

9 FAM 40.51 EXHIBIT I OCCUPATIONAL LABOR CERTIFICATION DETERMINATIONS

*(CT:VISA-1709; 09-23-2011)
(Office of Origin: CA/VO/L/R)*

SCHEDULE A (Department of Labor – 20 CFR 656.5)

Section Name: Schedule A

We have determined there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on Schedule A and 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 employer seeking a labor certification for an occupation listed on Schedule A may apply for that labor certification under Section 656.15.

Schedule A

(a) Group I:

- (1) Persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the state in which they propose to practice physical therapy.
- (2) Aliens who will be employed as professional nurses; and
 - (i) Who have received a Certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS);
 - (ii) Who hold a permanent, full and unrestricted license to practice professional nursing in the state of intended employment; or
 - (iii) Who have passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN), administered by the National Council of State Boards of

Nursing.

- (3) Definitions of Group I Occupations:
- (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 a surgeon).
 - (ii) **Professional nurse** means a person who applies the art and science of nursing which reflects comprehension of principles derived from the physical, biological and behavioral sciences. Professional nursing generally includes making clinical judgments involving the observation, care and counsel of persons requiring nursing care; administering of medicines and treatments prescribed by the physician or dentist; and participation in the activities for the promotion of health and 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.

(b) Group II:

- (1) Sciences or arts (except performing arts). 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 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.
- (2) Performing arts. Aliens of exceptional ability in the performing arts whose work during the past 12 months did require, and whose intended work in the United States will require, exceptional ability.

**Section 656.15 Applications for labor certification for
Schedule A occupations. ***
Department of Labor - 20 CFR 656.15

- (a) *Filing application.* An employer must apply for a labor certification for a *Schedule A* occupation by filing an application with the appropriate DHS office, and not with an ETA application processing center.
- (b) *General documentation requirements.* A *Schedule A* application must include:
- (1) An *Application for Permanent Employment Certification* form, which includes a prevailing wage determination in accordance with sections 656.40 and 656.41.
 - (2) Evidence that notice of filing the *Application for Permanent Employment Certification* was provided to the bargaining representative or the employer's employees as prescribed in section 656.10(d).
- (c) *Group I documentation.* An employer seeking labor certification under Group I of *Schedule A* must file with DHS, as part of its labor certification application, documentary evidence of the following:
- (1) An employer seeking *Schedule A* labor certification for an alien to be employed as a physical therapist (section 656.5(a)(1)) must 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 the alien is qualified to take that state's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only under this section 656.15 and not under section 656.17.
 - (2) An employer seeking a *Schedule A* labor certification for an alien to be employed as a professional nurse (section 656.5(a)(2)) must file as part of its labor certification application documentation that the alien has received a Certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS); that the alien holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment; or that the alien has passed the National Council Licensure Examination for Registered

Nurses (NCLEX–RN). Application for certification of employment as a professional nurse may be made only under this section 656.15(c) and not under section 656.17.

- (d) *Group II documentation.* An employer seeking a *Schedule A* labor certification under Group II of *Schedule A* must file with DHS, as part of its labor certification application, documentary evidence of the following:
- (1) An employer seeking labor certification on behalf of an alien 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 alien by recognized experts in the alien's field; and documentation showing 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 must file documentation about the alien from at least two of the following seven groups:
 - (i) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;
 - (ii) Documentation of the alien'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 alien, about the alien's 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 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;
 - (v) Evidence of the alien'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 alien'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 alien's work experience during the past twelve months did require, and the alien's intended work in the United States 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 alien, 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 alien 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 alien has performed during the past year in a leading or starring capacity.
- (e) *Determination.* An Immigration Officer determines whether the employer and alien have met the applicable requirements of section 656.10 and of *Schedule A* (section 656.5); reviews the application; and determines whether or not the alien is qualified for and intends to pursue the *Schedule A* occupation. The *Schedule A* determination of DHS is conclusive and final. The employer, therefore, may not appeal from any such

determination under the review procedures at §656.26.

- (f) *Refiling after denial.* If an application for a *Schedule A* occupation is denied, the employer, except where the occupation is as a physical therapist or a professional nurse, may at any time file for a labor certification on the alien beneficiary's behalf under section 656.17. Labor certifications for professional nurses and for physical therapists shall not be considered under section 656.17.

69 FR 77325 (12/27/04, effective 3/28/05), as amended
73 FR 78019 (12/19/08, effective 1/18/09) [revising (a), removing (f), and redesignating (g) as (f)].*