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## 5 Tips For Securing A Visa For An Athlete

By Allissa Wickham

Law360, New York (August 4, 2015, 1:48 PM ET) -- Nabbing a visa for an international athlete can be a tricky process, attorneys say, particularly if a team needs a player right away or if an athlete is hoping to compete in a lower-level tour. Here, experts share five tips to make sure your next sports-related visa application is a slam dunk.

### Choose the Right Visa for Your Athlete

When it comes to bringing a player into the U.S, attorneys have two main options: the P-1 visa for internationally recognized athletes, and the O-1 visa for people with "extraordinary ability" in athletics.

Several immigration attorneys told Law360 that they prefer the P-1 visa, as it requires a lower standard of proof, and can be good for five years, as opposed to three years under the O-1 visa. Major sports leagues have the extra advantage of automatically qualifying for P-1 visas, said Colleen Caden, chair of the immigration group at Pryor Cashman LLP.

"Not that there aren't Os out there, but why go through all that time and effort and energy, if it's not necessary to do?" said Caden, who works with basketball and hockey teams.

However, if a high-level athlete is planning to do more than just compete while they're in the U.S. — perhaps by taking part in promotional appearances, or modeling — it might be safer to apply for an O-1 visa, attorneys said.

"Sometimes I do O-1s for some of my best athletes, because in my opinion, the P-1 is more geared for just competing," said P. Christopher Jaensch of the Jaensch Immigration Law Firm. "Whereas the O-1 allows a little more flexibility, in terms of the activities they can do while they're here as an athlete."

An O-1 visa is also often more appropriate for an athlete who plans to coach on the side, according to Keith Pabian of Pabian Law LLC. This is particularly common in soccer, where athletes aren't yet making huge amounts of money, and may be looking to supplement their income, he said.

### Be Ready to Think Outside the Visa Box

As with other areas of immigration law, technical pitfalls can also plague sports visas, requiring attorneys to think of creative solutions for international athlete clients.

For instance, U.S. Citizenship and Immigration Service has begun denying petitions for internationally recognized athletes hoping to play on lower-level tours, since the agency has decided these events don't require players with international reputations, according to Steve Ladik of Fragomen, Del Rey, Bernsen & Loewy LLP. This appears to be a particular problem in golf, Caden added.

"If you're not coming in to play on a PGA tour — you're doing one of their lower-level tours — they don't think the tours meet the requirements for the P visa," he said.

As a temporary solution, Ladik suggested having young athletes who aren't yet on a major tour leave the U.S., and attempt to re-enter with a B-1 visitor visa. However, he cautioned that players will have a hard time showing that they're just a visitor if they want to play a whole season, so this is just a temporary fix.

"We give that as a small, sort of strategic way of getting these young guys in at least for a short time, until they can qualify on one of these bigger tours," Ladik said.

Attorneys may also need to turn to the H-2B visa for athletes if the league they'll be playing in is either brand-new and doesn't yet have \$10 million in revenue, or if the league is a mixture of professional and amateur teams, according to Pabian.

"Basically, if they don't meet that international reputation prong of the regular P-1 or the COMPETE Act, then you're in the H-2B world," Pabian said, referring to a 2006 law that expanded the P-1 category.

If your client is engaged in an artistic sport, you also may have the option of applying for either an arts or athletics visa, according to Jaensch, who once secured a P-1 visa for a ballroom dancer.

"Sometimes, [the activity] can be classified as either a sport or an art," Jaensch said. "And, so it gives you the option of a P or an O-1A, which is for athletes, or O-1B, which is for artists."

### **Rock the Documentation for Your Petition**

Technically speaking, P-1 and O-1 visa applications only require a limited amount of documentation. For P-1 visas, attorneys can choose two of seven possible supporting documents, like evidence of having played for a U.S. college. As for O-1 applications, they require three of eight possible pieces of proof, such as receiving a nationally recognized prize.

But while USCIS only requires a few pieces of supporting documents, attorneys recommend submitting as much documentation as possible, in order to strengthen a petition.

"I always say give everything possible you can," Ladik said. "Show seven out of seven, if you can."

Additional documentation is particularly important because USCIS has become much tougher on written statements from officials or experts, which comprise two of the possible forms of P-1 visa documentation, said Laurie Volk, an immigration attorney whose clients participate in horse sports.

"Even if you have 20 letters — letters and expert opinions are just not enough anymore," said Volk, who argued that the visa application process is "significantly tougher" for individual athletes than those who play on teams.

Caden added that including a consultation letter from the appropriate sports union is also key, which typically states a player is at the top of his field, and that the organization doesn't object to the hiring of a foreign worker.

"You need the union letters," Caden said. "Because when we have been in rush cases — where trades are going on and what not — and we haven't been able to secure the consultation letters, they've actually come back to us and said they won't approve the cases without the letters."

### **Pump the Brakes, Especially with Students and O-1s**

Many times in sports immigration cases, athletes are needed incredibly quickly, especially after a trade occurs, or if a team needs a head coach as soon as possible. However, when it comes to O visas, it's imperative that the process is slowed down in order to collect the right evidence, said Pabian.

"The way that you screw up with Os, in my opinion, is you rush it, and you end up getting a bad result because you're rushing instead of just taking an extra day or two to really pull together the necessary documents," he said.

Not jumping the gun on switching foreign student athletes from F-1 visa status to P-1 status is also a recurring issue, according to Caden. Major sports leagues may want to switch young athletes to a P visa before the school year is over, but many schools won't allow the students to graduate unless they're in F-1 status, she said.

Surmounting this hurdle usually requires completing degree requirements in F status, before being allowed to change to P status for graduation, according to Caden.

"I find that the teams don't want to jeopardize these kids getting their degrees, particularly if they're coming out of the Stanfords of the world, so we'll adjust the timing of the filing of the applications, until they finish their degree requirements," she said.

Of course, sometimes fast visa processing is essential, particularly in a trade situation in which a team is suddenly down a player. In that case, Ladik recommends either working with the sports league and a particular immigration office to figure out an expedited policy, or using contacts you may have at various immigration offices to get speedier resolution for the case.

### **Be Very Familiar with Your Sport and Athlete**

Along with supporting documents, submitting a thorough biography of a player is also a good move, according to Ladik, who typically includes a detailed bio of the athlete that lists her accomplishments, awards and national team play.

However, to create the most compelling case for an athlete, it also helps to have a solid understanding of the sport at issue. By knowing the different facets of a sport, an attorney can show how a particular athlete truly excels at one specific aspect of it, thereby narrowing the field and raising a client's position.

For instance, Ladik suggests not just listing an athlete as a “tennis player,” but as a doubles tennis player, which has different rankings and rules.

“You have people that you and I have never heard of, who are pretty highly ranked doubles tennis players, and would qualify as doubles tennis players of extraordinary ability,” Ladik said.

Pabian added that researching the market for a particular team or league is essential, as the government will likely want to know about the different levels of a particular sport — particularly if a lower-level league is involved.

“With petitions, it's really more just telling the story, and making sure that the government understands exactly what the sport is, first of all,” Pabian said. “And then understanding that they do qualify.”

--Editing by John Quinn.

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