



**U.S. Citizenship
and Immigration
Services**

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

In Re: 29156650

Date: NOV. 1, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a mental health nurse practitioner, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). To establish eligibility for U.S. permanent residence in this category, petitioners must demonstrate “sustained national or international acclaim” and submit “extensive documentation” recognizing their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not meet preliminary evidentiary requirements for the requested immigrant visa category. On appeal, the Petitioner contends that the Director undervalued evidence. He also submits new documentation and asserts his satisfaction of evidentiary criteria not previously raised before the Director.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has not satisfied the preliminary evidentiary requirements. We will therefore dismiss the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term “extraordinary ability” means a level of expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Evidence

of extraordinary ability must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3).¹

If a petitioner meets either of the initial evidentiary requirements discussed above, U.S. Citizenship and Immigration Services (USCIS) then determines whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing a noncitizen among the small percentage at the very top of their field. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability).

II. ANALYSIS

The record shows that the Petitioner, a Filipino native and Canadian citizen, has a doctoral degree in clinical psychology, master's degrees in nursing and community health, and more than 14 years of clinical nursing experience. He works as a mental health nurse practitioner for U.S. healthcare facilities, providing autism care to medically underserved and uninsured communities.

The record does not demonstrate - nor does the Petitioner claim - his receipt of a major international award. He must therefore meet at least three of the ten evidentiary requirements listed at 8 C.F.R. § 204.5(h)(3).

The Petitioner initially claimed to meet three requirements. But the Director found insufficient evidence that he:

- received lesser prizes or awards under 8 C.F.R. § 204.5(h)(3)(i);
- was a member of associations requiring outstanding achievements under 8 C.F.R. § 204.5(h)(3)(ii); or
- made original contributions of major significance in the field under 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner challenges the Director's findings regarding his receipt of lesser prizes or awards, and his membership in associations requiring outstanding achievements.

A. Lesser Prizes or Awards

This standard requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i). USCIS first confirms that a petitioner - as opposed, for instance, to their employer - received the awards. *See generally 6 USCIS Policy Manual F.(2)(B)(1)*, www.uscis.gov/policy-manual. The Agency then considers whether the prizes are in the petitioner's field and nationally or internationally recognized. *Id.* Other relevant considerations include: the awards' national or international significance; the number of recipients; and limitations on competitors. *Id.*

¹ If the ten standards do not readily apply to a petitioner's occupation, the noncitizen may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(h)(4).

To meet this requirement, the Petitioner submitted proof of his national nurse practitioner certifications in the fields of family medicine and psychiatry-mental health from the American Nurses Credentialing Center (ANCC) and his family nurse practitioner certification from The American Academy of Nurse Practitioners Certification Board (AANPCB). On appeal, he contends that the Director disregarded the certifications' significance, which he states represent "the pinnacle of professional achievement in nursing."

As the Director found, however, the record does not establish the Petitioner's receipt of these certifications for "excellence" in the field. Rather, documentation from the issuing organizations' websites indicate that the certifications reflect only basic nursing competency. The ANCC website states that the certifications received by the Petitioner are "competency-based examination[s] that provide[] valid and reliable assessment[s] of the *entry-level* clinical knowledge and skills" needed in the fields. ANCC, "Psychiatric Mental Health Nurse Practitioner Certification," www.nursingworld.org/our-certifications/psychiatric-mental-health-nurse-practitioner/; "Family Nurse Practitioner Certification," www.nursingworld.org/our-certifications/family-nurse-practitioner/ (emphasis added). Similarly, the AANPCB website describes the organization's family nurse practitioner certification as "an *entry-level* competency-based examination that tests clinical knowledge in family/individual across the life span." AANPCB, "Family Nurse Practitioner (FNP)," www.aanpcert.org/certs/fnp (emphasis added). Thus, the record indicates the Petitioner's receipt of the certifications for basic nursing competence, not for excellence.

The Petitioner has not demonstrated his receipt of nationally or internationally recognized prizes or awards for excellence in the field. We will therefore affirm the Director's finding regarding this evidentiary requirement.

B. Membership in Associations Requiring Outstanding Achievements

This criterion requires "[d]ocumentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." 8 C.F.R. § 204.5(h)(3)(ii). A petitioner must show that, to obtain membership in an association, recognized national or international experts judged the noncitizen as having attained outstanding achievements in the field. *See generally* 6 USCIS Policy Manual F.(2)(B)(1). Thus, under this criterion, memberships based on educational level, years of experience, fee payments, or employment in certain occupations do not qualify. *Id.*

In claiming satisfaction of this standard, the Petitioner submitted copies of his nurse practitioner and registered nursing certificates from the California and Arizona boards of registered nursing.² As the Director found, however, the record does not identify the boards as associations with members or as the issuers of certificates based on experts' judgments of outstanding achievements in the nursing field. Rather, the record indicates that all nurse practitioners and registered nurses in California and Arizona must obtain the certificates to legally practice in the states. *See* Ariz. Rev. Stat. § 32-1601(23);

² According to the American Nurses Association (ANA), nurse practitioners not only require licensure as registered nurses, they must also have master's degrees or doctorates in nursing and often national certification. ANA, "Three Types of Nurses and What They Do," www.nursingworld.org/practice-policy/workforce/what-is-nursing/types-of-nurses/. Nurse practitioners can also prescribe certain medications and, in some states, operate their own practices. *Id.*

Cal. Bus. & Prof. Code § 2835.5. Thus, nurses can obtain the certificates even if they lack outstanding achievements in their field. Also, the Petitioner has not established that the certificates grant him membership on the state boards or in nursing associations, or that the boards consist of recognized national or international nursing experts who judged him to have attained outstanding nursing achievements. *See Goncharov v. Allen*, Civil Action No. 3:21-CV-1372-B, 2022 WL 17327304, *5 (N.D. Tex. Nov. 29, 2022) (holding that “[n]o reasonable analysis could conclude” that 8 C.F.R. § 204.5(h)(3)(ii) is satisfied without evidence of “associations which grant memberships”).

The Petitioner has not demonstrated his membership in associations requiring outstanding nursing achievements as judged by experts in the field. We will therefore also affirm the Director’s finding regarding this evidentiary requirement.

C. Original Contributions of Major Significance

Under this requirement, petitioners must submit “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner submitted a copy of a research paper that he wrote as a doctoral project, focusing on treating patients with borderline personality disorder. The Director found insufficient evidence that the paper had major significance in the nursing field by, for example, provoking widespread commentary or receiving more citations in relation to others’ work in the field.

On appeal, the Petitioner does not challenge the Director’s finding. Thus, he has effectively waived review of this issue, and the Director’s finding of insufficient evidence stands. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009); *see also Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (deeming issues omitted from a brief to be waived).

The Petitioner submits new evidence on appeal, contending that he meets additional evidentiary requirements that he did not raise before the Director in either the initial filing or in response to the Director’s request for additional evidence (RFE). But, as the record shows his receipt of notice and an opportunity to submit the claims and evidence in response to the RFE, we decline to consider the new materials and issues on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

For the foregoing reasons, the Petitioner has not satisfied the preliminary evidentiary requirements for the requested immigrant visa category. We will therefore affirm the petition’s denial.

Because the Petitioner did not meet the evidentiary requirements, we - like the Director - will not perform a final merits analysis. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for the requested benefit).

The Petitioner seeks classification in a highly restrictive immigrant visa category intended for noncitizens at the very top of their respective fields. He has not sufficiently demonstrated his receipt

of national or international acclaim and that he is one of the small percentage who has risen to the very top of the nursing field. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.