U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25767325

Date: OCT. 13, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, general manager of a private golf course country club, 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 Nebraska 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, would be in the national interest. 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 RFE requested the Petitioner provide evidence to demonstrate their categorical eligibility for classification as an EB-2 immigrant. The Director's decision made no express observations relating to the Petitioner's EB-2 categorical eligibility. We conclude the record as it is currently composed does not contain sufficient relevant, material, or probative evidence of the Petitioner's advanced 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 earned a bachelor of arts degree in media arts from the University [redacted] College in 1999. The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that bachelor of arts degrees earned at accredited institutions of higher education in the United Kingdom (other than Scotland) are the single source equivalent to a United States bachelor's degree. So the Petitioner's British bachelor of arts degree in media arts is a foreign

equivalent degree to a U.S. baccalaureate degree in media arts from an accredited U.S. institution of higher education.

The petitioner also provided a letter from [redacted] president of [redacted] Country Club purporting to document approximately 15 years of work experience. But the letter contained in the record is not sufficient to evaluate whether the Petitioner has gained five years, let alone 15 years, of progressively responsible post-baccalaureate work experience in the specialty. Whilst the letter did contain the name, address, and title of the writer, it did not contain a sufficient specific description of the duties the Petitioner performed during their post baccalaureate work experience. 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 Director's decision did not evaluate whether the Petitioner demonstrated eligibility for EB-2 classification as an individual of exceptional ability. But the Petitioner submitted evidence in their initial petition for us to consider their eligibility for EB-2 permanent immigrant classification as a non-citizen of exceptional ability. Although the evidence in the record reflects that the Petitioner has provided an official academic record showing that they have a degree from a university in the United Kingdom, 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 letter purporting to support the Petitioner's work experience in the specialty is not evidence of at least ten years of full-time experience in their occupation because it did not sufficiently demonstrate the Petitioner's work experience as discussed by us earlier. The Petitioner's submitted letter did not contain a job description. We are unable to evaluate whether the Petitioner has full-time experience in the occupation without the specific job description required by 8 C.F.R. § 204.5(g)(1). So we cannot conclude that the Petitioner has the requisite 10 years of full-time experience in their occupation.

> *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).

The Petitioner contended they have commanded a salary, or other remuneration for services, which demonstrates exceptional ability. But they did not support their assertions with documentation.[2] And

[1] The Petitioner did not provide evidence of a license to practice the profession or certification for a particular profession or occupation under 8 C.F.R. § 204.5(k)(3(ii)(C).

[2] The Petitioner stated the record contained a document they referred to as a "2021 form" to support their asserted salary.

the record does not reflect the salary or remuneration expected for individuals of exceptional ability performing duties comparable to those the Petitioner intends to undertake so that context could be applied to evaluate the Petitioner's assertions. There is no evidence in the record which would permit us to evaluate the duties a general manager of exceptional ability would perform for the salary and their remuneration as a point of comparison. So the Petitioner has not met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) because we cannot evaluate from information in the record whether the Petitioner's salary or remuneration demonstrated their exceptional ability.

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

The Petitioner submitted their listing amongst the directors of [redacted] and receipt of an invitation to attend a meeting of the [redacted] Chapter of the Club Management Association of America as evidence of their membership in professional associations. But the Petitioner identified [redacted] as a corporation engaged in the "acquisition and sale of warehouses, equipment, and other things related to casters and wheels-parts needed for Gulf (sic) Clubs." Thus, it is not a professional association, which is ordinarily an organization or association of professionals in the same field. The record does not sufficiently describe the composition of the [redacted] and whether it is composed of professionals akin to the Petitioner. And the meeting invitation did not identify the Petitioner's membership status with the Club Management Association of America. It is also unclear what membership in the Club Management Association of America would represent within the Petitioner's field. Consequently, the record does not convincingly establish the Petitioner's membership status in any eligible professional association or organization as that term is contemplated in the regulations, and we conclude the Petitioner has not met this criterion.

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 of significant contributions should show expertise significantly above that ordinarily encountered in the field.

The Petitioner's letters of recommendation are written almost entirely by individual members of [redacted] Country Club. Several were written by the Petitioner's tennis partners and generally contain

The Petitioner submitted a USIRS Form 1040, U.S. Individual Income Tax Return for 2019 without an accompanying USIRS Form W-2, and Tax Statement or USIRS Form 1099-MISC, Miscellaneous Income. So it is unclear if this was the document the Petitioner referred to. And the sole document in the record from 2021 relating to any financial information is a "Income Statement Summary – 2021" for [redacted] Country Club. This document does not list the Petitioner's salary. But, even if the documents the Petitioner submitted had not suffered from these identified infirmities, we would still have concluded that the evidence was insufficient to establish that the Petitioner commanded a salary or other remuneration for services demonstrating exceptional ability for the reasons contained here.

vague statements about the writers' impressions of the Petitioner's positive work attributes in managing [redacted] Country Club and their overall strength of character. The Petitioner asks us to conclude the writers' conclusions alone constitute recognition of achievements and significant contributions. But these statements are not supported by any evidence in the record which reflects that these letters represent noteworthy achievements and significant contributions. For example, one letter credits the Petitioner with "improving the overall quality and efficiency of [redacted] Country Club." Another letter lauded the Petitioner's "management of a Club that had been struggling for a number of years" in a manner "over and beyond the budgetary constraints of new ownership" whilst describing the Petitioner as a "friend and acquaintance" of "utmost integrity and diligence." A letter written by "a friend (and tennis partner)" describes the Petitioner as a "customer-focused executive leader, kind, upstanding and conscientious person." Another letter writer and tennis partner identified the Petitioner's tennis game play as a "venue where you can learn a lot about someone's core personality" and concluded that the Petitioner had a "kind, clam (sic), and humorous demeanor." One letter writer also pointed out the Petitioner's display of "excellent management skills in operating [redacted] Country Club." being "very efficient in [their] job" leading to their expectation that the Petitioner would "exceed and progress" in their career. In general, the letter writers indicated the Petitioner was a person of genial character and a conscientious worker whose work in managing [redacted] Country Club was well appreciated. But the competent execution of the Petitioner's job duties and their tennis prowess are not achievements or significant contributions to their field of endeavor. The writers do not adequately identify any benefits of the Petitioner's endeavor, other than a more enjoyable country club experience, that would be worthy of recognition. So we cannot conclude that the Petitioner meets this ground of eligibility.

The Petitioner has established eligibility in only one 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.

Ordinarily, only after determining the Petitioner's eligibility under the EB-2 category would the Director proceed to determine whether a discretionary waiver of the job offer requirement, and thus a labor certification, is warranted. Section 203(b)(2)(B)(i) of the Act. But since the Director's decision here made specific findings about the Petitioner's eligibility for a national interest waiver in their decision, we will discuss the Petitioner's ineligibility for a discretionary waiver of the job offer requirement, and thus of a labor certification, notwithstanding their categorical ineligibility for the EB-2 permanent immigrant classification.

1. The Proposed Endeavor

The Petitioner indicated general manager as the proposed job title on their Form I-140, Immigrant Petition for Alien Worker. They describe their endeavor as a "business executive/entrepreneur" who would "plan, direct or coordinate operations of private sector organizations, overseeing multiple

departments. Duties include formulating policies, managing daily operations." The conduit for the Petitioner's proposed endeavor is the continued general management of [redacted] Country Club, which they have purportedly been managing since 2018.

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 Petitioner described their endeavor as a "business executive/entrepreneur." The record before us contains evidence of the characterization of the Petitioner's proposed endeavor as a "business executive/entrepreneur" 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. The Director concluded that the Petitioner's proposed endeavor did not have the required national importance to meet the first prong of the *Dhanasar* framework. We agree.

The Petitioner's endeavor as a business executive/entrepreneur proposed to "plan, direct or coordinate operations of private sector organizations, overseeing multiple departments. Duties include formulating policies, managing daily operations." The endeavor intends to realize benefits in the form of increasing a corporation's earnings before interest, taxes, depreciation, and amortization (EBIDTA), direct, and indirect job creation for U.S. workers.

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, copies of online articles with quotes from the Petitioner, enterprise valuation for [redacted] Country Club, a list of the largest corporations in South Korea, the Petitioner's USIRS Form 1040, U.S. Individual Tax Return without accompanying USIRS Form W-2, Wage and Tax Statement or USIRS Form 1099-MISC, Miscellaneous Income, a branch reports-company report for [redacted] Country Club and the entities it is affiliated, related, or both to, a printout of [redacted] Country Club's website, and articles about discrete demographic topics pertaining to Nevada.[3]

The Petitioner essentially argues their endeavor is nationally important because they, based on their previous experience and achievements, will undertake and execute it. The Petitioner described their endeavor in terms of performing the duties of a general manager competently. The main basis of the Petitioner's claim of eligibility for the act of discretion to waive the requirement of a job offer, and thus a labor certification, in the national interest comes from the Petitioner's claims regarding their past career as a general manager in prominent companies in their home country, their dedication to their field, and the competent and successful manner in which they have accomplished their duties in the past. But the performance of duties of a general manager on a broad level, even successfully or competently, do not implicate matters rising to a level of national importance. These facts are not

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

relevant to the question of whether a proposed endeavor can exert potential positive impact rising to a level of national importance. 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 "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. And it is here that the Petitioner's endeavor, such that it is, is deficient. The Petitioner's endeavor is at its core the performance of job duties in the operation of businesses, currently [redacted] Country Club. But the record does not adequately support how the performance of these duties by the Petitioner would potentially prospectively impact the Petitioner's field in a manner that rose to the level of the national interest, either through the proposed endeavor's broader implications or its positive economic impact. For example, the Petitioner does not sufficiently link in the record how their performance of general management duties at corporations or at [redacted] Country Club would increase employment in an area with historic unemployment. It does not identify what specific broader considerations would emanate from their specific performance of general company management that would implicate the national interest.

And it is also unclear from the evidence in the record that a single instance of performing the job duties of general manager described by the Petitioner would have a significant impact on the field beyond its immediate sphere of influence, which at present is [redacted] Country Club. The evidence in the record does not highlight how the prospective potential impact of the work of one general manager at one country club as is currently the case could have broader implications implicating the national interest. Again the Petitioner tries to highlight their endeavor's broader implications by linking the endeavor to their experience performing general duties for a company developing software for standardized reading tests and for a large multinational conglomerate. Again simple past performance of the duties of the endeavor, even successfully or competently, does not confer broad benefits rising to a level of national importance because it is not clear from the record how they implicate the greater national interest. [4] What can be concluded from the record is that the performance of duties of general manager would benefit only the company employing the Petitioner and utilizing their services like [redacted] Country Club. 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. 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. By extension, activities which only benefit a single employer, like [redacted]

[4] It is important to note that the Petitioner's accomplishments and expertise are more relevant to the second prong of *Dhanasar*, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 889.

[redacted] Country Club, would not rise to a level of national importance. The record does not contain any meaningful analysis of the broader implications or potential prospective economic impact rising to the level of national importance stemming from the Petitioner's specific performance of the duties of a general manager. And 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. In sum the record supports the conclusion that the potential impact of the Petitioner's endeavor would benefit only companies that employ the Petitioner.

Moreover, 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. Whilst the record contains evidence of some vague and general financial health, in the form of [redacted] Country Club's financial statements and the testimony of its members, it is not clear from the record how this economic impact would have a substantial prospective positive economic effect commensurate with national importance. In *Dhanasar*, we suggested that a Petitioner may be able to demonstrate the national importance of an endeavor by demonstrating "significant potential to employ U.S. workers…in an economically depressed area…" *See Dhanasar* at 890. Here, the evidence in the record does not identify any hiring plans or any locality or economically depressed area that could benefit from the Petitioner's proposed endeavor.

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

As the Petitioner did not demonstrate the national importance of their proposed endeavor, the resolution of that issue by itself requires dismissal of their appeal. But since the Director's decision made specific conclusions about the Petitioner's eligibility under *Dhanasar's* second prong, we will discuss whether the Petitioner is 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. The record does not sufficiently link the

field of the Petitioner's educational credential, media arts, with the performance of general management duties for corporations. And even if they had, we would still conclude that this would not demonstrate the Petitioner's positioning to advance their endeavor because 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. 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.

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. Moreover 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 identify any recognition, achievements, or significant contributions to their field that tend to reflect that the Petitioner is well-positioned to advance their 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.