to compare the petitioner’s community service work to that of other athletes in his sport.

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 his influence be national in scope. *NYSDOT*, 22 I&N Dec. 217, n.3. 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 alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

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. Furthermore, the petitioner has not met the requirements for the underlying classification of an alien of exceptional ability.

We will dismiss the appeal 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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.