

OUR PRACTICE

Athletes

Team owners, managers, coaches and the individuals involved have several classifications to choose from to arrange temporary and permanent entries of key international athletes and their support personnel. Deciding which ones to use in specific situations can be tricky business requiring detailed understanding of all the eligibility rules and procedures. Time often is an important factor when events have been scheduled. Typical options available include:

- **B-1 visitors**
- **Extraordinary Ability Aliens and support personnel**
- **P Aliens or Teams with International Recognition and support personnel**
- **Certain other classifications**

Each is discussed below, although O and P athletes share some aspects and are discussed together.

B-1 Athletic Visitors

The U.S. government has recognized several types of athletes who may become business visitors under the relatively simple standards and procedures generally applicable to the B-1 classification:

- Professional athletes who receive no salary or payment other than prize money for their participation in a tournament or sporting event;
- Professional athletes or teams based and primarily paid from abroad with membership in an international sports league coming to compete in the U.S.;
- Amateur players joining a professional team during its season or playoffs for the purpose of tryouts (i.e., to replace another player) with only transportation and incidental expenses paid;
- Certain officiators for international competitions;
- Unpaid amateur athletes coming to perform in an athletic event, with only incidental expenses reimbursed (State Department rules suggest B-2 classification for pure amateurs);
- Race horse jockeys, sulky drivers, trainers, or grooms for an employer of the alien's nationality.

Normal rules for the B-1 classification for business visitors apply.

O and P Status for Athletes, Teams, and Support Personnel

The O and P classifications apply in different ways to athletes, teams and support personnel. Because some aspects are common to all sub-classifications, they are discussed collectively here.

O-1 Individual Athletes

Individual athletes of extraordinary ability (but not teams) may use the O-1 classification. To qualify, the position or event (which may include an athletic season of competition) must require extraordinary ability, and the alien's credentials must demonstrate that he or she has sustained international or national acclaim (i.e., is among the few at the top of the field of endeavor). The individual showing can consist of receipt of a major,

internationally recognized award such as an Olympic gold medal, or some other evidence, but normally it must be established through showing of three or more of the following:

- Receipt of nationally or internationally recognized prizes or awards for excellence
- Membership in associations that require outstanding achievements of their members, as judged by recognized national or international experts
- Discussion about the alien's performances appearing in professional or major trade publications or other major media (must show title, date and author of material, with any necessary translation)
- Participation, either individually or on a panel, as a judge of the work of others in the same or an allied field
- Employment in a critical or essential role for organizations or establishments that have a distinguished reputation
- Command of a high salary or other significantly high remuneration for services, evidenced by contracts or other reliable evidence

The initial approval can be up to three years, with subsequent one-year extensions and no maximum limit.

P-1 Individuals or Teams

Foreign athletes or athletic teams with international recognition, having a tendered contract with a major U.S. sports league team or in an individual sport commensurate with international recognition, may come for a "specific athletic competition" upon a showing of at least two of the following:

- participation to a significant extent in a prior season with a major U.S. sports league;
- participation to a significant extent in international competition with a national team;
- participation to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;
- a written statement from a member of the sports media or a recognized expert in the sport that details how the alien or team is internationally recognized;
- a written statement from a member of the sports media or a recognized expert in the sport that details how the alien or team is internationally recognized;
- the individual's or team's rank if the sport has international rankings;
- the individual's or team's receipt of a significant honor or award in the sport.

Each player's eligibility for P-1 status through a foreign teams petition is based on the international reputation of the team. For individual petitions, initial approval may be for up to five years, with extension in increments up to five years, but with a maximum total 10 years without a stay outside the U.S. For team petitions, initial approvals and extensions are given in increments up to one year, with no total maximum.

O-2 and P-2 Support Personnel

Personnel providing essential support to a foreign O or P athlete or team, such as coaches, managers, and trainers, may obtain O-2 or P-2 status through a petition to the immigration service ("USCIS") on Form I-129 with an O/P Supplement. The required showing for eligibility is that the alien has essential, critical skills, substantial experience from working with the principal alien or group, and an integral part of the actual performance(s) that cannot be performed by a U.S. worker. A foreign coach or other worker supporting a U.S. athlete may not use O-2 or P-2 status and thus must qualify for O-1 or some other status in his or her own right.

Consultations

Generally, an O or P petitioner (i.e., employer or agent) must send a copy of the petition and supporting documents to an appropriate labor union (if any) or peer group (again, if any) so that it can comment to USCIS about the merits of the petition, ideally to be submitted with the petition. Complex procedures arise if an applicable union is not cooperative in responding to a request to consult. Extensions do not require new consultations, but any meaningful change to the nature of the event involved will trigger a new consultation requirement.

Petitions and Procedures

A petition to the USCIS is a precondition for obtaining O or P visas or status, just as with the H or L classifications. Unlike H or L, however, an O or P petition may in many instances cover a group of aliens. Procedures for using petition approval to obtain visas or status, particularly when a group is involved, can be complex. By special statute, O-1, P-1, and H-2B professional athletes traded between teams may retain status while beginning to play for the new team even before filing an amended petition and while the amended petition is adjudicated, as long as the new team files a petition within 30 days of the trade.

Family Members

A spouse or unmarried child under age 21 may receive O-3 or P-4 status to accompany or join the principal alien. The O-3 or P-4 dependent is not allowed to work in the U.S. O-3 or P-4 visa or status can never be obtained for any longer than the principal alien already has O-1, O-2, P-1, or P-3 visa or status approved, and the same total maximum as for the principal alien (if any) applies. Other family members or significant others may apply for B visitor status to accompany the principal alien.

Return Transportation

An O or P petitioner and any employer involved must agree to pay the alien's cost of return travel if the work is terminated before the petition approval expires unless the alien quits or is fired for cause. USCIS refuses to get involved in enforcing this requirement appearing in the forms and statute, and in reality the alien almost never wants this anyway.

Other Classifications

Athletes and teams may also try to use other more general classifications, such as H-2B, H-3, J-1 or Q.

Permanent Residence

There is no permanent residence category specifically assigned to athletes. However, extraordinary athletes may qualify as priority workers in the first employment preference for which no backlog or labor certification requirement applies. It is unclear whether athletics qualifies as the arts for second preference exceptional ability eligibility. Otherwise, athletes would use the third preference for skilled workers and fourth preference for unskilled workers under normal rules governing labor certifications and immigrant petitions. A special statute preserves the validity of a labor certification and immigrant petition for a professional athlete who changes from one team (including minor league) to another in the same sport with a regulating membership association of at least six teams and combined revenues exceeding \$10 million per year.

How We Can Help

The Baker Donelson Immigration Group helps owners, managers, teams, individual international athletes, and their support personnel pick and pursue a strategy for getting the international talent on time to the places needed. We group petitions together for athletic groups to achieve more cost- and time-efficient processing where possible, and we coordinate multiple petitions when necessary. We work with unions, players

associations, and experts to solve the consultation requirement quickly. We streamline visa processing and make arrangements for family members. We help get permanent residence for performers and their families.

Important Links

- [Internationally Recognized Alien Athletes, Artists and Entertainers](#)
- [Aliens with Extraordinary Ability \(O-1\) and Accompanying/Assisting Aliens \(O-2\)](#)