



Last month, we touched upon cross chargeability as a possible way for some to come out of the retrogression. Continuing with the same issue i.e. retrogression, in this article we will talk about another possible way which may be of help for some individuals currently affected by retrogression of EB-2. That is to Petition under the sub category of EB-2 for the positions that fall under Schedule A Group II, Exceptional Ability.

This strategy became possible in May 2005, with the passage of the REAL ID Act. Congress added 50,000 additional visas in the EB-2 category for the visas filed under Schedule A. While other employment based categories have retrogressed, visas remain available for beneficiaries of Schedule A petitions and should continue to appear as “Current” for foreseeable future, and if retrogressed, the backlog should not be as bad as that of other employment based categories.

Schedule A lists the occupations which the Secretary of Labor has pre certified as shortage occupations. Schedule A Group I includes nurses and physical therapists, but Schedule A Group II includes aliens with Exceptional Ability in arts and sciences. In this article we are specifically dealing with aliens of Exceptional Ability in arts and sciences that fall under Schedule A Group II.

To file under Exceptional Ability, the petition has to be sponsored by an employer which means that a job offer is required. As observed above, this option may be suitable for some but not all. Some who can meet the requirements set to meet the Exceptional Ability criteria.

When filing under Schedule A Group II, the green card application can be filed together with the immigrant worker petition, hence avoiding the wait time spread over years when waiting for priority date to become current. In addition while the labor certification (PERM) is filed with USCIS, there is no need to get it certified by the Department of Labor. In other words the PERM is filed together with immigrant worker petition and green card application. The most important is to include documentation as evidence of the Exceptional Ability.

Documentation is also required to show that the alien’s work both in the past year and the intended work in future requires the Exceptional Ability. In most cases, reference letters from recognized experts are critical to meet this documentary burden of proof.

To qualify for the Exceptional Ability, In addition to above, at least two other forms of documentation from a list of seven possible groups must be submitted. As long as the alien can show that s/he meets any two of the following seven standards s/he may consider filing under the Schedule A Group II. These seven standards/groups, for those applying for Exceptional Ability in sciences or arts are as follows:

- Receipt of internationally recognized prizes or awards in which certification is sought.
- Membership in International Associations, which requires outstanding achievements of their members, as judged by recognized international experts.
- Published material in professional publications about the alien.
- Alien’s participation, on a panel or individually, as judge of the work of others in the same field in which certification is sought.
- Alien’s original or scholarly research contributions of major contribution.
- Alien’s authorship of published scientific or scholarly articles in international professional journals or journals with international circulation.
- Display of alien’s work at artistic exhibitions in more than one country, in the field in which certification is sought.

The requirements for Exceptional Ability in the field of performing arts are similar but not identical. The regulations do not specify a minimum number of categories of documentation that must be presented. Rather, the regulations specify examples of documentation that may be submitted. Following are the examples of such documentation required for aliens filing under Exceptional Ability in performing arts:

- Documentation attesting to the current widespread acclaim and international recognition accorded to the alien;

- Receipts of internationally recognized prizes or awards for excellence;
- Published material by or about the alien, like critical reviews, articles in major newspapers, periodicals etc;
- Documentary evidence of earnings commensurate with the claimed level of activity.
- Pay bills and Star billings;
- Documents attesting to outstanding reputation of theaters, concert halls, night clubs or/and other establishments in which the alien has appeared or is scheduled to appear; and/or
- Documents attesting to outstanding reputation of theaters or repertory companies, ballet troupes, orchestras, or other organizations in which or with which the alien has performed during past year in a leading or starring capacity.

Please note that aliens in the performing arts under Schedule A Group II, as contrasted with aliens in other art fields, do not require international recognition.

While the criteria for someone to qualify for the Exceptional Ability is very similar to Extra Ordinary Ability, these two categories should not be confused.

It will not be wrong to observe that Congress probably anticipated the emergency created by the retrogression of EB-3 and in Chinese and Indian EB-2 and EB-1 categories and created the sub category of EB-2 for Exceptional Ability, Schedule A Group II workers.

Immigration Law is complex, and it is extremely important that people desirous of coming to live in the United States in immigrant or non immigrant categories seek the help of an Attorney who specializes in immigration. Immigration Law is a very specialized area of law and an Attorney can help you realize your dreams about the future in the most effective way by minimizing the risks attached with the process.

*Ms. Syed is a practicing attorney with Perez and Associates, specializing in immigration law. Please send your questions concerning immigration issues to legal@citymasala.com*