



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

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

In Re: 24361397

Date: FEB. 16, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an industrial designer, seeks classification as an individual of extraordinary ability in the arts. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center revoked the approval of the petition, concluding that the record did not establish that the Petitioner had won a major, internationally-recognized award in his field.¹ 8 C.F.R. § 204.5(h)(3). 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

U.S. Citizenship and Immigration Services (USCIS) may revoke the approval of a petition "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. USCIS may issue a notice of intent to revoke (NOIR) a petition's approval for good and sufficient cause if the unexplained and un rebutted record at the time of the notice's issuance would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). The NOIR provides the opportunity to submit evidence in support of the petition and in opposition to the alleged grounds for revocation. 8 C.F.R. § 205.2(b). If the NOIR response does not rebut or resolve revocation grounds stated in the notice, USCIS properly revokes a petition's approval. *Matter of Estime*, 19 I&N Dec. at 451-52.² However, a revocation is not valid unless it is based on evidence contained in the record of proceedings. *Id.*

¹ On appeal, the Petitioner has provided a brief which may be relevant to his eligibility as of the time of filing, stating that his initial evidence demonstrates that he qualifies both with a one-time achievement and with documentation meeting three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director is the more appropriate party to consider the impact of the appeal brief on the Petitioner's eligibility, as we cannot adjudicate the appeal based on an incomplete record.

² The Director's decision states that they did not receive a response to their NOIR. On appeal, the Petitioner provides a shipping receipt indicating that they mailed the response to the wrong address. The full, original NOIR response is not present in the record.

At this time, we are unable to address the merits of this case because the record is incomplete. The record indicates that the Petitioner originally submitted a 13-page brief and several supporting documents in support of his petition. However, the record lacks complete copies of these documents. Thus, we cannot determine whether the Director properly considered all the relevant evidence in the record or whether the record at the time of the revocation would have warranted the petition's denial. *Id.* at 452. The Director bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by USCIS in reaching its decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). We will therefore withdraw the Director's decision and remand this matter.

On remand, the Director should identify and incorporate any documents which may have been inadvertently omitted from the record of proceeding before reviewing the entire record and issuing a new decision. If the Director cannot supplement the record with the missing materials, they should issue a new NOIR, granting the Petitioner a reasonable opportunity to respond. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.