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EB-2 Green Card with Pre-certification under Schedule A Group II (for Aliens with Exceptional Ability in the Arts and Sciences)

In U.S. immigration law, there are three employment based categories for green cards.

The first category, called EB-1, is for Priority Workers. Priority workers include aliens with extraordinary ability, outstanding professors and researchers, and multinational executives and managers (the term “alien” means a person who is not a U.S. citizen).

The second category, called EB-2, is for professional workers with advanced degrees or aliens with exceptional ability. We have provided more information about these terms below. In general, the government generally views “exceptional ability” under the EB-2 category to be less difficult to prove compared to “extraordinary ability” under the EB-1 category.

The third category, called EB-3, is for professional, skilled, and unskilled workers.

The procedures for filing EB-2 and EB-3 green cards applications are very similar. Normally, U.S. business must agree to serve as the sponsor, which means that the business signs the application package and certifies to the government that it wants to employ the alien once the green card is approved.

Also, with EB-2 and EB-3 applications, the employer/sponsor normally must complete a process called “Labor Certification” *before* it can submit the green card application. Labor Certification is a process in which the employer/sponsor proves to the government that it cannot find a U.S. worker that is available to fill the position that has been offered to the alien worker. Labor Certification often takes 1 to 2 years to complete.

In the EB-2 Category, there is a special exception in the law which allows the employer/sponsor to skip the Labor Certification process. As a result, the employer/sponsor can immediately file the green card application for the alien worker. This reduces the overall processing time of the case by 1 to 2 years and increases the probability that the green card will ultimately be approved (because Labor Certification is usually the most difficult and time consuming part of an employment based green card application).

A second benefit to skipping Labor Certification is that, under a new government rule, the alien worker may be able to qualify for temporary work authorization and a travel document within three months of filing the green card application (only if the alien worker is already in the U.S.).

The temporary work authorization and travel document would be valid for 12 months and can be renewed while the green card application is pending. These authorizations would replace any

temporary (nonimmigrant) visa that the alien worker has *and may possibly be available even if the alien worker is currently illegal (only in some cases).*

This special exception in the EB-2 Category is called “Pre-certification under Schedule A Group II.”

In order to qualify for pre-certification under Schedule A Group II, the employer/sponsor must prove all of the following points:

1. The alien works in a field that could be classified as the “arts” or “sciences”
2. The alien has received widespread acclaim and international recognition by recognized experts in his or her specific field,
3. The alien’s work in the field during the past year has required exceptional ability, and,
4. The alien’s work in the U.S., after the green card is approved, will require exceptional ability.

In addition, to these points, the government requires that the alien produce at least *two forms* of evidence from the following list:

1. Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field of endeavor;
2. Documentation of the alien's membership in international associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized international experts;
3. Material published in professional publications about the alien and relating to the alien's work in the field for which classification is sought (including the title, date, and author of the published material, and any necessary translation);
4. Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or an allied field of specification for which classification is sought;
5. Evidence of the alien's original scientific, scholarly research contributions of major significance in the field for which certification is sought;
6. Evidence of the alien's authorship of published scientific or scholarly articles in the field that have been published in international professional journals or professional journals with an international circulation; and
7. Evidence of the display of the alien's work in the field at artistic exhibitions in more than one country;

Obviously, not all workers can meet these requirements. However, for some workers in artistic and scientific fields, meeting these requirements may not be as difficult as it seems. Often an immigration attorney can research the alien worker’s past and find evidence to support the case.

Assuming that the employer/sponsor and the alien worker can satisfy the requirements for pre-certification under Schedule A Group II, they must still prove that the alien worker qualifies for the EB-2 Category.

Remember, the EB-2 Category is for professional workers with advanced degrees *or* aliens with exceptional ability in the sciences, arts, or business.

If the alien worker has a masters or Ph.D. in his or her field from a U.S. or foreign university, then the alien worker should easily qualify for the EB-2 Category as a professional worker with an advanced degree. However, the alien worker may also qualify if he or she has four-year university degree (Bachelor's degree) from an American or foreign university followed by at least five years of progressive experience in the specialty. This is often considered to be the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In order to show that the alien worker is a professional worker with an advanced degree, the government requires the following items:

- An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- An official academic record showing that the alien has a United States baccalaureate degree (4 year university degree) or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In a few of these cases, additional evidence may be required to show that the alien worker is engaged in a "profession," which is an occupation for which a four-year university degree or the foreign equivalent is the minimum requirement for entry into the occupation.

In the alternative, the alien worker can also qualify for the EB-2 Category by proving he or she is exceptional in the arts, sciences or business. Because the alien worker already provided evidence that he or she is "exceptional in the arts or sciences" for pre-certification under Schedule A Group II, it normally is not too difficult to show that the worker is "exceptional" for the EB-2 Category. However, the alien worker must make certain that he or she provides the right type of evidence.

For the EB-2 Category, the government defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business."

In order to prove this, the government requires at least *three* of the following:

- An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

- Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- A license to practice the profession or certification for a particular profession or occupation;
- Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- Evidence of membership in professional associations; or
- Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply to the alien worker's occupation, the government may accept other comparable evidence to establish the beneficiary's eligibility.

This green card strategy is rarely used, but is clearly a strong option for alien workers who have achieved success or recognition for their work in artistic or scientific fields.

It should be considered for workers in any of the following fields:

Artistic Fields (must be in the fine arts and not performing arts):

Painters
 Writers
 Translators
 Sculptors
 Commercial and graphic artists
 Music composers

Scientific Fields:

Architecture and engineering occupations
 Computer related occupations
 Medical or health-related occupations
 Math or physical science occupations
 Life science occupations (agricultural, biological or psychological)
 Museum and library science