U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29449589

Date: JAN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the food industry, 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 that the record did not establish that a waiver of the required job offer and thus of a 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

We disagree with the Director's conclusion that the Petitioner is eligible for classification as a permanent immigrant in the employment based second preference category as an individual of exceptional ability and withdraw it. We conclude as set out below that the record as it is currently composed does not contain sufficient relevant, material, or probative evidence to demonstrate the Petitioner's eligibility for classification as a permanent immigrant in the employment based second preference category. The Petitioner has not earned the single source equivalent of a U.S master's or higher degree of the single source equivalent of a U.S. bachelor's degree followed by at least five years of progressive work experience. So we conclude that the Petitioner is not qualified for EB-2 immigrant classification as an advanced degree professional. And, as stated above, we conclude 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 the Petitioner is categorically ineligible for EB-2 permanent 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 submitted an education equivalency evaluation equating a combination of the Petitioner's education and work experience to demonstrate they earned the equivalent of a four-year bachelor's degree in marketing from an accredited United States institution of higher education. To

be eligible under section 203(b)(2), 8 U.S.C. § 1153(b)(2)(A), the Petitioner must have a single degree that is the "foreign equivalent degree" to a United States master's degree or a single degree that is the "foreign equivalent degree: to a United States baccalaureate degree plus five years of progressively responsible work experience. The equivalency evaluation is not probative to establish the Petitioner's categorical eligibility for classification as a permanent immigrant in the employment based second preference category as an advanced degree professional.

The Petitioner also submitted an academic transcript from [redacted] indicating they had earned some credits towards a bachelor's degree prior to their withdrawal from the institution. They further submitted an academic transcript from [redacted] reflecting 60 credit hours they earned in furtherance of a qualification. The Petitioner additionally submitted their high school completion certificate. The record also contains several documents in Portuguese the Petitioner submitted with English translation purporting to reflect professional certificates.[1] These documents are also not relevant, material, or probative to demonstrating the Petitioner has earned a single degree that is the "foreign equivalent degree" to a United States master's degree or a single degree that is the "foreign equivalent degree: to a United States baccalaureate degree plus five years of progressively responsible work experience.

The Petitioner does not possess a single "foreign equivalent degree" to a United States master's degree or a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree plus five years of progressively responsible 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.

2. The Petitioner Is Not An Individual of Exceptional Ability

We disagree with the Director's conclusion that the Petitioner established their eligibility for EB-2 permanent immigrant classification as a non-citizen of exceptional ability and will withdraw it. The Director concluded that the evidence established the Petitioner had a degree of expertise that rose to the level of exceptional ability. But the evidence the Petitioner submitted into the record does not sufficiently establish the Petitioner's eligibility. So upon de novo review, we conclude that the Petitioner has not demonstrated that they met any of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii) for the reasons set forth below.[2]

> *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;* 8 C.F.R. § 204.5(k)(3)(ii)(A).

We do not agree with the Director's conclusion that the Petitioner met this criterion and consequently withdraw it. The record does not contain evidence that the Petitioner has a degree, diploma, certificate,

[1] Documents containing languages other than English must be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that they are competent to translate from the language into English.

[2] 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).

or similar award from a college, university, school, or other institution of learning relating to their area of exceptional ability.

As discussed earlier, the Petitioner submitted an education equivalency evaluation equating a combination of the Petitioner's education and work experience to demonstrate they earned the equivalent of a four-year bachelor's degree in marketing from an accredited United States institution of higher education. The education equivalency evaluation does not reflect a single degree, diploma, certificate or similar award from a college, university, school, or other institution of learning relating to their area of exceptional ability. So it is not probative to establish the Petitioner's categorical eligibility for classification as a permanent immigrant in the employment based second preference category as an advanced degree professional.

The Petitioner also submitted an academic transcript from [redacted] indicating they had earned some credits towards a bachelor's degree prior to their withdrawal from the institution. They further submitted an academic transcript from [redacted] reflecting 60 credit hours they earned in furtherance of a qualification. Neither of these forays in higher education by the Petitioner resulted in a single degree, diploma, certificate or similar award from a college, university, school, or other institution of learning relating to their area of exceptional ability. The Petitioner additionally submitted their high school completion certificate, but this is a general educational qualification not related to their area of exceptional ability.

The Director concluded the Petitioner's certificates were issued by academic organizations. We discussed earlier that the record contains several documents in Portuguese the Petitioner submitted with English translation purporting to reflect professional certificates.[3] It is unclear whether the certificates were issued by a college, university, school, or other institution of learning. But, even if the certificates had been issued by a college, university, school, or other institution of learning, we would still conclude that they did not support the Petitioner's assertion of eligibility under this criterion because it is not clear if the institution that issued the certificates is related to entrepreneurship in the food industry, which is the Petitioner's claimed area of exceptional ability. So we cannot conclude that the Petitioner has earned a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning related to the area of exceptional ability corresponding to their proposed endeavor.

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 food industry. In support of their experience with current or former employers, the Petitioner submitted several letters. Whilst there is no doubt that the letters were written by individuals who held the Petitioner in high esteem, these individuals were not current or former employers as required by the regulation. [4]

---

[3] Documents containing languages other than English must be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that they are competent to translate from the language into English.

[4] The Petitioner submitted one letter on letterhead written by [redacted] advertising professional, attesting to the

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.

The record also contains "certificates" purporting to indicate the dates the Petitioner was a "managing partner" or "business owner" of their own entity. Upon review, the "certificates," do not contain sufficient detail or description of what specific duties the Petitioner performed in their capacity with the company. Moreover, it is not readily apparent from the certificates as to what field the business operated in. Se we cannot evaluate from the "certificate" whether the Petitioner has at least ten years of full-time experience as an entrepreneur in the food industry. So, the letters and "certificates" the Petitioner submitted do not support a conclusion the Petitioner has at least ten years of full-time experience in the occupation of entrepreneur in the food industry.

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).

We do not agree with the Director's conclusion that the Petitioner met this criterion and consequently withdraw it. The Petitioner submitted several certificates in numerous discrete topics such as "web creation," "art direction," "franchisor training," and "communication planning" ostensibly asserting that they possessed certifications for their particular profession or occupation. But the certificates are not persuasive to demonstrate the Petitioner's licensure or certification to perform a particular profession or occupation.

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.

The Petitioner's proposed endeavor is to perform the services of an entrepreneur in the food industry. The record does not sufficiently reflect how the Petitioner's certificates reflect certification in performing the role of an entrepreneur in the food industry. For example, it is unclear how the Petitioner's certificate for participation in "franchisor training" corresponds to their proposed entrepreneurial endeavor in the food industry. It is also not clear in the record how a "franchisor training" certificate reflects a competency to perform entrepreneurial duties in the food industry. 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's membership in the [redacted] is not sufficient evidence of membership in a professional association. These organizations are not professional associations. The occupation of franchisor does not appear

Petitioner's employment at [redacted] from 2007 to 2010. Although written by a former employer, this letter did not specify whether the Petitioner's employment was full-time and did not adequately establish that the Petitioner's employment with [redacted] as an intern and "top designer" was in the food service entrepreneur field within which their proposed endeavor lies.

in the list of professions contained at section 101(a)(32) of the Act, and it is not included as an occupation that customarily requires a bachelor's or higher degree. *See* Update to Appendix A to the Preamble-Education and Training Categories by O*NET-SOC Occupations; Labor Certification for Permanent Employment of Immigrants in the United States and Procedures To Establish Job Zone Values When O*NET Job Zone Data Are Unavailable, 86 Fed. Reg. 63070 (Nov. 15, 2021). Moreover, the record contains a letter from the [redacted] describing the criteria for membership. The requirement for membership does not specify if a bachelor's degree is a minimum requirement for membership as a professional in the association. Moreover, it is not evident from the record how the occupation of "franchisor" relates to the Petitioner's proposed endeavor to serve as an entrepreneur in the food industry. Consequently, an association of franchisors is not a professional association as that term is contemplated in the regulations, and 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 and significant contributions should show expertise significantly above that ordinarily encountered in the field.

The letters 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, one letter credited the Petitioner with launching a business in "a very abandoned place" with "a need for revitalization" that "resulted in a 300% increase in the number of families who have come back to this area of the city." But the record does not contain adequate evidence to support this assertion. So we cannot evaluate whether it could be an achievement and significant contribution demonstrating expertise significantly above that ordinarily encountered in the field.

Furthermore, several letters in the record credit the Petitioner with skill operating a successful business. However, simply carrying out job duties successfully and competently is not evidence of a significant contribution to the field. And it is not clear how the metrics the letter authors mentioned for the Petitioner's successful business operations reflected significant contributions demonstrating expertise significantly above that ordinarily encountered in the field. For example, the author of one letter the Petitioner submitted stated the Petitioner's hamburger kiosk grew "25% per month" necessitating a larger premises. The author also described the 20% EBITDA, 8% employee cost, and an expected payback of investment with 24 to 30 months as "astonishing." But the evidence in the record does not sufficiently highlight why the EBITDA, employee cost, and expected payback figures

the author mentioned were contributions or achievements of significance demonstrating expertise significantly above that ordinarily encountered in the field.

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 entrepreneur as the proposed job title on their Form I-140, Immigrant Petition for Alien Worker. They described their endeavor's goal as helping the "US food industry become healthier, more efficient and safer through developing innovative and cost-effective solutions that have national and global scope." Specifically, the Petitioner's endeavor would seek to "create, implement and operationalize revolutionary projects in the food industry" in the form of ready to eat frozen Brazilian dinners. The conduit for the Petitioner's proposed endeavor is the operation of [redacted], which will produce "frozen meal and then sell them across the U.S. through various channels."

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.

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, two versions of their business plan, an evaluation of training, experience, and education accompanied by transcripts of partially completed degree programs at institutions of higher education, several vocational certificates of training, completion, and attendance, news articles, and a business award.[5]

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 intended to rely on their "food sector experience" to "contribute to the country by providing high-quality frozen meals." The Petitioner identified improving access to quality healthy nutrition for U.S. residents, improving food security and quality, economic growth through increasing gross domestic product, and direct and indirect job creation, 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. The Petitioner heavily emphasizes the "ripple effects" of their endeavor on the U.S. economy to support their assertion that their endeavor would increase economic growth and gross domestic product or GDP. But, when considering an endeavor's national importance, we focus on the particular endeavor. *See Dhanasar*, 26 I&N Dec. at 889. An endeavor's "ripple effects" oftentimes are significantly attenuated and unconnected with a particular proposed endeavor. And when it comes to the Petitioner's particular endeavor, the Petitioner identifies their ready to eat frozen Brazilian meals as an "innovation" in their food industry field. But the record does not adequately identify why producing frozen meals in particular international foods such as Brazilian foods broadly implicate matters rising to a level of national importance. It is unclear how preparation of frozen Brazilian food would impact economic growth and GDP to a degree implicating national importance. The record does not link how the branding, introduction, and proliferation of [redacted] products would broadly influence the food industry to the degree it increases

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

GDP in a manner implicating national importance. And whilst the Petitioner asserted that wider adoption of frozen food into diets would have a follow-on effect to eliminate food waste, they did not identify how wider adoption of [redacted] products would reduce food waste at a level commensurate with matters on a level of national importance.

As stated above, another 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. The Petitioner asserts that their endeavor will create "46 direct in-house" jobs and "227 indirect final demand impact from all of the correlated other industries, businesses and resulting growth" within five years of its establishment. The Petitioner specified in their business plan that they intended to hire a mix of part time and full-time cooks, kitchen assistants, dishwashers, "general helpers," unit managers, financial assistants, operational assistants, marketing specialists, and business expansion/franchise specialists. But other than a nascent intention to establish "physical presence" in Florida, Massachusetts, the District of Columbia, and California the Petitioner does not identify where specifically the locus of employment for any new employees 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. 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.

The Petitioner identified Centers of Disease Control (CDC) and National Center for Chronic Disease Prevention and Health Promotion materials to assert good nutrition is essential to keeping current and future generations healthy across the lifespan. But even if we were to consider the frozen Brazilian meals the Petitioner intends to proliferate as nutritious and healthy, we would not conclude that the production of these foods by the Petitioner's proposed endeavor would implicate good health and nutrition in a manner rising to a level of national importance. The Petitioner has not sufficiently described how Brazilian frozen food impacts the landscape of the food industry to a degree broadly implicating matters of national importance. It is not evident from the record how the Petitioner's Brazilian frozen dinners, even if new to the market, would impact nutrition and health in U.S. residents at a magnitude commensurate with matters ascendant to a level of national importance.

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 Petitioner's previous activities in the food industry field 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 Petitioner's past work in the Brazilian food industry influences the national importance of the proposed endeavor at hand. And it must be noted that assertions based on the Petitioner and their individual attributes is more relevant to an evaluation of the Petitioner's eligibility under the second prong of the *Dhanasar* framework.

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 disagree with the Director's conclusion that the Petitioner was well-positioned to advance their proposed endeavor and withdraw it. 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 some education, skills from work experience, 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 and the Petitioner's business plan is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. The Petitioner's business plan listed "major projects" that they had managed and identified them by name as [redacted] a gourmet hot dog venture, [redacted] a sandwich shop, [redacted] a central kitchen, [redacted] a burger shop, and [redacted] a kebab snack restaurant. Whilst ostensibly in the food industry, the record does not adequately link the Petitioner's past "major projects" to their proposed endeavor such that we can evaluate if they are related or like one another. Moreover, none of these "major projects" was involved with the production of frozen food, which is the crux of the Petitioner's proposed endeavor. So we conclude that the Petitioner has not demonstrated a record of success in related or similar efforts.

And whilst Petitioner's business plan and revised business plan describing [redacted] does consist of a plan or model for their future activities, it is not clear from the record that the Petitioner has made any progress towards following their plan and achieving their proposed endeavor. The Petitioner's business plan contains optimistic projections of the eventual health and success of their proposed endeavor, but these assertions are not supported by material, relevant, or probative evidence in the record which would aid in an evaluation of the Petitioner's posture to advance their proposed endeavor in the manner the business plan described. The recommendation letters the Petitioner submitted into the record, effusively described the Petitioner's past endeavors. But other than the

general encouragement one would expect from acquaintances when embarking on a business project, the letters do not adequately compose a body of evidence from which we could determine if the authors are users, customers, investors or other relevant entities or person with interest or in a position to support the Petitioner's proposed endeavor. Ultimately, 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.