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Regional Directors District Directors

Service Center Directors

Director, Office of Administrative Appeals

Officers-in-Charge

Office of Field Operations

Immigration Officer Training Academies

Validity of Employment-Based Petitions Filed on Behalf of Athletes

Background

Section 624 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) provides that a labor certification or an approved employment-based petition (Form I-140) shall remain valid with respect to a “professional athlete” after the athlete changes employer, if the new employer is a team in the same sport as the team which filed the labor certification and/or Form I-140. Section 624 creates a new section 212(a)(5)(A)(iii) and 204(i) of the Immigration and Nationality Act (Act). New section 212(a)(5)(A)(iii) of the Act covers labor certifications and new section 204(i) of the Act covers approved employment-based petitions. Section 624 of the IIRAIRA defines a “professional athlete” as an individual who is employed as an athlete by a team which: (1) is a member of an association of six 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 contests and exhibitions in which its member teams regularly engage, or (2) any minor league that is affiliated with such an association. A minor league may be affiliated with such association through ownership or a contractual relationship. Section 624 became effective on September 30, 1996, the date the President signed the IIRAIRA. It is important to note that this provision affects only employment-based petitions and labor certifications filed by an employer on behalf of an athlete. It does not have any impact on employment-based petitions, either for classification as a priority worker or based on a national interest waiver under the employment-based second preference category, in which the professional athlete files a petition on his or her own behalf.

#### Pending or Future Employment-Based Petitions Filed on Behalf of Athletes

If the Department of Labor has approved a labor certification on behalf of a “professional athlete,” as defined in section 624 of the IIRAIRA, and the sponsoring employer has not yet filed an employment-based petition with a service center, a new employer in the same sport may file an I-140 petition on behalf of the athlete. The new employer must establish the employment relationship with the athlete as well as evidence that it is a team in the same sport as the team which filed the labor certification. As in the case of any other I-140 petition, the new employer has the burden of establishing eligibility under the requested classification, that the athlete beneficiary meets the minimum requirements stated in the labor certification, and that the new employer has the ability to pay the salary or compensation offered.

If an employment-based petition is pending at a service center and the athlete changes teams, the new team must notify the service center and attach evidence, such as a contract, that the athlete has changed teams within the sport. The service center should contact the employer which filed the original I-140 petition and verify that the employer no longer seeks to employ the athlete. If satisfied that the athlete has changed teams, the service center must amend the I-140 petition to reflect the new team and the service center should complete the adjudication of the I-140 petition.

#### Pending Adjustment of Status or Immigrant Visa Application Made by Athletes

If the athlete changes teams within the sport during the pendency of an application for adjustment of status or an immigrant visa, or after a service center has approved the original I-140 petition, the athlete must bring the matter immediately to the attention of the INS office or consular post at which the application is pending. The new employer must establish the requisite employment relationship with an athlete (as set forth in section 624 of the IIRAIRA), as well as evidence that it is a team in the same sport as the team which filed the labor certification. Since under section 624 of the IIRAIRA, the I-140 petition remains valid for the new team, the new team need not, however, file another I-140 petition. The adjudicating office should contact the employer which filed the I-140 petition and verify that the employer no longer seeks to employ the athlete. If the office is satisfied that the petition and labor certification are valid for the new team, the application for adjustment of status may be granted.

If you have any questions concerning this provision, please contact Michael Straus, HQBEN, at 202/514-5014.

Louis D. Crocetti, Jr.  
Associate Commissioner