

GMS Flash Alert

Immigration

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United States – USCIS Updates Definition for Schedule A, Group II Occupations

Effective April 10, 2024, United States Citizenship and Immigration Services (“USCIS”) updated the Schedule A, Group II definition of “science” or “art” to align with the United States Department of Labor (“DOL”) definition. DOL defines science or art as any field of knowledge or skill in which colleges and universities commonly offer specialized courses leading to a degree.

The update by USCIS is connected to the Biden Administration’s drive to expand the availability of highly-skilled foreign nationals in the Science, Technology, Engineering, and Mathematics (STEM) fields.

USCIS confirmed that the update is effective immediately and applies to requests that are pending or filed on or after April 10, 2024.

WHY THIS MATTERS

This update may have the effect of expanding the pool of job applicants – as long as they meet the conditions – available to employers under Schedule A, Group II Occupations for *Immigrants of Exceptional Ability in the Arts or Sciences*.

The Schedule A designation allows employers sponsoring individuals in certain occupations to submit a labor certification directly to USCIS, by-passing lengthy DOL review times, allowing for the swifter hiring of the individual to be employed.

Aligning with the current Administration’s efforts to retain and attract STEM talent¹, this change may provide employers with more options when sponsoring employees for permanent residency.

Background

Employment-based sponsorship for permanent residence in the United States (U.S.) typically requires that employers obtain a labor certification from DOL before filing an *Immigrant Petition for Alien Worker* (Form I-140) with USCIS². Certain occupations, referred to as “Schedule A occupations,” have been predetermined by DOL to be experiencing a shortage of able, willing, qualified, and available U.S. workers. For these occupations, employers submit the labor certification application directly to USCIS, bypassing DOL review.

Currently, DOL has designated two groups of occupations under Schedule A. Group I includes registered nurses and physical therapists. Group II includes beneficiaries with exceptional ability in the sciences or arts (except performing arts). A separate subset of Group II includes beneficiaries with exceptional ability in performing arts. Since USCIS considers DOL regulations when adjudicating Schedule A petitions, USCIS is now adding reference to DOL’s regulatory definition of science or art.

Eligibility

An employer seeking a Schedule A labor certification under Group II of Schedule A must file with USCIS, as part of its labor certification application, documentary evidence of the following³:

(1) An employer seeking labor certification on behalf of a foreign worker to be employed as an alien of exceptional ability in the sciences or arts (excluding those in the performing arts) must file documentary evidence showing the widespread acclaim and international recognition accorded the foreign national by recognized experts in their field; and documentation showing the individual’s work in that field during the past year did require, and the intended work in the U.S. will require, exceptional ability. In addition, the employer must file documentation about the sponsored worker from at least two of the following seven groups:

(i) Documentation of the sponsored worker’s receipt of internationally-recognized prizes or awards for excellence in the field for which certification is sought;

(ii) Documentation of the individual’s membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields;

(iii) Published material in professional publications about the foreign national, about his/her work in the field for which certification is sought, which shall include the title, date, and author of such published material;

(iv) Evidence of the individual’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 to that for which certification is sought;

(v) Evidence of the sponsored worker’s original scientific or scholarly research contributions of major significance in the field for which certification is sought;

(vi) Evidence of the alien’s authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation;

(vii) Evidence of the display of the foreign national’s work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(2) An employer seeking labor certification on behalf of an alien of exceptional ability in the performing arts must file documentary evidence that the person’s work experience during the past 12 months did require, and his/her intended work in the U.S. will require, exceptional ability; and must submit documentation to show this exceptional ability, such as:

- (i) Documentation attesting to the current widespread acclaim and international recognition accorded to the alien, and receipt of internationally-recognized prizes or awards for excellence;
- (ii) Published material by or about the sponsored individual, such as critical reviews or articles in major newspapers, periodicals, and/or trade journals (the title, date, and author of such material shall be indicated);
- (iii) Documentary evidence of earnings commensurate with the claimed level of ability;
- (iv) Playbills and star billings;
- (v) Documents attesting to the outstanding reputation of theaters, concert halls, night clubs, and other establishments in which the individual has appeared or is scheduled to appear; and/or
- (vi) Documents attesting to the outstanding reputation of theaters or repertory companies, ballet troupes, orchestras, or other organizations in which or with which the foreign national has performed during the past year in a leading or starring capacity.⁴

KPMG INSIGHTS

Employers and those individuals they are seeking to hire may have questions about the new expansion under Schedule A, Group II, in terms of who is eligible, the opportunities that may be availed, and the appropriate procedures to follow. They should consult with their immigration counsel or a member of the Immigration team with KPMG Law LLP in Canada (see the Contacts section).

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.



FOOTNOTES:

- 1 See The White House, Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (October 30, 2023).
- 2 See 20 CFR 656.5(b)(1).
- 3 See [20 CFR 656.15\(d\)\(1\)](#). See [Matter of Chawathe \(PDF\)](#), 25 I&N Dec. 369, 376 (AAO 2010) (“[T]ruth is to be determined not by the quantity of evidence alone but by its quality.”).
- 4 See [20 CFR 656.15\(d\)\(1\)](#).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in Canada:



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