U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28581034

Date: DEC. 19, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physiotherapist, 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 that 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 "título de Fisioterpeuta" from [redacted] in [redacted], Brazil in 2016. The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that professional "título" educational credentials 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 "título de Fisioterpeuta" is a foreign equivalent degree to a U.S. baccalaureate degree in physical therapy from an accredited U.S. institution of higher education.

The Petitioner did not provide any work experience letters. But the Petitioner did initially provide "letters of recommendation" from individuals they identified as "work" or "ex-boss." And in response to the Director's RFE, the Petitioner largely re-submitted the letters identified as "work" and "ex-boss" they initially submitted with their petition, save two letters revised by their respective authors. The "letters of recommendation" submitted initially with the petition and in response to the RFE are insufficient to evaluate whether the Petitioner has gained five years of progressively responsible post-baccalaureate work experience in the specialty. Whilst the 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 work experience. Moreover, even if they would have contained a sufficient specific description of the duties the Petitioner performed, we would have still concluded that the letters were insufficient because they attested to work experience the Petitioner gained prior to matriculating from their foreign educational program equivalent to a U.S. bachelor's degree. As stated above, progressive experience must be post-baccalaureate. And the post-baccalaureate time frame covered by the letters is less than five years. The Petitioner has not documented they have five years of progressively responsible post-baccalaureate work experience. 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.

We therefore conclude that the Petitioner is not 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.

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 made assertions and submitted evidence in their response to the RFE 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 Brazil, 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 letters purporting to support the Petitioner's work experience in the specialty do not adequately reflect at least ten years of full-time experience in their occupation for the reasons discussed by us earlier. As stated above, the letters the Petitioner submitted from "work" and "ex-bosses" covered a period less than five years, which is less than what the regulation requires a petitioner demonstrate. And the letters the Petitioner submitted suffered from the other deficiencies we have identified above,

[1] The Petitioner did not provide *evidence that they have commanded a salary, or other remuneration for services, which demonstrates exceptional ability* under 8 C.F.R. § 204.5(k)(3(ii)(D).

namely an insufficient description of duties the Petitioner performed during their work experience. So we cannot conclude that the Petitioner has the requisite 10 years of full-time experience in their occupation.

> *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 physiotherapist, the Petitioner submitted a copy with translation of an identity card issued by Federal Public Service, Regional Council of Physical Therapy and Occupational Therapy of the 3rd Region. The identity card purported to identify the Petitioner as a physiotherapist. But this document is not persuasive to demonstrate a physiotherapist license or certification.

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 identity card, not a licensure or certification. And the record does not convincingly establish the identity card relates to a licensure or certification. The record does not contain independent and objective evidence to establish the relevance and significance of the identity card in relation to authorization to practice the profession of physiotherapist. 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 the document the Petitioner submitted contained an apparent material discrepancy calling its reliability and authenticity into question. The reverse of the card reflects that it was issued on July 3, 2014, but the observe reflects it was issued on February 2, 2017. So we cannot conclude that the Petitioner has a license to practice the profession or certification for a particular profession or occupation.

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

The Petitioner submitted evidence of their membership in the Association of Physiotherapists of Brazil and the American Physical Therapy Association. The Petitioner's membership in these organizations is not sufficient evidence of membership in a professional association.

The Petitioner filed their petition on April 19, 2021 and responded to the Director's RFE on January 27, 2023. The letter the Petitioner submitted from the Association of Physiotherapist of Brazil identified the Petitioner as "regularly registered" with the Association of Physiotherapists of Brazil with entry in December 2022. And the printout from the American Physical Therapy Association indicated the Petitioner had "0" years of membership. So it appears the Petitioner commenced their membership in the organizations they identified after having filed their petition and prior to responding to the Director's RFE requesting evidence of the Petitioner's eligibility for classification as an employment based second preference permanent immigrant. A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). So the Petitioner's registration of membership in the Association of Physiotherapists of Brazil and the American Physical Therapy Association is not sufficient evidence

of their membership in a professional association. Moreover, the record is insufficient to establish that the Association of Physiotherapists of Brazil and the American Physical Therapy Association are professional associations. For example, the letter the Petitioner submitted does not identify the criteria or requirements for registration of membership in the Association of Physiotherapists of Brazil so that we could evaluate whether membership is reserved for professionals in the field of physiotherapy. And the Petitioner attests that membership in the American Physical Therapy Association is open not only to physical therapists, but also physical therapist assistants and students of physical therapy. Consequently, it appears the American Physical Therapy Association is also not a professional association limited to the physiotherapist profession. So we are unable to conclude that registration of membership in the Association of Physiotherapists of Brazil and the American Physical Therapy Association is reserved for professionals.

> *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 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 by teachers, colleagues ostensibly from "work" or who were an "ex-boss," and individuals described as "therapist" and "friend" respectively. 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. The letters described the Petitioner's character, work ethic, and other positive qualities like their "sweet personality," "natural curiosity," and "punctuality." In general, the letter writers indicated the Petitioner was a person of genial character and a conscientious worker. But the Petitioner's genial character and good work ethic are not achievements or significant contributions to their field of endeavor. The writers do not adequately identify any achievements or significant contributions significantly above that ordinarily encountered in the Petitioner's field 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 "physiotherapist" as the proposed job title on their Form I-140, Immigrant Petition for Alien Worker. They describe their endeavor as a "continuing to work in the field of [their] extraordinary ability in the United States" to "benefit" the United States "in an area where skilled professionals are needed."[2] The Petitioner's business plan proposed that the Petitioner would endeavor to treat patients with sports and orthopedics related injuries with their physical therapy services. The Petitioner contends that their proposed endeavor would "be extremely helpful to the American Health System" because of an "overall lack of professionals in the American Job Market and the Health System, and more specifically, the Physiotherapist industry" resulting in a concomitant underservice to populations desiring those services and knowledge transfer from the Petitioner to other physiotherapists in the United States by offering specialized training sessions.

2. Substantial Merit and National Importance

a) Substantial Merit

We withdraw the Director's conclusion that the Petitioner proposed endeavor did not have 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 "physiotherapist." The record before us contains evidence of the characterization of the Petitioner's proposed endeavor as a "physiotherapist" 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.

[2] Although we conclude, like the Director, that the Petitioner has not demonstrated eligibility for a discretionary waiver of the job offer requirement, and thus of a labor certification, in the national interest we do not agree with the Director's characterization of the Petitioner's proposed endeavor as no more than performing the expected duties of a general occupation. The Director is correct in so far that a petitioner proposing an endeavor that simply continued their ongoing employment on a permanent indefinite basis, and without a thorough description, would likely face significant obstacles in demonstrating their proposed endeavor's substantial merit and national importance. But that does not preclude adequately described and substantiated proposed endeavors undertaken as part of a petitioner's employment from evaluation of eligibility for a discretionary waiver of the requirement of a job offer, and thus a labor certification, in the national interest under the Dhanasar analytical framework.

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.

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 copies of their educational documents, letters of recommendation, evidence of volunteer work, fairs/congress participation, and "courses," articles in the field of physiotherapy, their resume/cv, business plan, and personal statement.[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 physiotherapist 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 physiotherapist in their home country, their dedication to their field, and the competent and successful way they have accomplished their duties in the past. But the performance of duties of a physiotherapist on a broad level, even successfully or competently, do not implicate matters rising to a level of national importance. These facts are not 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 a 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. 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. They do not identify what specific broader considerations would emanate from their specific performance of physiotherapist duties that would implicate the national interest. For example, the Petitioner does not sufficiently link in the record how their performance of

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

physiotherapist duties at corporations would increase employment in an area with historic unemployment.

And it is also unclear from the evidence in the record that a single instance of performing the job duties of physiotherapist described by the Petitioner would have a significant impact on the field beyond its immediate sphere of influence, which are the businesses they would work for. The evidence in the record does not highlight how the prospective potential impact of the work of one physiotherapist at a physical therapy center for instance 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 as a physiotherapist in their home country. And 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 physiotherapist would benefit only the company employing the Petitioner and utilizing their services. 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 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 physiotherapist. And the letters of recommendation containing testimonials of the services the Petitioner performed do not describe how their performance of those duties 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. 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.

[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.

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.

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. 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 reflects the Petitioner has earned a single source equivalent of a U.S. bachelor's degree in physiotherapy and has applicable work experience. However, 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. Moreover, although the Petitioner has embarked on having their credentials "re-validated" so that they can function as a physiotherapist in the United States, the record does not reflect how the current stage of these efforts would support their aspirations to perform their proposed endeavor.

The Petitioner's business plan identified a target audience for their proposed endeavor but did not adequately explicate how they would engage with their target audience to advance their proposed endeavor. The business plan instead only placed heavy emphasis on what the Petitioner had done in their past and their qualifications to continue the same activities in the future. The record simply does not reflect any progress to achieving the 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. And 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.

And the Petitioner's "letter of intent" is not sufficient evidence interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons. The "letter of intent" the Petitioner submitted verified the Petitioner's ongoing employment at [redacted] as a physical therapy technician and expressed a continued intention to continue to employment with "no expected end date." The "letter of intent" notes the Petitioner's previous work experience as a physiotherapist to provide context for the "minimal training being required [by the Petitioner] to perform her job [physical therapy technician] effectively."

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.