

# Special Visas Allow Foreign-Born Athletes to Compete in U.S.

BY JORDAN BUTLER, ESQ.

**Nikola Jokic. Joel Embiid. Giannis Antetokounmpo. What is the common thread between these star players? Sure, they are the recipients of the last six NBA Most Valuable Player awards, but invariably these elite superstars are also holders of P-1 or O-1 “athlete visas,” which enable leading foreign athletes to work in the U.S. on a temporary basis. Indeed, top international athletes in the P-1 and O-1 visa categories seek to enter the U.S. in order to compete in major professional sports leagues and other high-profile sporting events, such as UFC fights, championship boxing matches, marathons, extreme sports, major golf and tennis events, the Copa America soccer tournament, and more.**

## International Recognition: The P-1 Athlete Visa

The P-1A visa is strictly reserved for active (as opposed to retired) athletes who meet the “international recognition” standard, defined as “having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading or well-known in more than one country.” See 8 CFR 214.2(p)(1)(ii)(A)(1).

Whether the athlete is a member of a team in one of the major U.S. sports leagues, including the NBA, MLB, NHL, or MLS; an individual athlete competing on a professional tour, such as a pro tennis player or golfer; or a UFC fighter featured

in a championship fight, they must be coming to the U.S. to participate in an athletic competition that has a distinguished reputation and that requires the participation of an athlete or athletic team with an international reputation.

In addition, the athlete must establish, by sufficient supporting evidence, at least two of the following criteria in order to meet the international recognition threshold:

1. Evidence of significant participation in a prior season with a major U.S. sports league;
2. Evidence of participation in international competition with a national team (Paris Olympics, hello!);
3. Evidence of significant participation in a prior season for a U.S. college or university in intercollegiate competition;
4. A written statement from an official of the governing body of the sport detailing the person's or team's international recognition;
5. A written statement from a recognized expert or member of the sports media detailing the person's or team's international recognition;
6. Evidence that the person or team is ranked if the sport has international rankings; or
7. Evidence the person has received a significant honor or award in the sport.

See 8 CFR 214.2(p)(4)(iii)(B).

In addition, in support of their candidacy, a P-1 applicant must obtain an advisory opinion from a pertinent labor organization and establish the terms of their employment, either through a written contract or a summary of the terms of the agreement.

If approved, the P-1 visa provides overseas athletes with coveted career flexibility, enabling them to earn compensation, train and compete in their sport, and generally remain in and travel to and from the U.S. at their leisure during the visa period, which may be granted for up to five years at a

time, provided they maintain a foreign residence that they intend to return to upon expiration of their visa.

P-1 beneficiaries are also able to petition on behalf of coaches, trainers, managers, and other essential support personnel deemed integral to the athlete's performance. Additionally, spouses and children may accompany the P-1 visa holder to the U.S. and engage in full-time study.

### Extraordinary Ability: The O-1 "Talent" Visa

Colloquially referred to as the "talent visa," the O-1 visa is reserved for individuals who possess extraordinary ability or achievement in their field, which, in addition to athletics, also extends to the arts, sciences, business, and education.

Extraordinary ability means a level of expertise indicating that the person is one of the small percentage who have risen to the very top of their field of endeavor, and who seeks to enter the U.S. to continue working in the area of extraordinary ability. See 8 CFR 214.2(o)(3)(ii).

While reaching international recognition status in qualifying for a P-1 visa is impressive in its own right, O-1 visa holders are considered a different level of elite. For example, a tennis player or golfer ranked inside the top 100 in the world would almost certainly be a strong candidate for a P-1 visa, but may not meet the more exacting extraordinary ability standard, which requires supporting documentation of at least three of the following forms of evidence:

- Receipt of internationally recognized prizes or awards;
- Membership in associations that require outstanding achievements of their members;
- Published material in professional or major trade publications or major media;
- Participation on a panel, or individually, as a judge of the work of others in the field;
- Original contributions of major significance in the field;
- Authorship of scholarly articles in professional journals or other major media;
- Employment in a critical or essential capacity for distinguished organizations; or
- High salary.

The Las Vegas 51s take on the Reno Aces during a AAA baseball game in Reno.

PHOTO CREDIT: SCOTT WASSERMAN



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Further, an athlete must pass a "totality determination" by the reviewing officer, who proceeds to evaluate the totality of the evidence in the record to determine whether it is sufficient to meet the extraordinary ability standard.

While robust and challenging to obtain, one can also comprehend how superstar soccer player Lionel Messi was reportedly approved for his O-1 visa in a record time 24 hours after he shocked the soccer or "futbol" universe by agreeing to play for Inter Miami CF in the MLS. Highly regarded as one of the best soccer players of his generation,

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The New Jersey Devils and the Vegas Golden Knights get ready for a faceoff.

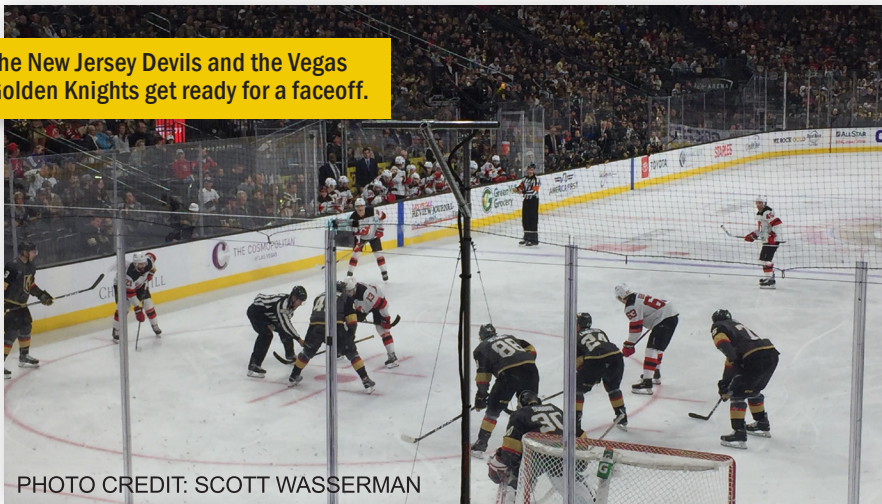


PHOTO CREDIT: SCOTT WASSERMAN

Messi’s accolades include winning multiple Ballon d’Or Awards; serving as captain of esteemed international soccer clubs such as FC Barcelona; earning the FIFA World Cup Golden Ball Award; and of course having a lucrative contract with Miami.

To be sure, Messi’s incredible career makes him a “unicorn” O-1 case; however, surpassing the O-1 threshold is hardly a slam dunk for the mere mortal professional athlete. As such, practitioners in the athlete visa space are often faced with the duty of candor to inform their prospective athlete client(s), who invariably hold a more favorable view of their career accomplishments, that applying for an O-1 visa may not be the best option at that time. Fortunately, the fluid nature of a talented athlete’s career means that a reassessment in the near future may be in order. For example, a plethora of professional tennis players have toiled on tour for years, only to suddenly break through in a major way by winning a Grand Slam or breaking into the Top 10. The salient point being that the client may be one stroke of athletic genius away from opening the door to O-1 eligibility.

In addition to the overall prestige of holding an O-1 visa, which can be granted in renewable periods of up to three years, beneficiaries in this esteemed classification who are interested in exploring permanent U.S. residency are able to petition for an EB-1 Green Card at any time during their O-1 visa period. Moreover, the EB-1, often referred to as the “Einstein visa,” boasts the same evidentiary criteria as the O-1, such that there is a rebuttable presumption that an O-1 visa holder qualifies for an EB-1.

While the focus of this article has been on international athletes, O-1 visas are also available for foreign artists and entertainers of extraordinary ability who may be offered U.S.-based employment in their respective field(s). For instance, a renowned South African pop artist may be signed by Sony to an international recording deal that contemplates recording at Sony Studios in Los Angeles and New York City, as well as related promotional appearances in the U.S. The artist in that case would need to be approved for an O-1 visa before he or she could begin performing in the U.S. under the terms of the recording

agreement. Likewise, a popular British actress cast in a major movie scheduled to be filmed in the U.S. would need employment authorization before stepping foot on set. In both real-world scenarios, the O-1(B)(Arts) visa would apply, which requires “distinction” in the arts. See CFR 214.2(o)(3)(ii).

## Employer Specific

Both P-1 and O-1 visas are “employer specific,” meaning the visa beneficiary can only work for the authorized employer who petitioned on their behalf. And, in fact, engaging in unauthorized employment is considered a serious violation of visa regulations, which in some cases may result in forfeiture of the visa and a ban on re-entry into the U.S. However, P and O visa holders wishing to change employers are permitted to do so, if they maintain status and obtain approval before starting their new employment. In the case of NBA players (and similarly situated players in other sports leagues) who suddenly get traded to a new team, the regulations allow for a 30-day grace period to accommodate the sudden, unexpected change.

In addition, both visas permit concurrent or simultaneous employment with multiple employers. Take the British actress example – she could theoretically act in multiple films in the U.S. for different movie studios under the same O-1 visa, provided each individual employment opportunity was approved in advance of “lights, camera, action.”

So, next time you are amazed, inspired, or just flat-out entertained by a talented foreign athlete or entertainer, remember, these individuals are able to share their admirable, and in some cases extraordinary abilities in the U.S. thanks to the P and O visa provisions.



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