U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31526766

Date: JUL. 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an airline pilot, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1 1 53(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the job offer requirement and labor certification would be in the national interest. We adopted and affirmed the Director's analysis regarding the national importance of the Petitioner's proposed endeavor and dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our prior decision, incorporated here by reference, we agreed with the Director that the Petitioner did not establish that his proposed endeavor of continuing employment as a commercial pilot had the economic, cultural, or social impact necessary to establish national importance as outlined by the first prong of *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on *Matter of Chawathe* and *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) to assert that the appropriate standard of proof in a benefit request is preponderance of the evidence. The

Petitioner submits a brief from counsel, a new personal statement and evidence provided with the prior appeal. The Petitioner asserts that these new facts establish eligibility, as they highlight his potential positive impact on the aviation industry in the United States.

The Petitioner states on motion that the AAO did not apply the appropriate standard of proof when evaluating the evidence that his current and future proposed endeavor working as a commercial airline pilot would be in the national interest. The Petitioner did not identify the alternative standard of proof that the AAO used but argues, generally, that we did not give appropriate weight to the submitted evidence.

In his personal statement on motion, the Petitioner argues that his training as a pilot and advanced degree in Flight Test Engineering would aide the aerospace industry through the design and development of aircraft as well as flight testing. The Petitioner's assertions on motion regarding his potential employment as an aerospace engineer are speculative in that they are not tied to one specific endeavor but to the possibility that, in the future, he may choose to pursue a career in aerospace engineering. Moreover, at the time of filing, the Petitioner indicated his endeavor was to complete training as a commercial pilot and work in that field. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

The Petitioner states that his role as a commercial airline pilot would have broader implications in his field because it would address a critical workforce shortage and contribute to the industry's growth and sustainability. Both the Director and the AAO addressed the Petitioner's argument regarding workforce shortages by concluding that the labor certification process managed by the U.S. Department of Labor was established to address worker shortages for specific industries, locations, and occupations with a shortage of qualified U.S. workers. The Petitioner's claim that his role as a commercial pilot is nationally important due to a shortage of qualified workers fails to address why he is unable to seek labor certification through a qualifying job offer as Congress intended.

The Petitioner also claims that through his work as a pilot he will "contribute to job creation and economic growth because a robust aviation sector creates employment opportunities" for "crew positions and jobs in research, development, manufacturing, and maintenance." The Petitioner does not offer any objective evidence supporting his assertion that his endeavor to work as a commercial airline pilot for a specific airline will create a "robust aviation sector" or provide evidence of the specific jobs that would be created because of his employment as a commercial airline pilot.

We acknowledge the submission of articles regarding the aviation sector, including articles related to the pilot shortage in the United States. We also acknowledge the resubmission of the expert opinion letters from S-S-, an Aerospace Engineering professor at [redacted] and R-T-, a professional pilot. As addressed in our prior decision, the letters provide insight into the aviation industry as a whole and briefly touch on the Petitioner's qualifications to work as a commercial pilot, however, the letters do not provide specific information related to the impact of the Petitioner's endeavor. For example, R-T- provides broad statements meant to highlight the Petitioner's impact on the aviation industry such as, the Petitioner's work "will continually improve American aviation safety

and reduce the risk of fatalities." This statement is not supported with any analysis regarding the Petitioner's record on flight safety or in what ways American aviation as a whole would be improved by the Petitioner through his work as a commercial pilot. Similarly, R-T- writes that the Petitioner "will create an impact on society by making it possible for travelers to explore the world." This statement could be made of any individual working in the transportation industry and is not evidence that the Petitioner's work would benefit anyone beyond the airline he works for or the passengers on his specific flights. These generalized statements citing to industry wide data do not provide the probative evidence necessary to establish the Petitioner's proposed endeavor would be nationally important. We do not dispute the importance of the aviation industry in the United States or its integral part in the overall economy. However, the Petitioner has not established that his specific role as a commercial airline pilot working for a specific airline has the ability to impact the aviation industry as a whole and rise to the level of national importance.

As stated by the Director in the initial decision and by the AAO on appeal, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.