O & P Webinar
Wednesday, August 3, 2022
Questions and Answers

Q1: To file for a professional athlete under the COMPETE Act, we have to provide evidence that the teams in the league have combined revenues exceeding 10 million dollars per year. We receive Requests for Evidence (RFEs) asking to show revenue streams which aren't always accessible. How does USCIS calculate whether this requirement has been met?

A1: As noted in the question, the INA defines a professional athlete as one who is employed by a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10 million per year, or a minor league team that is affiliated with such an association.

While an RFE may suggest particular types of evidence to demonstrate revenue of the teams in a league, there are a variety of forms that such evidence could take, including (but not limited to) profit/loss sheets, audited financial documents, or media articles or reports that specifically references revenues generated by the teams in the association or league. If submitting tax or financial documents, please identify sources of revenue (for example, ticket sales, local broadcasting, merchandise sales, other business activities) and the amount of revenue associated with the various sources.

In terms of how we calculate the total combined revenues, USCIS focuses on the revenue generated through the combined activities of each "team," which under 8 CFR 214.2(p)(3) means "two or more persons organized to perform together as a competitive unit in a competitive event." Thus, under this interpretation, the only revenues that would be counted are those coming from the portion of activities that relates to each "competitive unit." In other words, USCIS does not consider revenue streams that are unrelated to the activities of the teams.

Q2: We have received differing adjudications when it comes to establishing that a league's competitions have a "distinguished reputation" despite providing overwhelming evidence that the league qualifies. To help with clarity and consistency can USCIS explain how officers are trained to interpret this policy?

A2: The regulatory requirements that the prospective competitions have a "distinguished reputation" and "require" the participation or services of an internationally recognized athlete or team derive from the statutory language stating that a qualifying athlete is one who performs "at an internationally recognized level of performance."

Because the relevant statutory and regulatory provisions do not require that an athlete or team be coming to participate in a competition that is limited to internationally recognized participants, petitioners only need to show that the competition is at an internationally recognized level of performance such that it requires that caliber of

athlete or team to be among its participants or that some level of participation by internationally recognized athletes is required to maintain its current distinguished reputation in the sport.

Relevant considerations for determining whether competitions are at an internationally recognized level of performance such that they require the participation of an internationally recognized athlete or team include, but are not limited to:

- The level of viewership, attendance, revenue, and major media coverage of the events.
- The extent of past participation by internationally recognized athletes or teams;
- The international ranking of athletes competing; or
- Documented merits requirements for participants.

Two factors that, while not determinative, may suggest an event is not at an internationally recognized level include:

- The record shows the participation of internationally recognized caliber competitors is currently unusual or uncommon; or
- The competition is open to competitors at all skill levels.

You can find additional clarification at www.uscis.gov/policy-manual/volume-2-part-n-chapter-2

Q3: What does "affiliated" mean under INA 204(i)? What factors of evidence do officers consider in determining whether a minor league team is affiliated with a major league?

A3: Two-way agreements to move or transfer players between a minor league team and a major league are positive factors that USCIS considers. On the other hand, evidence of "partner" relationships between a major league and a smaller league solely for promotional or marketing purposes may not be sufficient on its own.

Q4: Is it possible to identify a direct liaison person for issues pertaining to P-1 and P-1S Petitions at each service center?

A4: We will not designate a direct liaison person for issues pertaining to P-1 and P-1S petitions at the service centers. If you have specific questions related to a pending petition, you may use the customer service number to request case status updates. See www.uscis.gov/contactcenter.

Q5: Would USCIS consider providing scans of Approval Notices via email to teams? This action would help alleviate delays from approval to receipt of the Notice.

A5: USCIS will not provide scans of Approval Notices via email to teams. If you file a petition with a premium processing request and that petition is subsequently approved, USCIS will notify you of the approval by email and will immediately issue an I-797 approval notice. USCIS is working to digitize many workloads and continues to seek improvements in how we communicate and share information with our stakeholders.

Q6: Understanding that a regulatory change would be required, would USCIS recommend a change that allows for P-1S Support Personnel for Major League teams to be five years in duration (matching P-1 max duration)?

A6: This suggestion was also received during a February 23, 2022 listening session and is under consideration along with other programmatic reform suggestions USCIS received. The purpose of that listening session was to gather information and feedback about the P nonimmigrant visa program and adjudication to inform the development of a future regulatory proposal.

Q7: What are some common issues you see across the board with P-1 petitions? Are there any common oversights to avoid that would help avoid processing issues/delays?

A7: While we do not have this type of P-1 specific guidance, USCIS provides general filing tips on our website. Some general tips include:

- Complete all sections of the Form I-129 petition, including the P Classification Supplement. You can find the current version of the form at www.uscis.dhs.gov/forms;
- Include signed checks or money orders with the correct fee amount;
- Submit all required documentation and evidence with the petition at the time of filing to ensure timely processing;
- File the petition with the correct USCIS service center. If you file your petition at the wrong location, we will reject it;
- If you will be represented by an attorney or other accredited representative, submit a properly completed Form G-28, Notice of Entry of Appearance as Attorney or Representative; and
- Ensure that the beneficiary's name is spelled properly and that his or her date of birth is displayed in the proper format (that is, month-day-year). Also review the country of birth and citizenship and the I-94 number (if applicable) for accuracy.

See www.uscis.gov/forms/filing-guidance/form-filing-tips, www.uscis.gov/working-in-the-united-states/temporary-workers/p-1a-athlete, www.uscis.gov/policy-manual/volume-2-part-n.

Q8: What is the current rate of RFEs for P-1 and P-1S applications?

A8: In May 2022, the RFE rates for P-1A and P-1S petitions were 21.4% and 21.5%, respectively.

Q9: What would your ideal petition look like? What elements (structural and otherwise) do you consider critical to a good petition? Do these things aid in faster processing? If yes, how do they aid processing? The goal is to help streamline petition preparation league-wide to enhance the ease and speed of USCIS adjudication.

A9: USCIS reviews each petition on a case-by-case basis and reviews all submitted evidence. An "ideal petition" is one that is filed according to the filing instructions (including with the correct fees) and includes evidence establishing that the petition meets all relevant statutory and regulatory eligibility requirements. While not required, it can be helpful for petitioners to provide a cover letter addressing each eligibility requirement and explaining the submitted documentation that corresponds to that requirement.

Q10: Does USCIS process Change of Status requests (i.e., B-2 to P-1A) for matters where a Form I-539 is still pending from a previous extension or change request?

A10: USCIS would generally process a change of status request after resolving a related, previously filed application which may affect that request. In those instances, USCIS would extend its best efforts to ensure that the previously filed application is processed so that it can issue a proper decision on the subsequent filing in the timeliest manner possible. In instances where a decision on the previous filing would not impact a decision on the later change of status request, then USCIS may process a subsequent request.

Q11: Why do I keep getting RFEs for my league to establish they satisfy the COMPETE Act requirements for professional athletes, when they have before?

A11: As noted above, each petition must stand on its own merits at the time of filing which may also include establishing that the professional sports league is still eligible. Because leagues are constantly changing with teams coming and going it is important that USCIS verifies that the league still satisfies the 6 teams with $10 million in revenue requirement.

Q12: Can my client/beneficiary do supplemental work?

A12: No. INA 214 (c)(4)(A)(ii) limits the prospective activities of P-1A athletes "solely" to performing in athletic competitions. The regulatory definition of competition, event, or performance indicates that may include promotional appearances relating to the

competition. It does not include supplemental work that does not fit that description.

Q13: Why is my P-1S being limited to one year?

A13: The regulation at 8 CFR 214.2(p)(8)(iii)(E) explicitly limits the initial validity period for P essential support personnel to the period determined by USCIS to be necessary to complete the event for which the P-1 is admitted, "not to exceed one year." As explained in the Policy Manual, however, after this initial validity period an *extension of stay* for essential support personnel of a P-1A individual athlete may be approved for a period of up to five years.

Q14: Is there any U.S. peer group or labor organization that can write a letter for a tennis coach? I cannot find any on your list. If so, please advise what to do.

A14: A consultation letter is usually required for O and P visa classifications. The address index provided on our website for the I-129 O and P consultation letters is a list of known organizations that have agreed to provide consultation letters, however it is not an exhaustive list. If you are filing under the O-1A classification you may submit a letter from a peer or a peer group (which could include a person or persons with expertise in the field) to satisfy this requirement. The regulation defines a peer group as "a group or organization which is comprised of practitioners of the alien's occupation. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for the purposes of consultations". If you are filing under the O-2, P-1A, or P-1S classifications, you must submit a letter from a labor organization, if a labor organization exists.

Q15: Can you provide any recent guidance on O-1 filings for coaches who were former professional athletes?

A15: Yes. A recent update to the USCIS Policy Manual, published in January 2022, provides guidance regarding the requirement that all O-1 beneficiaries are coming to the United States to continue work in their area of extraordinary ability or achievement, in particular how that requirement relates to beneficiaries transitioning to a new occupation, and an "acclaimed athlete coming to be a coach" is one of the examples mentioned in the guidance.

The update clarifies that, for O-1 adjudications, USCIS interprets the phrase "area of extraordinary ability" broadly to include not only the specific occupation(s) in which the beneficiary has garnered acclaim, but also other occupations that involve shared skillsets, knowledge, or expertise.

Accordingly, when determining whether the beneficiary is coming to work in the beneficiary's "area of extraordinary ability," officers focus on whether the prospective work or services involve skillsets, knowledge, or expertise shared with the occupation(s) in which the beneficiary has garnered acclaim. In evaluating whether occupations involve shared skillsets, knowledge, or expertise to an extent that they may be

considered within the same area of extraordinary ability, officers evaluate the totality of information and evidence presented. Relevant factors include, but are not limited to:

- Whether the past and prospective occupations are in the same industry or are otherwise related based on shared duties or expertise;
- Whether the prospective occupation is a supervisory, management, or other leadership position that oversees the beneficiary's previous position or otherwise requires shared knowledge, skills, or expertise; and
- Whether it is common for persons in one occupation to transition to the other occupation(s) based upon their experience and knowledge.

Q16: How do you schedule an appointment with the embassy or consulate once petition is approved?
A16: Please consult the embassy's or consulate's website for information on scheduling an appointment.

Q17: Are approved O/P petitions sent electronically or via mail to the KCC ?
A17: Approved O/P petitions are scanned and uploaded into the Petitioner Information Management Service (PIMS) so that DOS can view the entire petition electronically.

Q18: When do you anticipate we can file without the duplicate I-129 petition for Os and Ps? Several years ago, KCC and USCIS said that they would no longer be required as they were moving towards a digitization process. How is this process going?
A18: It is no longer necessary to provide a duplicate.

Q19: How long does USCIS take to send the approved petition to KCC for O and P petitions?
A19: The current estimated processing time for sending approvals to KCC is between one and two weeks.

Q20: What is the basis for 8 CFR 214.2(P)(4)(ii)(A) which states: The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation, and which requires participation of an athlete or athletic team that has an international reputation?
A20: INA 214(c)(4)(A) provides that an alien may qualify for P-1A status if the alien performs as an athlete at an internationally recognized level of performance and seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

Q21: Are you supposed to get an artist-recognized consultation letter for a P-1 support staff?
A21: The regulations at 8 CFR 214.2(p)(4)(iv)(B)(*1*), (p)(5)(iii)(B)(*1*), and (p)(6)(iii)(B)(*1*) require that P essential support personnel provide a consultation from a labor organization with expertise in the area of the support person's skill.

Q22: Are card game athletes (for example, poker players) considered 'athletes' for purposes of the P-1 visa?
A22: A poker player may qualify as an athlete if they can establish that they are internationally recognized and are coming to compete in an event with a distinguished reputation and requires the participation of an athlete or team with an international reputation**.**

Q23: Can you please provide the rate of approval following an RFE for both O's and P-1's. Please also provide the total approval rates for both P-1 and O-1 classifications for the current fiscal year.
A23: The rate of approval after RFE for O-1A and O-2 petitions was 74.4% and 73.1% respectively. The rate of approval after RFE for P-1A and P-1S was 65.2% and 85.7%. The overall approval rates for O-1A and O-2s were 94.6% and 93.8%. The P-1A and P-1S were 93.9% and 97%.

Q24: In the case of a needed expedite, can a petitioner physically deliver an I-129 & 1-907 directly to the Vermont Service Center in person, to maximize the speed of adjudication?
A24: A petition may be dropped at the VSC in person, and it will be put in date order for data entry and scanning. For information on a request to expedite an application or petition please see uscis.gov/policy-manual/volume-1-part-a-chapter-5.