

FRAGOMEN

Sports Immigration Law

Tulane International Baseball
Arbitration Competition
(TIBAC)

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WITH YOU TODAY



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What Is Sports Immigration Law?



SPORTS + IMMIGRATION

12,000

international NCAA Division I student-athletes in the US (7% of all sports)
(AY2019-2020)

275 players

represented **21 different non-US countries and territories** on Opening Day 2022

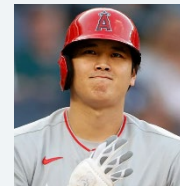
- ▶ Top 3 countries: Dominican Republic (99), Venezuela (67), Cuba (230)

28.2%

of all rostered Major League Baseball (MLB) players are non-US citizens or legal permanent residents

SHOHEI OHTANI

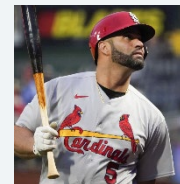
- ▶ Team: Los Angeles Angels
- ▶ Born in Japan
- ▶ Accomplishments: 2x All-Star, 2021 AL MVP



<https://www.baseball-reference.com/players/o/ohtansh01.shtml>

Albert Pujols

- ▶ Currently Retired
- ▶ Born in the Dominican Republic
- ▶ Accomplishments: 11x All-Star, 3x NL MVP, 703 Career Home runs



<https://www.baseball-reference.com/players/p/pujola01.shtml>

Juan Soto

- ▶ Team: San Diego Padres
- ▶ Born in the Dominican Republic
- ▶ Accomplishments: 2x All-Star, 2020 NL Batting Champion



<https://www.baseball-reference.com/players/s/sotoju01.shtml>



Fragomen's Sports Immigration Law Program

FRAGOMEN



Largest and leading
global immigration firm



Strongest global
immigration network
across 170+ countries



Market-leader in
advisory & consulting



4,800+ professionals
including 675+
immigration lawyers



Pioneer **cutting-edge**
immigration technology
solutions



Deep legal expertise
in **sports immigration**
and global mobility



More data than
any other firm



More than **6,500**
corporate clients



LEADER IN SPORTS IMMIGRATION LAW

- ▶ Dedicated **Sports Industry Practice Group** at Fragomen
- ▶ **US and global** sports immigration expertise
- ▶ Counsel **professional sports leagues, sports media, and other top athletics organizations**
- ▶ **Sponsor** for all of Tulane's Spring 2023 Sports Law Competitions & Symposiums

***U.S News – Best Lawyers
“Law Firm of the Year”
in Immigration Law***

2012-2015, 2017-2018, 2020, 2022

Best Lawyers

Individual lawyers recognized in America, Australia, Costa Rica, Germany and the UK in the most recent editions – including 40+ lawyers in the U.S. in 2022

Law360

Top law firm (of its size) for female and minority attorneys and partners, 2017-2021

National Law Journal

Among the top two law firms on “Women in Law Scorecard,” 2012-2021

The American Lawyer

Among the top five law firms for ethnic diversity, 2012-2021

City Bar Justice Center

Honors the firm for its leadership and dedication to pro bono and public service, 2018



US EMPLOYMENT-BASED IMMIGRATION OVERVIEW



US EMPLOYMENT-BASED IMMIGRATION LAW **OVERVIEW**

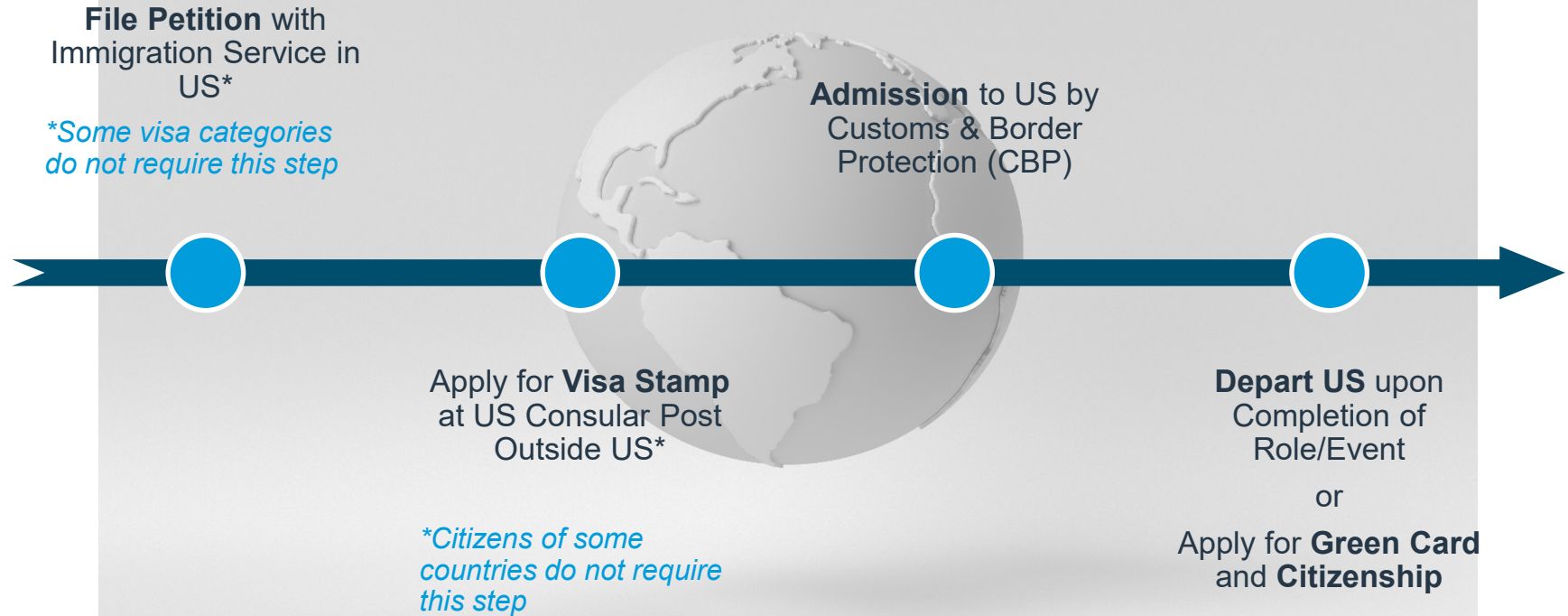
- ▶ **Work-authorized visa** required for any foreign national to work for compensation while physically present in the United States

- ▶ Non-Immigrant vs. Immigrant
 - **Non-Immigrant** = Temporary Worker (O-1A, P-1A, H-2B, B-1)
 - **Immigrant** = Lawful Permanent Resident/Green Card Holder

- ▶ Immigration Law is **Complex**
 - Constantly changing
 - Inconsistencies in processing times and approvals for similar cases
 - Involves laws that often do not account for modern society



TYPICAL SPORTS IMMIGRATION LAW PROCESS





VISAS FOR ATHLETES & ATHLETIC PERSONNEL

SPORTS IMMIGRATION VISAS

KEY VISAS FOR BASEBALL	
F-1	Student-athletes (EXCEPT those receiving compensation under NIL)
O-1A/O-2	<p>O-1A: Individuals of extraordinary ability in athletics, including student-athletes, professional athletes, coaches, and sports industry experts</p> <p>O-2: Athletic personnel who will accompany O-1 athlete in a specific event or performance</p>
P-1A	Individual athlete or part of team that are internationally recognized
H-2B	Individual athletes (alternative to O-1A and P-1A)
B-1, including Visa Waiver Program (VWP)	Individual athletes or team members who are part of a foreign-based team



F-1 STUDENT-ATHELETES

- ▶ **Common visa for international students** attending US universities
- ▶ Visa **sponsored by academic institution**
- ▶ Employment authorized in certain instances but **employment must be related to degree program**
- ▶ **International student-athletes compensated under NIL are not eligible for F-1 visas**



NIL: NAME, IMAGE & LIKENESS POLICY

Fundamental Change to Student-Athlete Immigration

- ▶ **All NCAA Division I, II & III student-athletes may be compensated for their Name, Image, and Likeness (NIL)** without losing their eligibility to compete as of July 1, 2021
- ▶ **25 states** have their own NIL policies (including Louisiana)
- ▶ Compensation under NIL **requires visa that allows for work authorization**
- ▶ US immigration agencies are “aware and actively monitoring” laws related to NIL for student-athletes

US IMMIGRATION IMPACT

Student-athletes who are compensated for their name, image and likeness pursuant NIL are **NOT eligible for F-1 student visas** and must secure a work authorized visa independent of their degree program (e.g. O-1A visa)



O-1A INDIVIDUALS OF EXTRAORDINARY ABILITY IN ATHLETICS

- ▶ Must be at **top of particular speciality in sports industry**
- ▶ Applies to a **variety of individuals**
 - *Examples: Student-Athletes (NIL), Coaches, Trainer, Commentators, Columnists, Other Sports Industry Experts*
- ▶ O-1A sponsor may be **employer or agent**
 - Beneficiary may hold **multiple O-1As** from different sponsors
 - Agent O-1A petition may outline **multiple employers, events, activities, and sources of compensation**
- ▶ ****First O-1A for a NIL student-athlete approved in 2022****

O-1A VISA ELIGIBILITY CRITERIA (ATHLETICS)

☐ Major, Internationally Recognized Award

Examples: Major League MVP or Olympic Medal

OR at least three (3) of the following:

☐ Lesser Prizes or Awards

National or international awards. Show criteria for eligibility. Individual Awards > Group Awards. *Examples: CY Young Award, Joe Bauman Trophy*

☐ Membership in Athletic Associations

Outstanding achievement required for membership. Beneficiary's achievements are basis for membership. *Example: Cooperstown Baseball Hall of Fame*

☐ Published Material

About the beneficiary and their work. *Examples: Sports Cards, News Articles*

☐ Original Contributions

Must be a major significance to athletics as documented by expert letters, implantation of beneficiary's work, public commentary, or similar

☐ Authorship of Articles

Must appear in major (not local) media. *Examples: ESPN, Sports Illustrated*

☐ High Salary

High relative to athletes in the sport per pay/tax statements, salary surveys, etc.

☐ Panel Participant or Judge

Examples: Conference submissions and grants, sports panel discussions

☐ Critical or Essential Employment

Past or present. *Examples: Captain or Coach of major league/national team*



O-2 ACCOMPANYING ATHLETIC PERSONNEL

- ▶ Must be **accompanying** an O-1 athlete
- ▶ Must be an **integral (critical and essential)** part of the athlete's event(s)
- ▶ Some athletic personnel **may qualify for O-1 status**
- ▶ *Examples: Coaches, Trainers, Scouts, Broadcasters, Referees, Interpreters*



P-1A ATHLETES

- ▶ Permits US entry to participate in **specific sporting event**

- ▶ Who is eligible?
 - **Individual athlete** if internationally recognized
 - **Member of team** if internationally recognized
 - **Professional athlete**
 - **Athlete (including amateur) or coach** if member of a foreign league or association

- ▶ P-1A sponsor may be **organization or agent**
 - Agent P-1A petition may outline **multiple employers, events, activities, and sources of compensation**



P-1A VISA ELIGIBILITY CRITERIA

Individual Athlete

- ✓ Internationally recognized
- ✓ High level of achievement in the sport
- ✓ Demonstrated degree of skill and recognition substantially above the ordinary
- ✓ High level of achievement in at least 2+ countries
- ✓ U.S. competition must have distinguished, internationally recognized reputation

Athletic Team

- ✓ Participation in U.S. with internationally recognized team in the sport
- ✓ U.S. competition must have distinguished, internationally recognized reputation

Professional Athlete

- ✓ To be employed as an athlete in the US by a team that is a member of an association of 6+ professional sports teams whose total combined revenue is \$10+ million/year; **OR**
- ✓ Any minor league team that is affiliated with such an association

Athlete (including Amateur) or Coach

- ✓ Participation in with team/franchise that is member of a foreign league or association
- ✓ Foreign league/association must have: 15+ amateur sports teams, make players ineligible under NCAA rules to earn scholarship or participate in college sports, highest level of amateur performance for sport in foreign country, significant # of players are drafted my major or minor leagues



P-1S ACCOMPANYING ATHLETIC PERSONNEL

- ▶ Must be **accompanying** a P-1A athlete or coach
- ▶ Must be an **integral (critical and essential)** part of the athlete's or coach's event(s)
- ▶ *Examples: Coaches, Trainers, Scouts, Broadcasters, Referees, Interpreters*



H-2B ATHLETES

- ▶ One-time, **seasonal**, peak load or intermittent need
- ▶ Popular with **minor league athletes**
- ▶ Requires **test of US labor market** to confirm visa sponsor cannot find a suitable US worker for the role
- ▶ Only available to **athletes from certain countries**, including top countries for baseball recruits
 - *Examples: Dominican Republic, Canada, Colombia, Japan*
- ▶ Only **66,000 non-agricultural H-2B visas** available per year



B-1 ATHLETES

- ▶ Permits US entry to participate in **specific sporting event**
- ▶ Activities while in US must **NOT amount to productive work or employment or compensation** (prize \$ = ok)
- ▶ Who is eligible?
 - **Individual professional athletes** of US team
 - **Athletes or team members** of a foreign-based team (income/salaries earned in foreign country, team is part of an international league, or the sporting events are international in nature)
 - **Sports Industry Professionals** (business meetings, negotiate contracts, conferences)
- ▶ Short period of stay in US
 - **B-1 Visa Stamp**: Up to 6 months
 - **ESTA (Visa Waiver Program)**: 90 Days



SPORT INDUSTRY PROFESSIONALS

- ▶ Additional visas available for other sports industry professionals, including corporate staff
- ▶ Eligible for some of the same visa categories as athletes (**O-1A**, **B-1**)
- ▶ Other Common Visa Types
 - **H-1B**, Specialty Occupation Professionals
 - **E-3**, Specialty Occupation Professionals (Australia)
 - **TN**, Professionals (Canada or Mexico)
 - **L-1A**, Intracompany Transferee (Manager or Executive)
 - **L-1B**, Intracompany Transferee (Specialized Knowledge)
 - **O-1B**, Individual of Extraordinary Ability (Film/TV/Web)

SPORTS IMMIGRATION VISA SUMMARY

	F-1	O-1A	O-2	P-1A	P-1S	H-2B	B-1
Student-Athletes (not NIL)	✓						
Student-Athletes (NIL)		✓					
Individual Athletes (High Acclaim)		✓		✓		✓	
Individual Athletes (Less Acclaim)		✓		✓		✓	
Members of Sports Team				✓			
Athletic Support Personnel			✓		✓		
Sports industry Experts		✓					✓
May be sponsored by agent		✓	via O-1A	✓	via P-1A		
Available longer than 6 months	✓	✓	✓	✓	✓	✓	



“GREEN CARDS” FOR ATHLETES

OVERVIEW OF GREEN CARD PROCESS

- ▶ A foreign national who **wishes to live in the US permanently** may apply for an immigrant visa to become a US lawful permanent resident (“green card holder”)
- ▶ Only **140,000 employment-based green cards** available each year
- ▶ **EB-1A, Individual of Extraordinary Ability** (similar to O-1A) sponsored by employer or self is the typical green card route for athletes
- ▶ **Pathway to US citizenship**



QUESTIONS & ANSWERS



APPENDIX

F-1 STUDENTS

OVERVIEW

F-1	STUDENTS
Sponsorship	Beneficiary's academic institution
Compensation	US or foreign payroll, but <u>not</u> NIL
Intermittent Presence Permitted?	No
Dependents	F-2; no work authorization
Termination of Employment	Notify academic institution
Period of Admission	Duration of Status (D/S)
Maximum Period of Stay	None
Processing	USCIS Service Center in US (I-539) or consular post abroad (visa stamp)

O-1A INDIVIDUALS OF EXTRAORDINARY ABILITY

OVERVIEW

O-1A	Individuals of Extraordinary Ability
Annual Cap	No
Eligibility	<p>Beneficiary has extraordinary ability in the sciences, education, business, or athletics and position in the US is in the area of extraordinary ability</p> <p>One-time achievement (e.g. Olympic Medal or MVP), <u>or at least three (3) of the following:</u></p> <ul style="list-style-type: none"> ▶ Receipt of lesser nationally and internationally recognized prizes or awards ▶ Membership in associations in the field ▶ Published materials about the individual ▶ Original contributions in the field ▶ Authorship of scholarly articles in the field ▶ Commanding a high salary ▶ Participation as a judge of the work of others in the field ▶ Serving in a critical or essential capacity for organizations with a distinguished reputation
Sponsorship	Beneficiary's employer or agent of the beneficiary or employer
Compensation	US or foreign payroll

O-1A INDIVIDUALS OF EXTRAORDINARY ABILITY

OVERVIEW

O-1A	Individuals of Extraordinary Ability
Intermittent Presence Permitted?	Yes
Support Personnel	O-2
Dependents	O-3; no work authorization
Termination of Employment	No action required
Period of Admission	3 years initial, 1-year extensions (3-year increments possible)
Maximum Period of Stay	None
Processing	USCIS Service Center in US (I-129) and consular post abroad (visa stamp) Premium (expedited) processing available

P-1A ATHLETES OR COACHES

OVERVIEW

P-1A	Athletes or Coaches
Annual Cap	No
Eligibility	<ol style="list-style-type: none"> 1. Individual athlete if internationally recognized 2. Member of team if internationally recognized 3. Professional athlete 4. Athlete (including amateur) or coach if member of a foreign league or association
Sponsorship	Beneficiary's employer or agent of the beneficiary or employer
Compensation	US or foreign payroll (depending on type of P-1A)
Intermittent Presence Permitted?	Yes
Support Personnel	P-1S
Dependents	P-4; no work authorization

P-1A ATHLETES OR COACHES

OVERVIEW

P-1A	Athletes or Coaches
Termination of Employment	No action required
Period of Admission	Time needed to complete the event Individual Athlete: 5 years (initially) Member of Team: 1-year with 1-year extensions
Maximum Period of Stay	Individual Athlete: 10 years Member of Team: N/A
Processing	USCIS Service Center in US (I-129) and consular post abroad (visa stamp) Premium (expedited) processing available

H-2B NON-AGRICULTURAL WORKERS

OVERVIEW

H-2B	Non-Agricultural Workers (ATHLETE)
Annual Cap	66,000 (33,000 for start date 1/1 – 3/31 // 33,000 for start date 4/1-9/30)
Eligibility	Only national of certain countries . Requires approved Labor Certification, including labor market test
Sponsorship	US company
Compensation	US payroll
Intermittent Presence Permitted?	Yes
Dependents	H-4; no work authorization
Termination of Employment	Notification to USCIS for no shows, abscondence, termination, or early completion
Period of Admission	As authorized on Labor Certification. Extensions in 1-year increments.
Maximum Period of Stay	3 years
Processing	Department of Labor (Labor Certification), USCIS Service Center in US (I-129), and consular post abroad (visa stamp)

B-1 VISITORS

OVERVIEW

B-1	Visitors
Eligibility	<p>Business visitors entering the US for non-productive work (e.g. athletic event, business meetings, solicit sales, negotiate contracts, independent research, conferences) that is for the benefit of a foreign entity</p> <p>-----</p> <p>Visa Exempt: Canada Visa Waiver Program/ESTA: See list of VWP countries and ESTA Requirements Visa Stamp: All other countries or otherwise not eligible for VWP</p>
Compensation	Foreign payroll
Period of Admission	<p>Visa Exempt & Visa Waiver/ESTA: 90 Days Visa Stamp: 6 months to 1 year</p>
Maximum Period of Stay	None
Processing	Service Center (I-539, Change of Status application) or consular post (visa stamp)

EB-1A INDIVIDUALS OF EXTRAORDINARY ABILITY

Overview

EB-1A	Individuals of Extraordinary Ability
Similar Nonimmigrant Category	O-1A and O-1B
Eligibility	<p>Beneficiary has extraordinary ability in the sciences, education, business, or athletics and position in the US is in the area of extraordinary ability</p> <p>One-time achievement (e.g. Olympic Medal or MVP), <u>or at least three (3) of the following:</u></p> <ul style="list-style-type: none">▶ Receipt of lesser prizes or awards▶ Membership in associations in the field▶ Published materials about the individual▶ Original contributions in the field▶ Authorship of scholarly articles in the field▶ Commanding a high salary▶ Participation as a judge of the work of others in the▶ Serving in a critical or essential capacity for organizations with a distinguished reputation
Sponsorship	<ul style="list-style-type: none">▶ US company or self-petition