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Policy Alert

SUBJECT: Labor Certification-Based Immigrant Petitions for Professional Athletes

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to address the U.S. Department of Labor's (DOL) adoption of the Foreign Labor Application Gateway (FLAG) system and its impact on certain immigrant visa petitions filed on behalf of professional athletes.

Background

Starting June 1, 2023, DOL has required permanent labor certification applications to be filed using its FLAG system. The FLAG system contains a revised Application for Permanent Employment Certification (Form ETA-9089) as well as four appendices and a Final Determination: Permanent Employment Certification Approval. The new Form ETA-9089 no longer collects information about the minimum requirements of the job opportunity. Instead, aliens now provide that information to DOL using the Application for Prevailing Wage Determination (Form ETA-9141).

Because DOL regulations exempt professional athletes from the prevailing wage determination requirement, under the FLAG system, labor certification approvals for professional athletes do not contain the minimum requirements for the job. As detailed below, USCIS requires this information to adjudicate labor certification-based immigrant petitions.

Petitioners generally file labor certification-based immigrant petitions for professional athletes in the EB-2 aliens of exceptional ability or EB-3 skilled worker categories. In order to determine whether a professional athlete qualifies as an alien of exceptional ability or a skilled worker, USCIS must review the requirements of the offered position.¹ Accordingly, USCIS is issuing this policy guidance to explain that, for labor certification-based immigrant petitions filed on behalf of professional athletes, if the minimum requirements of the offered position are not stated on the labor certification or in the supporting documentation submitted with the Immigrant Petition for Alien Workers ([Form I-140](#)), then USCIS may issue a request for evidence in order to obtain this information.

This guidance, contained in Volume 6 of the Policy Manual, is effective immediately and applies to requests pending or filed on or after the publication date.

¹ See [8 CFR 204.5\(k\)\(4\)\(i\)](#) for aliens of exceptional ability and [8 CFR 204.5\(l\)\(3\)\(ii\)\(B\)](#) for skilled workers.

The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

Policy Highlights

- Provides an overview of the DOL FLAG system and describes the new labor certification-related documentation that must be submitted with the Form I-140.
- Explains that labor certifications for professional athletes that were filed using the FLAG system no longer contain the minimum job requirements for the offered position.
- Clarifies that if an immigrant petition for a professional athlete contains a labor certification obtained through the FLAG system, USCIS may issue a request for evidence to obtain the minimum job requirements if that information is not contained in the supporting documentation submitted with the Form I-140.

Summary of Changes

Affected Section: Volume 6 > Part E > Chapter 6 > Section A, Employer Requirements

- Revises Subsection 2 (Individual Permanent Labor Certifications) in its entirety.

Affected Section: Volume 6 > Part F > Chapter 5 > Section C, Professional Athletes

- Adds a new paragraph at the end of Subsection 2 (Evidence).

Affected Section: Volume 6 > Part F > Chapter 7 > Section A, Eligibility

- Adds new italicized subheading “Professional Athletes” with associated content.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 6: Immigrants, Part E, Employment-Based Immigration, Chapter 6, Permanent Labor Certification [[6 USCIS-PM E.6](#)]; Part F, Employment-Based Classifications, Chapter 5, Advanced Degree or Exceptional Ability [[6 USCIS-PM F.5](#)] and Chapter 7, Skilled Worker, Professional, or Other Worker [[6 USCIS-PM F.7](#)].