U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28086601

Date: NOV. 17, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a personal grooming industry entrepreneur, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) 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. *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that a waiver of the required job offer and thus of the labor certification. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) 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 the sciences, arts, or business." To demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii):

(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; or

(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, the regulations permit a petitioner to submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

And because this classification 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. Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a three-prong analytical framework for adjudicating national interest waiver petitions in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

A. Categorical Ineligibility for EB-2 Classification

In the first instance, we note the Director's request for evidence (RFE) requested the Petitioner provide evidence to demonstrate their categorical eligibility for classification as an EB-2 immigrant. We conclude the Director correctly determined that the record as it is currently composed does not contain sufficient relevant, material, or probative evidence of at least five years of progressive work experience the Petitioner earned after conferral of their bachelor's degree. So we conclude that the Petitioner is not qualified for EB-2 immigrant classification as an advanced degree professional. And the record does not contain sufficient evidence to establish that the Petitioner qualifies for EB-2 immigrant classification as an individual of exceptional ability. So we conclude that the Petitioner is categorically ineligible for EB-2 immigrant classification.

1. The Petitioner Has Not Sufficiently Demonstrated Eligibility For EB-2 Classification As An Advanced Degree Professional

The evidence the Petitioner submitted into the record does not sufficiently establish the Petitioner's eligibility for EB-2 classification as a member of the professions holding an advanced degree. The regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree to mean any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree and so permit classification as an EB-2 permanent immigrant. Progressive experience can be demonstrated by the Petitioner by providing letters from current or former employers showing that they have at least five years of progressive post-baccalaureate experience in the specialty. The regulation at 8 C.F.R § 204.5(g)(1) requires letters from current or former employers include the name, address, and title of the writer, and a specific description of the duties performed.

The Petitioner claimed they earned a four-year bachelor's degree in administration from Universidade [redacted] in July 2013. The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that four-year bachelor's degrees earned at accredited institutions of higher education in Brazil are the single source equivalent to a United States bachelor's degree. So the Petitioner's Brazilian bachelor's

degree in administration is a foreign equivalent degree to a U.S. baccalaureate degree in administration from an accredited U.S. institution of higher education.

The petitioner provided several letters to document their accumulation of more than five years of progressive post-baccalaureate work experience. But the letters contained in the record were not sufficient to evaluate whether the Petitioner had earned five years of progressively responsible post-baccalaureate work experience in the specialty. Several letters were written by individuals who were mentored by the Petitioner, sought out the Petitioner's endorsement for their hair care products, or attended vocational courses with the Petitioner. So, these letters were not written by current or former employers.

The Petitioner did submit several letters from individuals that engaged them for their services. But whilst these letters did contain the name, address, and title of the writer, they did not contain a sufficient specific description of the duties the Petitioner performed during their post baccalaureate work experience. In other words, whilst the letters described the fields the Petitioner provided their services in, it was not clear from the description what duties the Petitioner would perform in those fields. If we cannot determine what work the Petitioner performed and whether it was in the Petitioner's field of specialty, we cannot conclude that the Petitioner is an advanced degree professional as a non-citizen who has earned a single source bachelor's degree in a field of specialty with at least five years progressively responsible post-baccalaureate work experience in the specialty. So the record does not contain adequate evidence to demonstrate the Petitioner's eligibility for EB-2 classification as a professional with an advanced degree.

2. The Petitioner Is Not An Individual of Exceptional Ability

The Petitioner asserted eligibility for EB-2 permanent immigrant classification as a non-citizen of exceptional ability with supporting evidence. The Director evaluated the Petitioner's assertions and evidence and issued a request for evidence (RFE) requesting additional documentation to consider whether the Petitioner qualified for eligibility for EB-2 permanent immigrant classification as a non-citizen of exceptional ability. The Petitioner did not submit any assertions or evidence in their response to the RFE. But on appeal, the Petitioner appears to renew their claim to eligibility for eligibility for EB-2 permanent immigrant classification as a non-citizen of exceptional ability. In general, we do not accept new assertions supported by new evidence on appeal when, as here, a petitioner was put on notice for the need for additional evidence to demonstrate eligibility through an RFE and was given a reasonable opportunity to provide additional evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988) and *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). But, we will nevertheless exercise our discretion and consider the Petitioner for second preference permanent immigrant classification eligibility the Petitioner claims as a noncitizen of exceptional ability for the first time on appeal.

The Petitioner's contention that the RFE "did not explain why it deemed the other three criteria insufficiently evidenced" is considerably dimmed considering the fact the Petitioner did not provide evidence or assertions to support their eligibility for the EB-2 classification as a noncitizen of exceptional ability or submit supporting evidence in their RFE response. It is always the Petitioner's burden of proof to establish eligibility for the benefit they seek. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (AAO 2010).

Although we conclude the record reflects the Petitioner's attainment of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning in accord with the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(A), the remaining evidence in the record does not sufficiently demonstrate the Petitioner's eligibility for EB-2 nonimmigrant classification as an individual of exceptional ability.[1]

Evidence in the form of letter(s) from current or former employer(s) showing that the noncitizen 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 proposed to work as an entrepreneur in the personal grooming industry. In support of their experience with current or former employers, the Petitioner submitted several experience letters. The letters purporting to support the Petitioner's work experience in the occupation are not sufficient material, relevant, or probative evidence of at least ten years of the Petitioner's full-time experience in the occupation they seek to undertake in the United States.

As we discussed earlier, several letters were written by individuals who were mentored by the Petitioner, sought out the Petitioner's endorsement for their hair care products, or attended vocational courses with the Petitioner. So, these letters were not written by current or former employers and cannot evidence the Petitioner's full-time experience in their occupation.

The remaining letters submitted were from individuals that engaged the Petitioner for their services. But whilst these letters did contain the name, address, and title of the writer, they did not contain a sufficient specific description of the duties the Petitioner performed for us to evaluate whether the duties were in the same occupation the Petitioner intended to perform as part of their proposed endeavor in the United States. And the letters did not specify if the work the Petitioner performed was full-time. Moreover, the earliest point in time these letters specified as when the Petitioner commenced performing services was some unspecified point in 2015. Any point of time in the year 2015 is less than 10 years from the date the Petitioner filed their petition.

So, the letters the Petitioner submitted do not support a conclusion the Petitioner has at least ten years of full-time experience in the occupation of marketing director.

Evidence of a license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

In support of their licensure or certification to perform the duties of a marketing director, the Petitioner submitted a copy with translation of an identity card issued by Regional Council of Administration of [redacted] (Conselho Regional de Administração do [redacted] identifying them as an administrator. But this document is not persuasive to demonstrate a license or certification.

[1] The Petitioner did not assert eligibility nor did they submit evidence in support of a salary, or other remuneration for services, which demonstrated their exceptional ability under the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(D). And they did not submit evidence of membership in professional associations under the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Licenses and certifications show that a person has the specific knowledge or skill needed to do a job. A license, generally conferred by an official government body, confers legal authority to work in an occupation. A certification, whilst not always required to work in an occupation, generally requires demonstrating competency to do a specific job.

At the outset, we note the Petitioner has submitted an identify card, not a licensure or certification. And the record does not convincingly establish the identify card relates to a licensure or certification. But even if we were to accept at face value that the identity card reflected a licensure or certification, we would not conclude that it met the criterion because it reflects the Petitioner is an administrator. The Petitioner's proposed endeavor is to perform the services of an entrepreneur in a personal grooming business. And the record does not reflect what duties an administrator would be expected to perform and how they correspond to the endeavor the Petitioner proposed to undertake. So we cannot conclude that the Petitioner has a license to practice the profession or certification for a particular profession or occupation.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner submitted several letters of recommendation prepared contemporaneously with these immigrant petition proceedings to demonstrate that they have been recognized for achievements and significant contributions to their field by peers, governmental entities or professional or business organizations. But the evidence the Petitioner submitted did not meet the standard of proof because it did not satisfy the basic standards of the regulations. *See Matter of Chawathe*, 25 I&N Dec. at 374 n.7. The regulation requires evidence of recognition of achievements and significant contributions. When read together with the regulatory definition of exceptional ability, the evidence of recognition of achievement and significant contributions should show expertise significantly above that ordinarily encountered in the field.

The Petitioner's letter of recommendation are not evidence of the Petitioner's recognition of achievement and significant contributions reflecting their expertise as significantly above that ordinarily encountered in the field. For example, a letter from an individual who sought out the Petitioner's endorsement for their product did not specify and the record does not reflect what the Petitioner did to "make the economy revolve and grow through [their] work and skill" and "contribute to the self-esteem and confidence of many people." Without knowing what the Petitioner specifically did, we cannot evaluate whether it could be an achievement and significant contribution demonstrating expertise significantly above that ordinarily encountered in the field. Similarly, a letter from an individual who took courses with the Petitioner credited the Petitioner with "generating an excellent service for society, generating jobs, taxes, revenues, profits, and currency circulation" and stated that "techniques and solutions created by [the Petitioner] were responsible for bringing knowledge to several cities in Latin America…generating a significant improvement in health, well-being, and self-esteem." Again, the letter writer did not specify and the record did not reflect what the Petitioner did to realize these purported benefits rendering evaluation of whether they were achievements and significant contributions reflecting expertise significantly above that ordinarily encountered in their field. One letter described the Petitioner as having "contributed to the development of a scheduling application for barbershops, facilitating the internal administration of

any barbershop and generating greater comfort and practicality to the public that frequents them." But the record did not support and the Petitioner did not demonstrate how a scheduling application for barbershops is an achievement and significant contribution at a level above what would ordinarily be encountered in the Petitioner's fields.

And the Petitioner submitted many vocational certificates reflecting participation in workshops and courses. But the record does not evidence how completion of the workshop or courses the certificates the Petitioner possesses represent achievements and significant contributions above that ordinarily encountered in their field. So we cannot conclude that the Petitioner meets this ground of eligibility.

The Petitioner has not established eligibility in any three of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). They cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). So we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification. Consequently, we conclude the Petitioner has not demonstrated their eligibility for permanent immigrant classification in the EB-2 category.

B. Eligibility for Discretionary Waiver of the Job Offer, And So a Labor Certification, in the National Interest.

1. The Proposed Endeavor

The Petitioner indicated manager as the proposed job title on their Form I-140, Immigrant Petition for Alien Worker. They describe their endeavor to require them to "manage business operations and directs personal service function of barber shop. Confers with employees to ensure quality services for patrons" The conduit for the Petitioner's proposed endeavor is the management of a barbershop and school they intend to establish.

2. Substantial Merit and National Importance

a) Substantial Merit

An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar* at 889. The record before us contains evidence of the characterization of the Petitioner's proposed endeavor as entrepreneurial, which falls within the range of areas we concluded could demonstrate endeavor of substantial merit. So the record supports the substantial merit of the Petitioner's proposed endeavor.

b) National Importance

Alongside demonstrating its substantial merit, a petitioner must also showcase the national importance of their proposed endeavor. We conclude that the Petitioner's proposed endeavor did not have the required national importance to meet the first prong of the *Dhanasar* framework.

The Petitioner's endeavor as a "manager" proposed to "manage business operations and directs personal service function of barber shop. Confers with employees to ensure quality services for

patrons" The endeavor intended to "offer a range of hair and beard services for men, hair cutting services for women and children, as well as barber training courses."

In support of their claim of eligibility for a discretionary waiver of the job offer requirement, and thus of a labor certification, under *Dhanasar* the Petitioner submitted recommendation letters, their business plan, copy of degree with transcripts and an evaluation of training, experience, and education, several vocational certificates of training, completion, and attendance, news articles, business awards, and copy of a professional identity card.[2]

When evaluating the national importance of a proposed endeavor, the relevant question is not the performance of the proposed endeavor which the individual will operate; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. So we are not concerned with the individual petitioner when evaluating the first prong of the *Dhanasar* analytical framework; we are focused on the petitioner's proposed endeavor. And to demonstrate the national importance of a proposed endeavor under *Dhanasar's* first prong, we look to its potential prospective impact. In *Dhanasar* we said that when we look to a proposed endeavor's potential prospective impact "we look for broader implications." *See Dhanasar*, 26 I&N Dec. at 889. Broader implications are not necessarily evaluated from a narrow frame of reference such as geography; implications within a field which demonstrate a national or even international influence of broader scale can rise to a level of national importance. And substantial positive economic impacts, such as a significant potential to employ U.S. workers particularly in an economically depressed area, can also help a proposed endeavor rise to a level of national importance. The success of the endeavor, or attributes that could tend to make the endeavor more successful, are consequently not as important as determining whether the proposed endeavor itself stripped away from a petitioner has attributes that would highlight the prospective positive impact of its broader implications or positive economic effects rising to a level of national importance.

The Petitioner identified two areas where their proposed endeavor would positively impact the national interest; "promoting job creation," and "promoting skilled, well-trained barbers. But the record does not contain adequate evidence to identify any positive economic impact rising to a level of national importance from the Petitioner's endeavor.

The record contains insufficient evidence to support the positive economic effects the Petitioner expects will be realized by their proposed endeavor. As stated above one of the potential positive effects of their endeavor identified by the Petitioner is their potential for job creation. But the record does not adequately support the Petitioner's statement in their business plan and a mention to "hire initial staff" in "Q3 2022." The Petitioner does not specify how many staff they intend to employ, or their roles in the endeavor. And the Petitioner does not identify where the locus of employment would be. So we are not able to consider whether the proposed job creation's significance or whether the job creation will be in an economically depressed area. So, the record does not support any potential positive economic effects, such as beneficially addressing high unemployment in economically depressed areas in a manner meaningful enough to implicate the national interest and rise to the level of national importance.

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

And the proposed endeavor's aim to "promot[e] skilled, well-trained barbers" does not elevate it to a level of national importance. This is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not wider population. The skill and training a nascent barber receives is for their own benefit and the benefit of those who engage their services. So the teaching of the skill and training is similar constrained. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893.

The record simply does not contain any meaningful analysis of the broader implications or potential positive economic impact rising to the level of national importance stemming from the Petitioner's specific performance of the duties of a general manager. The evidence in the record does not highlight how the prospective potential impact of the Petitioner's proposed endeavor could have broader implications implicating the national interest. For example, the letters of recommendation containing testimonials of the services the Petitioner performed do not describe how the benefits they have received connect to broader implications rising to national importance or any nationally important economic impact. It is unclear from the letters in the record how the establishment of an independent barbershop and training school would have a significant impact on the field of entrepreneurship beyond the barbershop and training school's immediate sphere of influence, namely those individuals who engage its services for personal grooming needs or receive training in personal grooming techniques. In other words, the record does not sufficiently highlight how the establishment of an independent barbershop and training school would broadly implicate matters in the field rising to a level of national importance.

A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). The Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates the national importance of their proposed endeavor.

3. Well-Positioned to Advance the Proposed Endeavor

We conclude the Petitioner has not sufficiently demonstrated that they are well positioned to advance their proposed endeavor under the second prong of the *Dhanasar* analytical framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor under the second prong of *Dhanasar*, we review (A) a petitioner's education, skill, knowledge, and record of success in related or similar efforts; (B) a petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing; (C) any progress towards achieving the proposed endeavor; and (D) the interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Y-B-*, 21 I&N Dec. at 1142 n.3. The record contains evidence of the Petitioner's academic record and employment history. But simply having education, skills, and/or knowledge in isolation do not place a petitioner in a position to advance their proposed

endeavor. This is only one factor amongst many factors which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor.

And the record does not reflect how the Petitioner's prior activities as described in the recommendation letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. The letters the Petitioner provided described the Petitioner as a "consultant" variously providing "consultant" services in "company administration and business, financial analysis support. As well as being responsible for direct training," "administrative strategies and in the area of team management," or applying "all [their] knowledge…in practice." Another letter from an individual who sought out the Petitioner's endorsement for their product did not specify and the record does not reflect what the Petitioner did to "make the economy revolve and grow through [their] work and skill" and "contribute to the self-esteem and confidence of many people." Without knowing what the Petitioner specifically did, we cannot evaluate whether it is a similar effort to the endeavor the Petitioner proposed to undertake in the United States. Similarly, a letter from an individual who took courses with the Petitioner credited the Petitioner with "generating an excellent service for society, generating jobs, taxes, revenues, profits, and currency circulation" and stated that "techniques and solutions created by [the Petitioner] were responsible for bringing knowledge to several cities in Latin America…generating a significant improvement in health, well-being, and self-esteem." Again, the letter writer did not specify and the record did not reflect how this was a similar effort to the Petitioner's proposed endeavor. Still another letter described the Petitioner as having "contributed to the development of a scheduling application for barbershops, facilitating the internal administration of any barbershop and generating greater comfort and practicality to the public that frequents them." But the record did not support and the Petitioner did not demonstrate that development of a scheduling application for barbershops was a similar effort to the barbershop and training endeavor the Petitioner proposes to undertake. So the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition. Whilst they speak generally of the Petitioner's realization of certain objectives and skill in their field, they do not sufficiently describe commonalities which could enable to evaluate whether they are a similar effort to the Petitioner's proposed endeavor.

It is not clear from the totality of the evidence in the record how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor. So the Petitioner has not demonstrated with material, relevant, and probative evidence that they are well-positioned to advance their proposed endeavor.

4. Balancing Factors to Determine Benefit to the United States of Granting Waiver of the Job Offer Requirement so that the Petitioner can Undertake the Proposed Endeavor.

If the Director had found that the Petitioner met the eligibility requirements contained in the first and second prongs of the *Dhanasar* framework they would have moved to evaluating whether, on balance, the Petitioner had demonstrated that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The Director could have considered the impracticality of a labor certification, the benefit to the U.S. of a petitioner's contributions, the urgency of a petitioner's contributions to the national interest, the

capacity for job creation, and any adverse effects on U.S. workers when conducting the balancing of the national interests of waiving the requirements of a job offer and therefore a labor certification.

The record here does not demonstrate the Petitioner's eligibility under the first two prongs of the *Dhanasar* framework. But even if the first two prongs had been met, the petition could not have been approved because the record does not satisfy the third prong. The record does not contain sufficient evidence of factors like the impracticality of a labor certification, the benefit to the U.S. of a petitioner's contributions, the urgency of a petitioner's contributions to the national interest, the capacity for job creation, and any adverse effects on U.S. workers. So it is not evident in the record, on balance, that the requirement of a job offer and thus a labor certification, should be waived for the Petitioner.

III. CONCLUSION

The Petitioner has not demonstrated their categorical eligibility for EB-2 permanent immigrant classification. And the record contains insufficient evidence to establish they met the requisite prongs of the *Dhanasar* analytical framework. So we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion, with each reason being an independent ground requiring dismissal of this appeal.

ORDER: The appeal is dismissed.