

## **B. EB-2 SECOND PREFERENCE – EMPLOYMENT BASED IMMIGRATION EXCEPTIONAL ABILITY ALIENS**

The term “exceptional” in various contexts under the immigration law has caused a lot of confusion. For the purpose of showing eligibility for EB-2 classification as a worker of exceptional ability in the sciences, arts (including athletics), or business, the individual must have a degree of expertise above the ordinary.

The Second Preference category requires that the employer first obtain a Labor Certification (PERM) from the Department of Labor. Those individuals from other countries, except India and China, were allowed to file their petitions and applications immediately after getting the Labor Certification without having to wait for numerical availability. The immediate availability of this category will continue for individuals from most countries. Spouses and children below 21 years of age and not married are qualified to obtain green cards if accompanying the main beneficiary. The petitioner must file a Form I-140, petition for alien worker, for an EB-2 worker at the USCIS Dallas Lockbox. The Form I-140 may be e-filed, as well. Basically, the petition must include a certified individual labor certification from DOL, with evidence that the individual meets the requirements for the job set forth in the labor certification.

This second sub-category of the Second Preference category applies to those who have exceptional ability in the science, arts, or business that benefits the national economy, cultural, or educational interests or welfare of the United States. To receive this classification, you must be able or provide at least three types of evidence related to and support the specific exceptional ability: (a) 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 the area of exceptional ability; (b) letters documenting at least ten years of full-time experience in the occupation being sought; (c) license to practice the profession or certification for a particular professions or occupation; (d) evidence that you have commanded a salary or other remuneration for services which demonstrates exceptional ability; (e) membership in professional associations; (f) recognition for achievements and significant contributions to the industry or field by peers, government entries, professional or business organizations.

### **Two Exceptions to The Labor Certification Requirement:**

FIRST, if the foreign national will serve the national interest, labor certification may be waived. If the foreign national is claiming an exceptional ability and seeks a waiver of the labor certification requirement, the foreign national or anyone on his or her behalf may be the petitioner. To apply for a national waiver: The petitioner must submit Form I-140 with the Form ETA-9089 (available at [www.plc.doleta.gov](http://www.plc.doleta.gov)) Statement of Qualifications of Alien and evidence to support the claim that exemption would be in the national interest.

SECOND, workers under DOL's Schedule A. Petitions under Schedule A, Group II for individuals of exceptional ability are not limited to the second preference category, and there is no specific box to check on the I-140 petition. The petitioner should check the preference category box on Form I-140 which corresponds to the minimum education, training and experience required for the position and should clarify in parentheses that the case is being filed under Schedule A, Group II.

**To qualify for Schedule A, Group II, in the sciences or arts (excluding the performing arts) an individual must submit:**

- (a) Evidence of current widespread acclaim and international recognition;
- (b) Documentation showing that his or her work during the past year required, and his or her intended work will require, exceptional ability;
- (c) Evidence from at least two of the following seven categories:
  - (1) Receipt of international prizes or awards for excellence in the field;
  - (2) Membership in international organizations that require outstanding achievement of their members;
  - (3) Published material about the alien relating to the alien's work in professional publications;
  - (4) Evidence of the alien's participation as a judge of the work of others in the same or an allied field;
  - (5) Original scientific or scholarly research contributions of major significance in the field;
  - (6) Authorship of scientific or scholarly articles in the field in professional journals with international circulation;
  - (7) Display of the alien's work at artistic exhibitions in more than one country.

**To qualify for Schedule a Group II, in the performing arts, an individual must submit:**

- (a) Evidence that the alien's work experience during the past 12 months did require and the intended employment will require exceptional ability;
- (b) Documentation to show exceptional ability, such as:
  - (1) Documentation attesting to current widespread acclaim and international recognition and receipt of international prizes or awards for excellence,
  - (2) Published material by or about the alien, such as critical reviews or articles in major newspapers, periodicals, and/or trade journals (with title, date, and author),
  - (3) Evidence of earnings commensurate with the claimed level of ability,
  - (4) Playbills and star billings,
  - (5) Documents attesting to the outstanding reputation of theaters, concert halls, nightclubs, and other venues in which the alien has appeared or is scheduled to appear,
  - (6) Documents attesting to the outstanding reputation of theaters or repertory companies, ballet troupes, orchestras, or other organizations in which or with which the alien has performed during the past year in a leading or starring capacity.

To find out more about the procedural steps involved and an estimate of fees, call or email us today for your free in-depth consultation!