Athlete Visas and How to Avoid (Inadvertent) Status Violations

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Athletes encounter a unique set of challenges obtaining status to live and work in the U.S. Many professional and amateur athletes are young—and while they may be excellent at their sport, they have little or no understanding of the restrictions, challenges or consequences relating to entries to the U.S. for tryouts, training camps, or seasonal play.

One of the challenges most often faced is understanding when work authorization is needed vs. when athletes can enter as visitors, for purposes of play. Entries for tryouts while not under any contract are permitted as a business visitor; however, as soon as a contract or extended play reaching beyond the norms of a "tryout" period are reached, work authorization is required. While a "normal" tryout period for athletes varies by sport and is not defined in any U.S. statute or regulation, employers should not try to get around the requirement for work authorization by calling seasonal play a mere "tryout" for athletes.

Another issue that frequently arises is when foreign students at U.S. universities or colleges are recruited to a

professional or semi-professional sports team while still attending their university program. Most of these students will be in either F-1 or M-1 "student" status, and are unsure whether they can either (1) play on a compensated basis for U.S. sports teams while in student status, or (2) attend their educational program if they switch to a work-authorized athlete status. Again, a mere tryout does not require a work authorization, but regular or contracted-for play with a team does. Therefore, someone in student status would not need to switch to a work authorized status in order to try out for a team, but will need to do so once they are engaged formally or utilized on a regular basis by a U.S. sports team.

Switching to a work authorized status may also present some limitations for athletes pursuing concurrent education in the U.S. The most common work authorization statuses held by athletes are P-1 (individual, professional or amateur athlete) or 0-1 (extraordinary ability athlete). Importantly, students in either of these statuses are work authorized for their specific petitioning employer(s), but are limited to only part-time study in the U.S. Athletes in this position should ask their designated school official what constitutes "part-time" vs. "full-time" study, to be sure they are complying with this limitation and properly maintaining their status.

Athletes also may get themselves into a pickle by working as a coach at their university, college, or a local educational institution or youth program while in work authorized status linked to their specific employer. Any employment outside athletic services linked to their specific, approved employer is unauthorized employment. While they might be able to fly under the radar now, if they end up wanting to obtain permanent residence down the road, they will be required to admit to the unauthorized employment during that process.

Working without authorization at any point, for any employer, prevents individuals from adjusting their status to permanent resident from within the U.S. Instead, they will need to apply for an immigrant visa through a U.S. consulate or embassy in their home country, in order to obtain permanent residence - which historically takes significantly longer than adjusting status from within the U.S. (i.e., sometimes years longer).

Athletes and all others entering the U.S. should also be sure to always check their 1-94 arrival/departure record when they leave and re-enter the U.S. This can be done easily through U.S. Customs and Border Protection's (CBP's) CBP One mobile app, or online at the CBP website. It is incumbent on the foreign entrant to make certain that CBP admitted them in their work authorized status rather than a student or visitor status, once they are engaged and approved for work in the U.S. If the record reflects an admission in the wrong status, the athlete is not authorized to work until the 1-94 record is corrected, and remains only authorized for the time in the U.S. allotted on the current arrival/departure record. Failing to correctly check and maintain the appropriate status can easily result in athletes overstaying their authorized time in the U.S., accruing unlawful presence of six months or more, and ending up being barred from entering the U.S. for several years (even where one can demonstrate that the mistake was made by CBP).

Vigilance to the issues faced by athletes working and/or studying in the U.S. is key to any short or long-term goal to be employed in the U.S. as an athlete. Where in doubt, athletes should discuss their circumstances with professional immigration counsel familiar with the challenges faced by athletes and whether these or any other limitations exist based on their unique situation.

If you or someone you know has questions pertaining to athlete visas, please contact one of our qualified attorneys at Lippes Mathias LLP: Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com) of the Lippes Mathias LLP immigration practice team.

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