U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30970483

Date: JUNE 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is a flight attendant who seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record established that the Petitioner qualified for the underlying visa classification, but she did not merit 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

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 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

[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.

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 provides: "**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. If you are filing this form electronically, when authorized, USCIS will accept your signature in an electronic format." The instructions for the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative contain the same signature requirements as the instructions for the Form I-290B. 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 discussion of the filing requirements for these documents is 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 are 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).

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, the third letter of the Petitioner's first name is barely present on both documents, which does not appear to be consistent with how she normally signs. And finally, while the sole differentiating element between these two signatures is the image used on the Form I-290B is slightly larger in size than the image on the Form G-28, the ratio of height to width is consistent throughout the signature.

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). To be valid here, regardless of how the filing party transmits the immigration form to USCIS, any signature must be on an original immigration form "containing an original handwritten signature, unless otherwise specified." *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(B).

We observe the same shortcomings on the appellate Form G-28, meaning that form does not comply with the regulation at 8 C.F.R. § 292.4(a) requiring 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." Therefore, the Petitioner has not satisfied their burden, or the preponderance standard of proof, that the signatures on the Form I-290B or the Form G-28 are valid signatures. *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 are not copies "of an original document containing an original handwritten signature," as the USCIS Policy Manual requires. *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(B). Based on that determination, we would still dismiss the appeal even if we were not dismissing on other grounds. Additionally, because we conclude the signatures in question are not "any handwritten mark or sign made by a person," we are not basing this decision on a signature that appears inconsistent with other signatures in the record, and we will not issue a notice seeking additional information relating to the signature's appearance.

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, and we will dismiss this filing. *See generally* 1 *USCIS Policy Manual*, *supra*, at B.2(B).

As a final note, we observe that the Petitioner filed a subsequent NIW petition that is currently pending, as well as other immigrant visa filings. That pending NIW petition appears to bear the same signature issues we note above, and the Director may elect to evaluate that filing to make their own determination of whether the Petitioner properly filed that petition, or if they should follow the procedures outlined in the USCIS Policy Manual for signatures that are not valid.

II. NATIONAL INTEREST WAIVER

Even if we were not dismissing the Petitioner's appeal on the signature issue, we would dismiss it on the merits of her NIW claims.

A. Law

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).

B. Analysis

The Petitioner states her proposed endeavor is to be a flight attendant and she offers a detailed account of the duties that generally comprise that occupation. When she filed the petition, the Petitioner had seven years of experience as a flight attendant, and prior to that she served as an office assistant.

The Director determined that the Petitioner met the requirements for an individual of exceptional ability, but the Director did not elaborate and offer analysis related to this requirement. Specifically, the Director did not describe how she met the requirements in a final merits determination. Although, the record does not appear to support a favorable determination that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field, it is unnecessary that we offer analysis on that requirement here.

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 Director decided the Petitioner did not demonstrate her proposed endeavor had either substantial merit or national importance, and we agree with that assessment.

After reviewing the entire record, we adopt and affirm the Director's ultimate determination that the Petitioner did not offer arguments or evidence to demonstrate eligibility under *Dhanasar's* first prong, and we add the below comments. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Edwards v. U.S. Att'y Gen.*, 97 F.4th 725, 734 (11th Cir. 2024) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Although a flight attendant's duties may be valuable for passenger safety and comfort, the Petitioner has not adequately established this undertaking has substantial merit, nor has she demonstrated such an endeavor has national importance that would extend to the broader field. While the Petitioner's endeavor has merit, it is not apparent from the record that it has *substantial* merit, and the Petitioner has not sufficiently argued to the contrary in this appeal. One example of an endeavor that satisfies this prong one requirement and aligns with a heightened level of merit is the foreign national's proposed endeavor in *Dhanasar*. He intended to continue research into the design and development of propulsion systems for potential use in military and civilian technologies, and he offered adequate supporting materials explaining how his research in those areas would enhance our national security and defense. Although it may not be necessary to demonstrate that level of merit, the Petitioner here has not made an adequate meritorious showing.

Turning to the national importance element, 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 her 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).

In the appeal, the Petitioner argues that her proposed endeavor "holds the potential to improve the efficiency and safety of aviation operations, ultimately benefiting both the individual companies and the industry as a whole." She continues indicating that based on "her expertise and knowledge, she can contribute to smoother and safer flights, resulting in fewer delays, cancellations, and mishaps." She surmises this is a notable enhancement to the industry's overall reputation. The Petitioner also offers several claims relating to substantial positive economic effects her service as a flight attendant could bring to the U.S. economy and the aviation industry. She indicates those positive effects would be achieved through investments in training and development, meaning companies could enhance their operations, improve their customer service, and better prepare for emergencies. She asserts this can lead to increased profitability, competitiveness, and sustainability in the industry with broader economic benefits.

But the Petitioner's appeal does not describe the evidence that supports these claims. Instead, she simply lays out these speculative theories without grounding them in tangible or concrete proof. It is inadequate for this Petitioner to allege she has satisfied prong one's national importance requirements through conclusory assertions that are not supported by sufficient evidence proving what she alleges. *Matter of Ho,* 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Fogo De Chao (Holdings) Inc. v. U.S. Dep't of Homeland Sec.*, 769 F.3d 1127, 1143–44 (D.C. Cir. 2014) (finding a petitioner's assertions in the appeal carried no merit because they did not offer evidence to corroborate the claim); *Coliseum Square Ass'n, Inc. v. Jackson*, 465 F.3d 215, 238 (5th Cir. 2006); *Fano v. O'Neill*, 806 F.2d 1262, 1266 (5th Cir. 1987).

What *Dhanasar* requires—and what the Petitioner has not been able to satisfactorily express throughout these proceedings—is how her proposed endeavor will have a positive impact in her field to the extent required under *Dhanasar's* first prong. Considering the Petitioner's arguments and evidence, her endeavor's effect and the resulting benefits to the industry and economy are effectively imperceptible and are not impactful at the level warranting a waiver of the job offer requirement. Again, missing is the extent to which the Petitioner's undertaking would have substantial positive economic effects rather than incremental or nominal impacts. Nominal improvements in an industry or field are not sufficient to meet the national importance requirements under the *Dhanasar* framework. *Dhanasar*, 26 I&N Dec. at 889–90.

To summarize, without her serving in a capacity in which the potential prospective impact of her work will "impact the field . . . more broadly" (*Id.* at 893) and that the endeavor will have "broader implications" (*Id.* at 889), the Petitioner has not satisfied her burden under prong one's national importance requirements.

ORDER: The appeal is dismissed.

ENCLOSURE:

1. Signatures as presented on appeal (1 page)