U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31281820

Date: JULY 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner proposes to be an entrepreneur in the area of business and corporate law and seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver (NIW) of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner merited a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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. SIGNATURES ON APPEAL

Before we address the Petitioner's NIW eligibility, we observe anomalous signature issues on the forms the Petitioner submitted on appeal.

A. Legal Framework

The regulation at 8 C.F.R. § 103.2(a)(2) provides that "[u]nless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS [U.S. Citizenship and Immigration Services] is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format."[1]

USCIS policy explains that a valid signature is "*any handwritten mark or sign made by a person*" and such signature must be made by the person who is the affected party with standing to file an appeal or

[1] Because this Form I-290B was not electronically filed, none of the provisions relating to electronic filings applies in this case. We note the Form I-290B is not a form that is available for parties to file electronically online. *Forms Available to File Online*, USCIS (Mar. 21, 2024), https://www.uscis.gov/file-online/forms-available-to-file-online.

motion to signify that "[t]he person knows of the content of the request and any supporting documents; [t]he person has reviewed and approves of any information contained in such request and any supporting documents; and [t]he person certifies under penalty of perjury that the request and any other supporting documents are true and correct." *See generally* 1 *USCIS Policy Manual* B.2(B) (emphasis added), https://www.uscis.gov/policymanual. A person's signature on an immigration form establishes a strong presumption that the signer knows its contents and has assented to them, absent evidence of fraud or other wrongful acts by another person. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (citing *Thompson v. Lynch*, 788 F.3d 638, 647 (6th Cir. 2015); *Bingham v. Holder*, 637 F.3d 1040, 1045 (9th Cir. 2011). The probative force of a declaration subscribed under penalty of perjury derives from the declarant's signature.

The USCIS Policy Manual provides that in "general, any person requesting an immigration benefit must sign their own immigration benefit request, and any other associated documents, before filing it with USCIS." *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(C)(1) (citing to 8 C.F.R. § 103.2(a)(2)). Agency policy provides that "[a] signature is valid even if the original signature on the document is photocopied, scanned, faxed, or similarly reproduced. Regardless of how it is transmitted to USCIS, the copy must be of an original document containing an original handwritten signature, unless otherwise specified." *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(B).

Relating to the Form I-290B, the Instructions for Notice of Appeal or Motion additionally provide: "Every form **MUST** contain the signature of the applicant or petitioner (or parent or legal guardian, if applicable)." The form instructions further require: "**Signature.** Each form must be properly signed and filed. For all signatures on this form, USCIS will not accept a stamped or typewritten name in place of a signature."

The instructions for the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative provide: "**Validity of Signatures.** For Form G-28, USCIS will consider a photocopied, faxed, or scanned copy of the original handwritten signature valid for filing purposes. The photocopy, fax, or scan must be of the original document containing the handwritten, ink signature. Every form, benefit request, or other document must be executed in accordance with the instructions on the form, which are incorporated into the regulation requiring its submission. 8 C.F.R. § 103.2(a)(1).

Further filing requirements for these documents are found at 8 C.F.R. § 103.2(b)(1), which provides that "[e]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions." Therefore, the failure to follow the form instructions is tantamount to not complying with the regulation.

Finally, the regulation at 8 C.F.R. § 292.4(a) requires that the Form G-28 "must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS."

If someone acting on behalf of a petitioner—to include someone from their attorney's office—performs the function of electronically applying a signature to a Form I-290B, that act nullifies the filing because it is not a valid signature and it is not properly signed under the penalty of perjury. Ultimately, even if a filing party presents a photocopy of a Form I-290B to USCIS, that photocopied form must contain a filing party's original signature because "[a]n applicant or petitioner must sign

his or her benefit request." 8 C.F.R. § 103.2(a)(2).

Although the "regulations do not require that the person signing submit an 'original' or 'wet ink' signature on a petition, application, or other request to USCIS," we do "not accept signatures created by a typewriter, word processor, stamp, auto-pen, or similar device." *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(B). *Also see generally* 1 *USCIS Policy Manual*, *supra*, at B.2(A) (stating that "[e]xcept as otherwise specifically authorized, a benefit requestor must personally sign his or her own request before filing it with USCIS"). USCIS has implemented these regulations and attendant policies "to maintain the integrity of the immigration benefit system and validate the identity of benefit requestors." *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(A).

In the same way that one person signing a declaration "for" another person carries no evidentiary force, neither will an image of a signature duplicated in using some electronic means or method. Without the Petitioner's actual and personal signature as the declarant, the declaration under the penalty of perjury on the Form I-290B has no evidentiary force. *See In re Rivera*, 342 B.R. 435, 458–59 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D. Cal. Aug. 19, 2003). Moreover, if we determine that a benefit request does not contain a valid or a proper signature, we reject, deny, or dismiss it without providing an opportunity to correct or cure a deficient signature. 8 C.F.R. § 103.2(a)(7)(ii)(A); *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(A).

The USCIS Policy Manual further explains that the agency interprets the regulatory term "valid signature" to require that a signature on any form transmitted to USCIS "must be of an original document containing an original handwritten signature" and it may not be a digital duplicate of a signature that is simply transposed onto an immigration form. *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(B) (explaining that the signature's appearance on USCIS forms must be preponderantly consistent with that person's normal signature).

B. Analysis

On the appellate Form I-290B, the form contains an image of a signature under Part 4, 6.a in the Petitioner's Signature block. We conclude that this is an image of a signature and not an original signature due to multiple factors. First, the Petitioner's signatures on the appellate forms (Form I-290B and the Form G-28) are identical and indistinguishable, to include each line, loop, slant, spacing, and pen lift. Second, while the sole differentiating element between these two signatures is the image used on the Form I-290B is slightly smaller in size than the image on the Form G-28, the ratio of height to width is consistent throughout the signature. Moreover, the image of the signature under Part 4, 6.a is not similarly represented on other material in the record, meaning it is distinct in appearance from the Petitioner's other signatures throughout the record.

We also observe the Petitioner's signatures he presented before the Director on the Form G-28, the petition, the ETA-750 Part B, Statement of Qualifications of Alien, and the Petitioner's autobiographical statement do not appear to be of the same image utilized on the appeal forms, but they do appear to be a separate transposed image as the signature image is identical on each of those documents. In other words, it appears the Petitioner or the person preparing his documents electronically transposed an image of a signature onto the documents he filed before the Director, and

the Petitioner or the person preparing his appeal used that same process—but with a different image—on his appeal forms.

Because of the above factors, we conclude that it is more likely than not that the image of the signature on the Form I-290B is not a valid signature as required by the regulation. 8 C.F.R. § 103.2(a)(7)(ii)(A). We observe the same shortcomings on the appellate Form G-28. Therefore, the Petitioner has not satisfied his burden of proof, or the preponderance standard of proof, that the signature on the Form I-290B or the Form G-28 are valid signatures. *See Chawathe*, 25 I&N Dec. at 375 n.7 (explaining that the filing party bears the burden of proof, and that the preponderance standard does not relieve them from satisfying regulatory requirements, such as providing a "valid signature").

Considering the totality of the circumstances, the record preponderantly reflects that the Petitioner's signatures on the Form I-290B and the Form G-28 were electronically applied to the forms and those are not his "original handwritten signature," as USCIS policy requires. *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(B). Based on that determination, we are dismissing the appeal.

If the record does not establish that the Petitioner personally signed the Form I-290B and the Form G-28, we cannot recognize the appellate forms to have been properly filed by an affected party with legal standing in these proceedings. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B). Nor can we decide that the Petitioner properly filed this appeal. *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(B). As a result, we are dismissing the appeal in part on these factors.

II. IMMIGRANT CLASSIFICATION

To establish eligibility for an NIW, a petitioner must first demonstrate qualification for the underlying EB-2 visa 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.

Once a petitioner demonstrates eligibility for the EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

A. Eligibility for the EB-2 Classification

The Director determined that the Petitioner was eligible for the EB-2 classification as a member of the professions holding an advanced degree.

B. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

The proposed endeavor will consist of the Petitioner operating a legal consulting firm that will provide civil law consulting services for American investors with an interest in Kazakhstan. The Petitioner indicated that based on market analysis, he has identified a substantial demand for specialized services in cities such as [redacted] But as the Director noted, the Petitioner did not support these claims with adequate or probative evidence. Absent, for example, is any market analysis referencing these three listed locations, or any basis for identifying them.

The only other reference to the reasons for the Petitioner identifying these cities is contained within his business plan's executive summary. In that document, the Petitioner provided the following statement:

> Through rigorous market analysis, we have identified a substantial demand for these specialized services in key cities such as [redacted]
>
> For instance, [redacted] as an international business hub, hosts a multitude of investors seeking to diversify their portfolios globally. [redacted] known for its robust business climate, presents ample opportunities for investors exploring foreign markets. Similarly, [redacted] with its strong energy sector, offers considerable potential for businesses looking at energy-rich countries like Kazakhstan.

The Director's decision denying the petition noted the Petitioner's initial description and his business plan offered in the request for evidence response and characterized them as "general claims about what he intends to do," but they decided that he did not support these overly generalized claims with probative evidence, nor did he satisfy his burden of proof. The Director further indicated that (1) continuing employment in one's field or industry alone is not an endeavor sufficient to qualify for an NIW, (2) his membership in the American Bar Association did not act as a stand-in for a license to practice law, and (3) he did not show the proposed endeavor would extend beyond impacting an organization and its clients when *Dhanasar* requires an impact to the industry or field more broadly.

Within the appeal, the Petitioner contests the Director's adverse determination under prong one with three points:

1. The proposed endeavor will have national and even global implications;

2. The proposed endeavor is aligned with federal priorities; and
3. The proposed endeavor will have substantial positive economic effects for the nation.

Regarding item 1, the Petitioner merely repeats the claims he presented before the Director without explaining what evidence the Director failed to consider properly or at all. The Petitioner's claims revolve around an increase in U.S. investment in Kazakhstan and the impact that could have on the country's foreign policy goals, national security interests, bilateral national relations, cultural exchanges, and diplomatic cooperation.

When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the foreign national will work. Rather, we focus on the "the specific endeavor that the foreign national proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of his actual proposed work. *See Dhanasar*, 26 I&N Dec. at 889. A petitioner must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Such endeavors may have "national or even global implications within a particular field" (*Id.* at 889), "significant potential to employ U.S. workers or [have] other substantial positive economic effects, particularly in an economically depressed area, for instance" (*Id.* at 890), or the potential to advance and affect U.S. strategic interests (*Id.* at 892).

But as the Director noted, even though the proposed endeavor has sufficient merit, he did not provide probative evidence showing that his efforts would rise to the level of national importance. Probative evidence is the type that "must tend to prove or disprove an issue that is material to the determination of the case." *Matter of E-F-N-*, 28 I&N Dec. 591, 593 (BIA 2022) (quoting *Matter of Ruzku*, 26 I&N Dec. 731, 733 (BIA 2016)); *see also* Evidence, *Black's Law Dictionary* (11th ed. 2019). Therefore, if some form of the Petitioner's evidence does not adequately prove his contention, then it is not considered to be probative. When combined with other favorable material, evidence that is not probative on its own could exist on a palette in which the Petitioner "paints a mosaic" that sufficiently demonstrates his claims. However, the Petitioner has not crafted such a tapestry here.

The 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). First, the Petitioner must satisfy the burden of production. As the term suggests, this burden requires him to produce evidence in the form of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

Second, he must satisfy the burden of persuasion, meaning he must establish the degree to which his arguments and evidence should persuade or convince USCIS that the requisite eligibility parameters have been met (i.e., the obligation to persuade the trier of fact of the truth of a proposition). *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 274 (1994). The level at which the Petitioner must persuade in the present context is the preponderance of the evidence. Whether the Petitioner is able to show that a particular fact or event is more likely than not to occur is the determinant of whether he has met the preponderance of the evidence standard of proof. And here, the lack of specifics relating to the proposed endeavor's activities undermines the Petitioner's ability to satisfy his burden of proof.

Turning to item 2, the Petitioner claims that recent legislation in the America COMPETES Act of 2022 refers to the strategic importance of Central Asia and competition for natural resources. But simple alignment or shared common aspects with recently enacted legislation are not sufficient to meet the first prong's national importance portion. In focusing generally on the entire foreign energy investment industry, the Petitioner has not established his specific endeavor will substantially benefit and impact the field more broadly. This misplaced focus does not address the *Dhanasar 's* decision national importance requirements. *Dhanasar*, 26 I&N Dec. at 893.

And finally item 3, the appeal brief again restates the Petitioner's claims he asserted before the Director—mainly in his business plan—without explaining how the Director erred. He essentially discusses cross-border investment, leading to job creation and economic growth in the United States, and the ripple effects that will have on the U.S. economy. While we acknowledge the nominal benefits of such secondary effects, it is essential to differentiate between localized impacts and those of national significance. Merely demonstrating secondary effects within a narrow area does not inherently satisfy the stringent threshold for national importance. *See Dhanasar*, 26 I&N Dec. at 893. Rather, the Petitioner must demonstrate a capacity to substantially benefit the industry or field as a whole. *Id.* at 890, 892. Therefore, it is the Petitioner's responsibility to offer sufficient arguments and evidence allowing us to discern the magnitude of his proposed contributions.

Even with the second opportunity to explain why he is eligible for this classification and why the Director came to the wrong conclusion, the Petitioner has not adequately advanced those claims supported with evidence here. Because the Petitioner has not sufficiently established the national importance of his proposed endeavor as required by *Dhanasar 's* first prong, he has not demonstrated eligibility for a waiver of the job offer requirement.

As we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate he is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that his proposed endeavor satisfies the *Dhanasar* framework's first prong, he is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.