

Temporary Workers in Sports-Related Activities



By Michael Wildes, Esq.

The H-2B nonimmigrant visa classification applies to foreign nationals seeking to enter the U.S. to perform non-agricultural work or labor that is temporary in nature. For H-2B purposes, this includes work

that is seasonal or peak load. The employer must also prove that there is an insufficient number of U.S. workers willing or able to perform the work, and this is established through the Labor Certification process conducted in conjunction with the Department of Labor, which can be a complex process. This type of visa includes sports professionals, including, for instance, the equestrian industry (Show Riders, Jockeys, Polo Players, and all horse riders and/or trainers).

Here are some key basics regarding H-2B visas:

- The H-2B visa was created in 1986 as part of the Immigration Reform and Control Act, which split the H guest worker program into an H-2A visa for agricultural guest workers, and an H-2B visa for non-agricultural guest workers.

- U.S. employers filing H-2B petitions must establish that their need for the services or labor is "temporary," regardless of how long that is.

- The petitioner's need is considered "temporary" if it is a "one-time occurrence, a seasonal, peak load, or intermittent need."

- U.S. Citizenship and Immigration Services (USCIS) defines the term "temporary" as "generally limited to one year or less," but allows H-2B workers' visas to be extended for an uninterrupted stay.

- Congress has established an annual cap of 66,000 H-2B visas for each year, half of which become available on April 1, and the other half on October 1.

- Prospective employers of H-2B workers must first obtain certification from the U.S. Department of Labor (DOL) that demonstrates: (1) there are insufficient U.S. workers who are able, willing, qualified, and available to do the temporary work; and (2) the employment of H-2B foreign nationals will not adversely affect the wages and working conditions of similarly employed U.S. workers.

- Once the employer has obtained an approved temporary labor certification, the employer may file a Form I-129, "Petition for a Nonimmigrant Worker," with USCIS to classify the individual as an H-2B worker. Once the petition is approved, the worker may apply for an H-2B visa at a U.S. embassy or consulate abroad.

- Employers are required to pay employees the prevailing wage and H-2B workers are tied to the employer that files the petition for them; if a worker fails to show up for work on five consecutive days, the employer is required to report this consec-

utive absence to the Department of Homeland Security.

- DHS, in concurrence with the State Department, determines which countries are eligible to participate in the H-2B program, based on how cooperative each country is on deportation and other consular issues, as well as how important the country is to the operation of the H-2B program.

For athletes and other sports professionals, like polo players who do not qualify for O-1 or P-1 visas, an H-2B visa category is the best way to seek work in the U.S. An O-1 visa is available to individual athletes of "extraordinary ability," who can demonstrate that they possess "a level of expertise indicating that they are one of the small percentage that have risen to the top of the field of endeavor." Examples of O-1 eligible athletes would be Wayne Gretzky, Ronaldo, and Annika Sorenstam. P-1 visas include athletes who cannot meet the "extraordinary ability standard" required for an O-1 visa if the athlete can prove that he or she is internationally recognized and is coming to the U.S. to participate in a league or event with a distinguished reputation.

Athletes under contract with the NHL, NBA, MLB, MLS, and NFL need only establish that they have a major league contract to qualify for a P-1 visa. Unlike the more stringent O-1 and P-1 types of visa, the H-2B visa allows athletes to be temporarily employed in the U.S. However, as mentioned above, to obtain an H-2B visa the sponsor-

ing team must obtain a labor certification from the Department of Labor. Athletes playing under a minor league contract typically are issued an H-2B visa but only for the duration of the season, up to a maximum of one year.

A petition for an H-2B athlete must be accompanied by a tendered contract and a labor certification issued by the United States Department of Labor. Professional leagues must adhere to the total number of H-2B positions granted to them by the Department of Labor. Injured players and players who voluntarily terminate their employment with a league may be replaced on existing petitions provided the injured or terminated employee returns to his native country. Such replacement will generally require the filing of a new petition. If an H-2B player is traded to another team, the player's H-2B labor certification slot remains with the trading team and the receiving team must have an available slot to receive the player. If a team does not use all its designated H-2B labor certification slots on an initial petition, any subsequent signings to fill designated slots will require a new petition.

H-2B visa athletes and employers in the athletic arena can benefit greatly from the assistance of an experienced immigration attorney, especially when it comes to filing a successful Labor Certification that complies with the Department of Labor standards and meeting the H-2B numerical limit deadlines.

Congregation Shomrei Torah Presents The 6th Annual Susan Nelson Glasser Memorial Kristallnacht Commemoration

Featuring

THE BEST OF MEN



Source: BBC, 2012



Dr. Ludwig Guttman

Source: British Paralympic Association
<http://paralymics.org.uk/games/ludwig-guttman>

"...About 200,000 handicapped people were murdered between 1940 and 1945...The T-4 program became the model for the mass murder of Jews, Roma (Gypsies), and others" (United States Holocaust Memorial Museum Web site, 2014).

Dr. Ludwig Guttman's achievements with British paraplegics repudiated common contentions that the disabled were useless and unworthy of life. His legacy is an ongoing tribute to the resilience of the human body and spirit.

The event is free and open to the public. Refreshments will be served.

For more information call
mediahappenings@gmail.com.

SUNDAY, NOV. 9 2014
7:00 PM

Congregation
Shomrei Torah
19-10 Morlot Avenue
Fair Lawn, NJ 07410

This event is sponsored by
the Kovacs Family.

Flyer design by Sara Levi

ALMONITOR

THE PULSE OF THE MIDDLE EAST

Al-Monitor features unmatched reporting and analysis by prominent journalists and experts from the Middle East, including through its Egypt, Iran, Iraq, Israel, Lebanon, Palestine, Syria and Turkey Pulses.

www.al-monitor.com

[@almonitor](https://twitter.com/almonitor)

Active Burial Society
with plots in
Cedar Park Cemetery
Paramus, NJ
Accepting New Members
One Time Membership Fee
Call 212 675-5738