

9 FAM 40.51 Exhibit I

(TL:VISA-56; 4-10-92)

SCHEDULE A

Excerpt from Technical Assistance Guide No. 656 of Department of Labor 20 CFR 656.10 and Sec. 656.22 (56 FR 54920-30, 10-23-91).

Subpart B.—Occupational Labor Certification Determinations

Sec. 656.10 Schedule A

The Director, United States Employment Service (Director), has determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on Schedule A and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in Schedule A occupations. An alien seeking a labor certification for an occupation listed on Schedule A may apply for that labor certification pursuant to Sec. 656.22.

Sec. 656.10 of the regulations includes occupational groups for which the Director, United States Employment Service, has predetermined that there is a shortage of U.S. workers and that the employment of aliens in the occupations covered will not adversely affect the wages and working conditions of U.S. workers similarly employed. A further individual test of the labor market is not required for an alien qualified for an occupation listed on Schedule A.

Schedule A occupations are divided into two groups. They are described in general terms and may cover more than one similar job defined in the Dictionary of Occupational Titles, 4th edition, published by the Department of Labor in 1977 and hereafter called the DOT.

Group I: Physical Therapists

Sec. 656.10(a)(4)

(i) "Physical therapist" means a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a physician (or surgeon).

Sec. 656.22(c)

(c) Aliens seeking labor certification under Group I of Schedule A shall file, as part of their labor certification, documentary evidence of the following:

(1) An employer seeking Schedule A labor certification for an alien to be employed as a physical therapist (Sec. 656.10(a)(1) of this part) shall file as part of its labor certification application a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take the State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only pursuant to this Sec. 656.22 and not pursuant to Secs. 656.21, 656.21a, or 656.23 of this part.

As documentation of Schedule A eligibility, an alien physical therapist must submit with the application for certification a signed statement or letter from the physical therapy licensing authority in the State of intended employment. This document must state that the alien met all requirements necessary to take that State's physical therapy licensing examination.

A baccalaureate degree is no longer required for Schedule A certification as a physical therapist....

Physical therapists, as defined in the regulations, include only one occupation in the DOT: Physical Therapist.

Physical therapists who do not qualify for Schedule A may not have an employer file a job offer under the Basic Labor Certification process in their behalf as a physical therapist. This does not preclude filing in a different occupation for which the alien is qualified.

Professional Nurses

Sec. 656.10(a)

(2) Aliens who will be employed as professional nurses; and (i) who have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or (ii) who hold a full and unrestricted license to practice professional nursing in the State of intended employment.

"Professional nurses" means persons who apply the art and science of nursing, which reflects comprehension of principles derived from the physical, biological, and behavioral sciences. Professional nursing generally includes the making of clinical judgments concerning the observation, care, and counsel of persons requiring nursing care; and administering of medicines and treatments prescribed by the physician or dentist; the participation in activities for the promotion of health and the prevention of illness in others. A program of study for professional nurses generally includes theory and practice in clinical areas such as: obstetrics, surgery, pediatrics, psychiatry, and medicine. This definition includes only those occupations within Occupational Group No. 075 of the Dictionary of Occupational Titles (4th ed.)

It has been determined that there is generally an insufficient number of professional nurses in the United States.

Occupations included under professional nurse in the DOT are within Occupational Group No. 075, such as:

- Director, School of Nursing
- Nurse, Anesthetist
- Nurse, Consultant
- Nurse, Head
- Nurse, Instructor
- Nurse, Office
- Nurse, Practitioner
- Nurse, Private Duty
- Nurse, School
- Nurse, Staff, Community Health
- Nurse, Supervisor Occupational Health
- Nurse, Supervisor
- Nurse, General Duty
- Instructor, Psychiatric Aide

Sec. 656.22(c)

(2) An employer seeking a Schedule A labor certification as a professional nurse (Sec. 656.10(a)(2) of this part) shall file, as part of its labor certification application, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted (permanent) license to practice nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only pursuant to this Sec. 656.22(c), and not pursuant to Secs. 656.21, 656.21a, or 656.23 of this part.

Professional nurses seeking permanent labor certification on Schedule A must document that he/she passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination or holds a full and unrestricted license to practice professional nursing in the State of intended employment.

The CGFNS is an independent, nonprofit organization which developed this examination to test capabilities of foreign professional nurses in all areas of nursing for which American nurse graduates are responsible, and to give an objective estimate of their ability to pass licensure examinations in the United States. The examination is given yearly in April and October in the United States and approximately 30 other countries throughout the world. Further information may be obtained from the Commission on Graduates of Foreign Nursing Schools (CGFNS), 3624 Market Street, Philadelphia, Pennsylvania 19104.

Foreign nurse graduates who have temporary, provisional, or otherwise restricted States licenses are not exempted from the CGFNS examination. They must document that they are permanently and fully licensed to practice professional nursing in the State of intended employment or pass the CGFNS examination. Although most States, after a review of a licensed nurse's credentials, will issue a license based on reciprocity from another State, this procedure is not automatic. Therefore, a foreign nurse who holds a license in other than the State of intended employment, must secure a permanent and unrestricted license in the State of intended employment or pass the CGFNS examination before filing for a labor certification.

A foreign professional nurse may only apply for a Schedule A certification; however, an employer may file a job offer in the alien's behalf for a certification under the basic labor certification process in a different occupation.

Group II: Aliens of Exceptional Ability in Sciences or Arts

Sec. 656.10

(b) Group II:

Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.

"Exceptional ability" for Schedule A purposes means recognized, outstanding performance well above the standard for professional competence in the occupation. College and university teachers who have exceptional ability in the sciences or arts may qualify under Schedule A.

"Science or Art" is defined in Sec. 656.10(b) of the regulations and means any field of knowledge or skill, the study of which usually leads to a college or university degree in the knowledge or skill. Since colleges and universities do not normally award degrees in a specific area of sports, such as tennis or football, exceptional ability in sports does not qualify an alien for processing under Schedule A.

It is important to note that formal education at a college or university is not necessary to qualify for processing under Group II of Schedule A. Examples of fields in which an alien may have exceptional ability without formal education are painting, sculpture, and fashion designing.

Aliens in the performing arts are excluded from Schedule A processing because of the general availability of performing artists of exceptional ability in the United States not continuously employed. Applications for such aliens may be filed under Sec. 656.21a and will be determined in the national office of the U.S. Employment Service.

Sec. 656.22

(d) An employer seeking labor certification on behalf of an alien under Group II of Schedule A shall file as part of their labor certification application, documentary evidence testifying to the current widespread acclaim and international recognition accorded the alien by recognized experts in their field; and documentation showing that the alien's work in that field during the past year did, and the alien's intended work in the United States will, require exceptional ability. In addition, the employer shall file, as part of their labor certification applications, documentation from at least two of the following seven groups:

(1) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;

(2) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievements of their members, as judged by recognized international experts in their disciplines or fields;

(3) Published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material;

(4) Evidence of the alien'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;

(5) Evidence of the alien's original scientific or 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 for which certification is sought, in international professional journals or professional journals with an international circulation; and/or

(7) Evidence of the display of alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

Aliens claiming exceptional ability in the sciences or arts must provide at least four types of documentation for Schedule A certification under Group II. Two of the four are mandatory to be eligible for consideration:

(1) Documentary evidence testifying to the current widespread acclaim and international recognition accorded them by recognized experts in their field.

Such documentation may be letters from well-known experts in the alien's field. To substantiate the international recognition of the alien, documentation must show the expert's knowledge of the alien's current recognition in more than one country, or be from experts in different countries where the alien's current achievements are known. Testimonial letters or attachments shall clearly indicate the author's authority and expertise.

(2) Documentation showing that their work in that field in the past year required exceptional ability, and that their intended work in the United States will require exceptional ability.

The alien's exceptional work in the past year can be documented in several ways, i.e., letters from persons who know of the alien's work, such as the employer or colleagues; copies of articles from publications or newspapers about the alien's work; and documents which describe the unique nature of the alien's work and the exceptional ability required to perform it. The alien's prospective employer should supply documentation that the alien's work in the United States requires exceptional ability.

In addition, applicants must also provide at least two other forms of documentation described in paragraphs 656.22(d)(1) through 656.22(d)(7) of the regulations to complete requirements for Group II certification.

General Requirements for Schedule A Determinations

Sec. 656.22 Applications for labor certifications for Schedule A occupations

(a) An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification form in duplicate with the appropriate Immigration and Naturalization Service office, not with the Department of Labor or a State Employment service office.

(b) The Application for Alien Employment Certification form shall include:

(1) Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form. There is, however, no need for the employer to provide the other documentation required under Sec. 656.21 of this part for non-Schedule A occupations.

(2) Evidence that notice of filing the application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in Sec. 656.20(g)(3) of this part.

Sec. 656.29

(b) An alien who is denied a labor certification for a Schedule A occupation, except for employment as a physical therapist or as a professional nurse, may at any time have an employer file for a labor certification on the alien's behalf pursuant to Sec. 656.21. Labor certifications for professional nurses and for physical therapists shall be considered only pursuant to Secs. 656.10 and 656.22.

An alien who does not meet the regulation requirements for a Schedule A certification, except physical therapists and professional nurses, may have an employer file for an individual labor certification in the alien's behalf under Sec. 656.21; except that individual labor certifications for college and university teachers are filed under Sec. 656.21a of the regulations. If it is obvious that the alien does not qualify for the Schedule A occupation, a formal denial of certification from INS or a Consular office is not required before an employer can file.

The regulations exclude professional nurses from obtaining a labor certification unless they have passed the CGFNS examination or hold a full and unrestricted license to practice in the State of intended employment. Physical therapists are also excluded unless they are eligible to take the physical therapy licensing examination in the State of intended employment. This is to assure that aliens in these occupations have a higher probability of obtaining licensure and will be able to work in the occupation for which they receive labor certification. Unless professional nurses and physical therapists qualify for Schedule A certification, they do not qualify for a labor certification. This does not, of course, preclude consideration of an application in behalf of such aliens in other occupations.