

Athletes: The Right Immigration Status for Each Career Stage



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Becoming a professional athlete is a long and tough road, often starting at an early age. Playing or working internationally as an athlete comes with certain challenges, depending on the stage of your career, who you are working for, whether you are getting paid for the role, and the specific expectations or requirements in the role.

Young athletes: Amateur tryouts

Athletic teams often want to bring young or untested athletes to the U.S. for professional tryouts. These tryouts or

professional development camps provide a solid opportunity for athletes to demonstrate their skills and make the cut for recruitment to a dream team. Some of these professional tryouts are paid, while others are not. So, when does an athlete need work authorization, and when can they enter as a visitor instead?

In order to be admitted to the U.S. as a B-1 business visitor, the general rule is that athletes: (1) do not receive a salary or any other income from a U.S. source (other than prize money); and (2) are athletes or team members of a foreign-based team who are entering the U.S. to compete against another sports team in the U.S.; or (3) are trying out for a professional team, but are not yet under contract. In the case of Canadian athletes, this makes entry much easier for the purpose of attending a professional development camp or tryout, since they can request the admission right at the U.S. border or pre-clearance location, without having to file paperwork with U.S. immigration and obtain approval ahead of their entry.

Seasoned or extraordinary athletes

Professional and amateur athletes coming to the U.S. to work for a U.S. league or team may qualify for a P-1A Athlete visa. This is available to athletes who are (1) individual athletes performing at an international level of performance; (2) are part of a group or team at an internationally recognized level of performance; (3) are professional athletes; or (4) are coming to the U.S. as an athlete or coach that is part of a team or franchise located in the United States and a member of a foreign league or association.

For athletes who are extraordinary in their field - as demonstrated by such things as participation as a player in a major sports league, awards received, information published about them in major media, their contributions of major significance to their field, etc. - they may qualify for an O-1 Extraordinary Ability nonimmigrant visa to work for one or more employers based on that extraordinary ability. Even more appealing, they may have the option of self-petitioning (i.e., without a U.S. sponsor) for permanent residence (often called a green card) based on their expertise and contributions to their sport. The O-1 visas can be held indefinitely, so long as the athlete continues to have a U.S. sponsor and work in a role that qualifies them for the visa. But obtaining a green card not only allows them to live in the U.S.; it allows them to work for any employer(s) in any field they wish, and therefore it is a better, more expansive long-term option.

Leveraging athletic success, post-play

Most professional athletes reach a point in their career where it makes sense to step back from active play and take on a managerial, supervisory, coaching, scouting, or other role within their sport. By leveraging their success as an athlete within their sport to obtain permission to hold a related role after their retirement from active play, they may continue to qualify for the same or an alternate status, such as O-1 or P-1S (Essential Support Personnel, supporting P-1A athletes). Or they may choose to start their own business in the U.S. supporting athletes or leveraging their athletic expertise and experience, which may be possible through an E-2 (Treaty Investor) visa. There are many visa options for retiring athletes, based on what the athlete wants to do post-play, their country of nationality and their level of notoriety within the sport, among other factors.

General takeaway

Athletes need to be careful at each stage of their career to obtain the correct work authorization where permission is required, and not to work without authorization - which could have dramatic consequences on their future in the

U.S. Working without authorization in the U.S. exposes athletes to unnecessary risk, and can be tempting for successful athletes who are offered short-term engagements such as paid independent appearances or off-season coaching opportunities. If you want to take on additional or alternate employment, it is crucial to seek advice when the opportunity is first discussed, as these opportunities may require a broader change in immigration strategy that takes time to resolve.

Elizabeth M. Klarin, partner with Lippes Mathias LLP, has more than 15 years of immigration experience assisting clients with the full spectrum of U.S. immigration matters. She represents clients from around the globe across virtually every industry, as well as individuals seeking strategic immigration options and solutions.

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