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## “LET ME IN, COACH”: TEMPORARY WORK VISAS NOW AVAILABLE FOR AMATEUR ATHLETES AND COACHES

By Andrew J. Stevenson\* and Bernard P. Wolfsdorf\*\*

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In the summer of 1993, Craig Muni—a veteran NHL defenseman—filed for an employment-based immigrant visa to the United States as an individual of “extraordinary ability” in athletics.<sup>1</sup> To prove he was

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“extraordinary,” Muni’s lawyers submitted evidence that he had over 10 years of experience in the NHL, had contributed to three Stanley Cup victories playing for the Edmonton Oilers, had one of the best plus-minus ratios in the league, had a reputation among other players, sportswriters and fans as an excellent defenseman, and more. Yet Muni’s visa petition was denied, the denial was affirmed on appeal, and he was left to scratch his head in disbelief in the locker room. How could a sports star of his caliber, a key player on a world championship team and the subject of articles in major sports magazines, *not* receive a visa reserved for top athletes in the U.S.? If he didn’t qualify, who *would*?

Ultimately, a federal judge in the Northern District of Illinois reversed the denial of Muni’s visa, scolding the INS’ “grudging interpretation” that “apparently...only all-stars or the League’s highest-paid players have extraordinary ability.”<sup>2</sup> Yet Muni’s case reflected a stingy attitude in immigration policy toward

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<sup>1</sup> See INA § 203(b)(1)(A); 8 C.F.R. § 204.5(h).

<sup>2</sup> *Muni v. INS*, 891 F.Supp. 440 (N.D. Ill. 1995).

foreign athletes discouraging rather than encouraging their participation in U.S. sports leagues. Similar to the strict definitions in immigrant visa applications for athletes, U.S. immigration authorities restricted the non-immigrant P-1 and O-1 visas to “internationally recognized”<sup>3</sup> or “extraordinary ability”<sup>4</sup> athletes. This left no hope of amateur or minor league athletes. Likewise, very few coaches were able to qualify under this rigorous standard.

Fortunately, on December 9, 2006, Congress passed the COMPETE Act,<sup>5</sup> allowing certain amateur and semi-professional athletes and coaches to qualify for temporary work visas. As a result, international amateur and minor league athletes and coaches will be eligible to participate and compete in sports in the U.S. While applicants will still need to be sponsored by the team that employs them or by the league or association in which they compete, they are no longer required to be regionally, nationally or internationally “recognized” for their ability.

The new provisions represent a giant leap forward and overcome numerous hurdles that have presented considerable bars to promising amateur and semi-professional athletes wishing to perform or compete in this sports-loving nation. Congress has taken a bold step forward in expanding the categories that allow athletes and coaches to compete with American sportspeople and has effectively leveled the playing field to provide opportunities for qualified athletes sponsored by U.S. teams or leagues.

### From “International Recognition” to League / Association Requirements

Previously, international recognition was the only way for athletes, teams and support staff to receive P-1 status. Under the new COMPETE Act there are four qualifying categories, each of which is sufficient to justify granting P-1 status. Only one category retains the “international recognition” standard. Two others allow athletes or coaches to qualify based on criteria related to the league or association with which they are affiliated. The last category makes P-1 visa status available to professional or amateur athletes “performing in... theatrical ice skating production[s].”<sup>6</sup>

<sup>3</sup> See INA § 214(c)(4)(A); 8 C.F.R. § 214.2(p)(4)(ii)(B).

<sup>4</sup> See INA § 214(c)(4)(A); 8 C.F.R. § 214.2(o)(3)(iii).

<sup>5</sup> Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act, S. 3821, 109<sup>th</sup> Cong. (2006). President Bush signed the bill into law on December 22, 2006. See Pub. L. No. 109-463.

<sup>6</sup> S. 3821 § 2(a).

The most important new visa opportunities for international amateur athletes and coaches exist in the new “league or association” categories. These categories exempt athletes and coaches from proving *any* significant benchmark of achievement or recognition and remove these difficult hurdles for up-and-coming sports professionals. Athletes and coaches could instead merely submit a contract of employment with a qualifying team or franchise to qualify. This takes the burden off the athlete and coach and makes the application process more straightforward.

### Eligibility Criteria for Amateur Athletes and Coaches

#### 1. *Athletes employed by teams in major professional sports associations or minor league affiliates*

The first new P-1 category tracks the existing “professional athlete” standard. Athletes qualify as “professional” if they are employed by “a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage...”<sup>7</sup> In addition, “any minor league team that is affiliated with such an association”<sup>8</sup> may qualify.

This provision makes P-1 visas available to athletes from minor league baseball and junior league hockey teams affiliated with a Major League Baseball or National Hockey League team, as well as many soccer players. It also appears to qualify athletes employed by clubs or teams worldwide in other sports, provided the league or association in which their team is a member or with which it is affiliated meets the requirements, including having at least 6 professional teams, total combined revenue greater than \$10 million, and a governance and regulation structure for sports competition.

This provision appears to open doors for international athletes employed by teams in large commercial sports leagues worldwide.

#### 2. *Athletes or coaches employed by a team or franchise located in the U.S. that is a member of a qualifying foreign amateur league or association*

The second new P-1 category allows athletes or coaches to be employed by U.S. amateur teams. There is no requirement for the amateur U.S. team to be affiliated

<sup>7</sup> INA § 204(i)(2).

<sup>8</sup> *Id.*

with any major professional sports team. However, the petitioning U.S. teams must be part of foreign leagues and compete at a “high” amateur level.

To qualify, the team or franchise for which the sportsperson will perform as an athlete or coach must be “located in the United States and [be] a member of a foreign league or association of 15 or more amateur sports teams.”<sup>9</sup> Several qualifications apply to the foreign league or association:

- A) It must represent “the highest level of amateur performance of that sport in the relevant foreign country;”<sup>10</sup>
- B) “[P]articipation in [it must] render[] players ineligible...to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the [NCAA];”<sup>11</sup> and
- C) “[A] significant number of the individuals who play in [it] are drafted by a major sports league or a minor league affiliate of such a sports league...”<sup>12</sup>

It is difficult to determine exactly which foreign leagues and associations qualify according to these standards without careful, case-specific review. It appears that sportspeople will need to meet a certain profile to qualify under this category. Such athletes or coaches will need a job offer from a team in the U.S. that is affiliated with a foreign network of sports competition. The sport in question must have sufficient exposure outside the U.S. for it to be in a foreign league or association of at least 15 teams, and must have sufficient exposure within the U.S. to be an NCAA-regulated sport. Finally, the foreign league with which the U.S. team or franchise is affiliated must be a source of drafting players into professional or amateur clubs of a “major sports league.”

### Other Considerations: Team Applications and Coach Applications as “Essential Support” Workers

There are several potentially viable strategies that may be applicable to facilitate the admission of amateur athletes and coaches. Since P-1 petitions need not be filed individually on behalf of each amateur athlete or coach and the focus is now on team qualifications, these applications could likely be filed in groups, based on team affiliation. Also, while coaches are only specifically

mentioned in one of the new P-1 categories, regulations will allow for their admission under all the new categories when accompanying qualifying athletes.

The COMPETE Act authorizes multiple amateur athletes or coaches to apply for status as part of one single P-1 petition.<sup>13</sup> Accordingly, many individuals who are employed by a team that meets new P-1 criteria should be able to apply simultaneously. Each group petition could simply submit evidence that their team fits into either the professional sports team category, or is part of a U.S. team affiliated with a foreign league, and each individual in the group has an employment contract with the team. P-1 status for teams can only be approved in one-year increments, however, whereas individual athletes (and most likely coaches) can receive valid status for up to five years.<sup>14</sup>

It appears that coaches could be admitted under either of the new amateur sports categories. The admission of amateur coaches to work for U.S. teams with foreign affiliations appears clear, as coaches are expressly mentioned as beneficiaries. It is not clear, however, whether coaches will qualify under the professional sports team category. Existing regulations allow “essential support aliens” to receive P-1 status when applying together with qualifying athletes.<sup>15</sup> Coaches are likely to qualify under the “essential support” criteria of “perform[ing] support services...which are essential to the successful performance of services by the P-1 [athlete],”<sup>16</sup> and could thus be admitted in this capacity.

The new law will likely not change filing procedures for these petitions.<sup>17</sup> Regulations require a U.S. sponsor—either the American employer or sponsoring organization, or a U.S. manager or agent—to file petitions on behalf of P-1 applicants.<sup>18</sup> Foreign employers may not directly petition for an applicant, and must use a U.S. agent.<sup>19</sup> Since the new categories grant status to international athletes and coaches with no team

<sup>9</sup> S. 3821 § 2(a).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See* S. 3821 § 2(c).

<sup>14</sup> *See* 8 C.F.R. § 214.2(p)(8)(iii)(A).

<sup>15</sup> *See id.* at §§ 214.2(p)(3) & (4)(iv).

<sup>16</sup> *Id.* at § 214.2(p)(3).

<sup>17</sup> On December 28, 2006, USCIS issued a policy memo recognizing the passage of the COMPETE Act and stating that it would issue revised regulations to facilitate implementation of new P-1 categories. *See* Michael Aytes, USCIS Memorandum, “Creating Opportunities for Minor League Professional [sic], Entertainers, and Teams through Legal Entry Act of 2006 (COMPETE Act of 2006)” – Admission as P-1 Nonimmigrant (No. HQ 70/6.2.19).

<sup>18</sup> *See id.* at § 214.2(p)(2)(i).

<sup>19</sup> *See id.*

affiliation in the U.S., the necessity of working through a U.S. manager or agent is important. Advisory opinions from sports labor organizations confirming that the sports person meets the requirements are also mandatory.<sup>20</sup>

*To discuss any of these options, we invite you to contact Andrew Stevenson, Bernard Wolfsdorf, Stephen Dewar, Avi Friedman, Rita Kushner-Sostrin, Tien-Li Loke Walsh, Frieda Wong Dittmar Allison-Claire Acker, Lisa Yu, Naveen Rahman Bhora, Clifford Rosenthal, Jaime Wang, Alexander Dgebuadze, Meghan Vivo or Mary Kearney at (310) 570-4088 or 1-800-VISA LAW.*

*We have a highly qualified, experienced professional staff of over 50 employees. Each is skilled and knowledgeable in their respective areas. We look forward to the privilege of serving you or email to [astevenson@wolfsdorf.com](mailto:astevenson@wolfsdorf.com) or [visalaw@wolfsdorf.com](mailto:visalaw@wolfsdorf.com).*

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<sup>20</sup> See *id.* at § 214.2(p)(7).

