



THE MUCH NEGLECTED SCHEDULE A, GROUP II GREEN CARD OPTION GETS A BOOST AFTER USCIS BROADENS THE "SCIENCES OR ARTS" DEFINITION

Posted on April 23, 2024 by Cyrus Mehta

By Cyrus D. Mehta and Kaitlyn Box*

On April 10, 2024, USCIS issued a [policy alert](#) clarifying the term “sciences or arts” for Schedule A, Group II occupations. [Schedule A occupations](#) are those for which the Department of Labor (DOL) has recognized that a shortage of U.S. workers exists. Group I occupations consist of physical therapists and professional nurses, while Group II occupations include “immigrants of exceptional ability in the sciences or arts, including college and university teachers, and immigrants of exceptional ability in the performing arts”. Schedule A occupations are “pre-certified” by the DOL, so employers are not required to conduct a lengthy and onerous test of the labor market or file an ETA-9089 with the DOL.

In its recent policy update, USCIS stated that “DOL, when designating Schedule A, Group II, defines science or art as any field of knowledge or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge or skill.” Previously, these terms were not defined in the USCIS Policy Manual. This update could open up the Schedule A, Group II to encompass any field for which U.S. colleges and universities commonly offer a degree program. Noncitizens whose professions were not clearly a “science” or “art”, such as lawyers, businesspeople, and teachers, may now be able to avail of the Schedule A, Group II program. This broadening of the definitions of “science” and “art” follows the Biden Administration’s [Executive Order on Artificial Intelligence](#) to expand the availability of highly-skilled foreign nationals in the Science, Technology, Engineering, and Mathematics (STEM) and AI fields, as well as additional occupations across the economy, for which there is an

insufficient number of ready, willing, able, and qualified United States workers.

However, the significance of this change should not be overstated as all the existing requirements for Schedule A, Group II designation still apply. For noncitizens in the sciences or arts, even under the expanded definition, this means that they must demonstrate exceptional ability in their field. Employers must provide a full-time offer of employment, and offer the beneficiary at least the prevailing wage. The employer must also provide notice of the position to a bargaining representative, or its employees. The specific requirements that USCIS outlines for each Schedule A occupation must also be met. In order to demonstrate "exceptional ability in the sciences or arts", a beneficiary's prospective employer must "submit documentary evidence showing the widespread acclaim and international recognition accorded to the beneficiary by recognized experts in the beneficiary's field". The beneficiary's employment during the past year, as well as the position offered in the U.S., must also require exceptional ability.

Additionally, the beneficiary must meet at least two of the following seven criteria laid out in 20 CFR 656.15(d)(1):

- Documentation of the beneficiary's receipt of internationally recognized prizes or awards for excellence in the field;
- Documentation of the beneficiary's membership in international associations, in the field, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields;
- Published material in professional publications about the beneficiary, about the beneficiary's work in the field, which must include the title, date, and author of such published material;
- Evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization;
- Evidence of the beneficiary's original scientific or scholarly research contributions of major significance in the field;
- Evidence of the beneficiary's authorship of published scientific or scholarly articles in the field, in international professional journals or professional journals with an international circulation; and
- Evidence of the display of the beneficiary's work, in the field, at artistic

exhibitions in more than one country.

It is also important ensure that the "exceptional ability" criteria for Schedule A, Group II are not conflated with the criteria for an employment-based, second preference visa based on exceptional ability. In order to qualify for [Employment-Based Second Preference \(EB-2\) classification](#), a noncitizen must hold an advanced degree or equivalent, or "be able to show exceptional ability in the sciences, arts, or business". Exceptional ability for EB-2 purposes is defined as "degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business". Beneficiaries must also demonstrate that they meet at least three of the six criteria outlined in 8 CFR 204.5(k)(3)(ii):

- Official academic record showing that you have a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to your area of exceptional ability
- Letters from current or former employers documenting at least 10 years of full-time experience in your occupation
- A license to practice your profession or certification for your profession or occupation
- Evidence that you have commanded a salary or other remuneration for services that demonstrates your exceptional ability
- Membership in a professional association(s)
- Recognition for your achievements and significant contributions to your industry or field by your peers, government entities, professional or business organizations

Other comparable evidence of eligibility is also acceptable.

Schedule A, Group II, provides an alternative basis for an employer to sponsor a noncitizen employee for permanent residence without going through the lengthy labor certification process in addition to the person extraordinary ability under the Employment-Based First Preference (EB-1) or the National Interest Waiver under EB-2.

*Kaitlyn Box is a Senior Associate at Cyrus D. Mehta & Partners PLLC.

.

