

Semiprofessional Immigration: Modern Sports Require Modern Visas

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ABSTRACT: The U.S. immigration system was partly designed to promote the admission of highly skilled foreign nationals. Although the current visa process has provided a route to admission for many foreign nationals, a modern trend is that certain groups of talented athletes do not have a visa option that fits their “semiprofessional” status. Whether they are student athletes or esports athletes, these individuals have skills and talents that, if admitted, would benefit the United States. Yet, due to the barriers that exist as a result of the current visa system, strict limitations exist on what they can do, if they are even admitted into the United States. Given these challenges, the U.S. immigration system must modernize to resolve this modern issue through the creation of a new nonimmigrant visa category that aims to admit individuals who show promising signs of qualifying as highly skilled individuals in the near future. Only through the creation of a new visa category can the issues plaguing these semiprofessional athletes be resolved so that they can continue to contribute their talents and skills to society at large. Although there are potential risks associated with such changes, the overall benefit of a nonimmigrant visa category tailored toward these semiprofessional individuals will ultimately outweigh the costs.

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INTRODUCTION

After months of practice and preparation for an upcoming competition, you are once again brought back to reality: Although your skill ranks in the upper echelons of your craft, your visa application has been denied. This reality is relatively common in the world of esports, with individuals from high profile teams getting denied regardless of their repeated attempts at admission. Perhaps one of the most high profile cases of a denial like this happened in early 2024 when several of the members of the esports team “Moist Esports” had their applications denied with little feedback from the U.S. Citizenship and Immigration Services (“USCIS”) adjudicator on the reasoning for their rejection.¹ One of the owners of the team, the prominent YouTuber Charlie “MoistCr1TiKaL” White, became outraged after the denials, and ultimately, as a result of these issues, the team was forced to drop the athletes from the team’s roster.² Although the exact reasons for their denials are unknown, one of the commonly touted reasons is that “the immigration agency didn’t believe the team was as highly ranked as they claimed they were.”³ Vague rejections like the ones these esports athletes received are relatively common, in part due to the strict qualification criteria for applicants of the visa categories most commonly sought by esports athletes, the variety of games that make up the esports industry, and the varying skill level it takes to compete in these games at the highest levels.⁴ Determining comparable ranks across different games is the subject of widespread debate; however, creating

1. See Declan McLaughlin, *MoistCr1TiKaL “Infuriated” as US Visa Issues Force Him to Drop Top Apex Legends Roster*, DEXERTO (Apr. 12, 2024, 3:17 PM), <https://www.dexerto.com/apex-legends/moistcr1tikal-infuriated-as-us-visa-issues-force-him-to-drop-top-apex-legends-roster-2644728> (on file with the *Iowa Law Review*).

2. See *id.*

3. Dafydd Gwynn, *Moist Esports Sues US Immigration Over Apex Legends Visa Issues*, ESPORTS INSIDER (May 7, 2024), <https://esportsinsider.com/2024/05/moist-esports-sues-us-immigration-over-apex-legends-visa-issues> [<https://perma.cc/3T2M-RFM6>].

4. See *infra* Section I.B.3; swim, *The Easiest and Hardest Ranks in Video Games*, YOUTUBE (Dec. 18, 2024), <https://www.youtube.com/watch?v=vxcMzPfAafQ> [<https://perma.cc/26EE-YCSZ>]. In addition to the claimed difficulty levels associated with reaching the highest ranks in different games, there is also wide disagreement within the industry about which ranks are legitimately the hardest to achieve. See rohangod, *What Is the Hardest Competitive Game? Finale*, TIKTOK (Apr. 4, 2025), <https://www.tiktok.com/@rohangod/video/7489576454330567978> [<https://perma.cc/3PDJ-XMDF>] (providing one player’s opinion on which game has the hardest competitive ranks).

a process to establish that an individual esports athlete has reached an elite rank within a game, therefore satisfying certain visa criteria, is feasible.⁵

At the same time, international student athletes admitted on F-1 student visas are generally unable to accept sponsorship opportunities with local and national brands because of their immigration status.⁶ For example, Nouredin Nouili, an offensive lineman who played for the University of Nebraska, recalled that on several occasions he had to decline sponsorship opportunities because his visa forbade him from engaging in these opportunities.⁷ This is because his visa status permitted him to study in the United States, not to work.⁸ However, Nouili recalled spending close to seven hours a day practicing football, and only four hours a day attending class.⁹ This division of time is typical for student athletes, who dedicate between thirty and forty hours a week to their athletic pursuits.¹⁰ Generally, F-1 visas are the only practical option for student athletes, even though the F-1 status is tailored primarily for students who focus on academics, not athletics.¹¹ Even for student athletes who spend more time perfecting their craft than attending class, there are no athletics-tailored student visa categories, so for them to attend school and compete, they must also accept the limitations that accompany F-1 status.

Skilled traditional student athletes and esports athletes are part of the larger semiprofessional athlete group: A group whose members often lack widely recognized credentials to be considered professionals yet train in capacities that mirror the habits of recognized professionals.¹² Furthermore, members of the semiprofessional class continue to hone their crafts while being restricted by the antiquated U.S. immigration system. As the sporting world makes modern changes, so too should the U.S. immigration system develop modern solutions to accommodate this new class of athletes. This Note argues that it is time to recognize that these semiprofessional athletes

5. See swim, *supra* note 4.

6. Matt Brown, "Not Even Invited to the Table"—International Athletes and NIL, EXTRA POINTS (Aug. 2, 2021), <https://www.extrapointsmb.com/p/college-sports-nil-international-athlete-immigration> [<https://perma.cc/2T4R-PBYY>].

7. See *id.*

8. See *infra* Section I.B.2.

9. Brown, *supra* note 6.

10. See Peter Jacobs, *Here's the Insane Amount of Time Student-Athletes Spend on Practice*, BUS. INSIDER (Jan. 27, 2015, 11:44 AM), <https://www.businessinsider.com/college-student-athletes-spend-40-hours-a-week-practicing-2015-1> [<https://perma.cc/Z7SH-A4WE>].

11. See 8 U.S.C. § 1101(a)(15)(F) (2018); *Student Visa*, U.S. DEP'T STATE — BUREAU CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html> [<https://perma.cc/Z8E4-J5JF>] (outlining the practical visa options for students).

12. Compare *Occupational Outlook Handbook: Athletes and Sports Competitors*, U.S. BUREAU LAB. STAT. (Apr. 18, 2025), <https://www.bls.gov/oooh/entertainment-and-sports/athletes-and-sports-competitors.htm> [<https://perma.cc/HH3L-8gEF>], and *This Study Proves Just How Much Time College Athletes Spend on Their Sport*, NCSA COLL. RECRUITING, <https://www.ncsasports.org/blog/study-time-demands-d1-studentathletes-excessive> [<https://perma.cc/7GDW-9HB5>], with Pavle Marinkovic, *Inside Esports Teams — Training Professional Gaming Stars*, MEDIUM (May 27, 2020), <https://medium.com/predict/inside-esports-teams-training-professional-gaming-stars-4ab40190e6d1> [<https://perma.cc/BE2J-XRN8>], and *Esports Frequently Asked Questions*, WITTENBERG U., <https://www.wittenberg.edu/student-life/esports-faq> [<https://perma.cc/FH2F-98TF>].

need an immigration option tailored to their skills, because if the United States hopes to continue to recruit highly talented athletes, it must be willing to modernize its immigration system.

Part I provides a background on immigration legislation and how the immigration system changed to become what it is today. This Part then details the most commonly used visa categories that esports and student athletes use and discusses how both categories of athletes are similar yet unique enough that no other visa category is tailored toward their needs. Part II provides an overview of the issues that plague semiprofessional athletes and the goals that immigration policy aims to accomplish.¹³ This Part also discusses how the available options fail to provide an adequate option for semiprofessional athletes due to the strict requirements and limitations these visas possess. Finally, Part III provides a solution to these problems. Temporary fixes are insufficient; only a permanent and tailored solution can resolve the unique problems and circumstances these athletes face. Although such solutions may have the potential for abuse, these abuses can be minimized by implementing adequate safeguards.

I. IMMIGRATION OPTIONS FOR ATHLETES

This Part provides information about the history of immigration legislation, the types of visas that are commonly used by athletes, and how athletes are classified. Section I.A gives an overview of the history of immigration and the goals that Congress has intended to preserve when making changes to immigration laws. Section I.B explains the most commonly used categories of visas that athletes apply for and their corresponding qualification criteria. Lastly, Section I.C previews the emergence of “semiprofessional athletes” following significant changes to the world of sports.

A. LEGISLATIVE HISTORY

Understanding the history of the current U.S. immigration scheme is key to understanding the interests Congress had when previously enacting various immigration laws and how these traditional interests will not be frustrated by modern changes. In 1965, Congress made one of the most pivotal reforms to American immigration law—the Immigration and Naturalization Act of 1965.¹⁴ The Act replaced the “nearly intolerable” national origins quota system with a system that instead focused on uniting families and attracting skilled workers.¹⁵ Although the new system eliminated the quotas, it imposed caps on “per-country and total immigration.”¹⁶ Following the introduction of the new

13. See *infra* Section II.A.

14. See *Historical Overview of Immigration Policy*, CTR. FOR IMMIGR. STUD., <https://cis.org/Historical-Overview-Immigration-Policy> [<https://perma.cc/3XQ4-KXTX>]. See generally 8 U.S.C. § 1153 (outlining preference for family-based and skill-based immigration priorities).

15. See *U.S. Immigration Since 1965*, HISTORY (Feb. 27, 2025), <https://www.history.com/topics/immigration/us-immigration-since-1965> [<https://perma.cc/H6GS-JRDT>]; John F. Kennedy, U.S. President, Remarks to American Committee on Italian Migration (June 11, 1963).

16. *U.S. Immigration Since 1965*, *supra* note 15.

system, the number of new immigrants to the United States tripled compared to the previous system.¹⁷

Due to the temporary nature of educational pursuits, student visas were reclassified as nonimmigrant visas in 1952.¹⁸ This change was made in part due to concerns “that [foreign nationals] would use student visas as a means to enter the country, or would try to stay in the U.S. after the completion of study.”¹⁹ By changing the classification of student visas to nonimmigrant visas, the burden is on the foreign national to prove that they do not intend to use their visa for this purpose.²⁰ Student visas once again underwent significant changes in response to suspected abuses that came into the limelight after the September 11th terrorist attacks.²¹ Following the terrorist attacks, “the Student and Exchange Visitor Information System (SEVIS) tracking system was quickly implemented.”²² SEVIS continues to be used to track all kinds of information on international students, from course enrollment to personal financial information.²³

In 1990, Congress reformed immigration law once again, increasing the annual total number of immigrants and expanding the availability of visas.²⁴ The Immigration Act of 1990 “mandated a study of immigration,” which would later become known as the Jordan Commission Report.²⁵ The findings of the Jordan Commission stated that “immigration policy can be measured by a simple yardstick: people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave.”²⁶ The Jordan Commission Report advocated for reducing the admission of unskilled workers in favor of highly skilled foreign nationals, believing this approach would be the most effective practice for U.S. immigration.²⁷ These past recommendations align with the modern immigration goal of admitting skilled foreign nationals.²⁸ By admitting skilled foreign

17. See *id.*

18. See M. Allison Witt, *Closed Borders and Closed Minds: Immigration Policy Changes After 9/11 and U.S. Higher Education*, J. EDUC. CONTROVERSY 1, 2 (2008), <https://cedar.wvu.edu/cgi/viewcontent.cgi?article=1058&context=jec> [<https://perma.cc/ASX5-J5WV>].

19. *Id.*

20. *Id.*

21. See *id.* at 1.

22. See *id.* at 2.

23. See *id.*

24. See *Historical Overview of Immigration Policy*, *supra* note 14; Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 4980–86.

25. See *Historical Overview of Immigration Policy*, *supra* note 14; Immigration Act of 1990, § 141, 104 Stat. at 5001–04.

26. U.S. COMM’N ON IMMIGR. REFORM, U.S. IMMIGRATION POLICY: RESTORING CREDIBILITY 3 (1994).

27. See David North, *Revisiting the Jordan Commission Report*, CTR. FOR IMMIGR. STUD. (Feb. 11, 2013), <https://cis.org/Report/Revisiting-Jordan-Commission-Report> [<https://perma.cc/2CQ9-L3U2>].

28. See *How the United States Immigration System Works*, AM. IMMIGR. COUNCIL (June 24, 2024), <https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works> [<https://perma.cc/G546-EQ3Z>].

nationals, the United States is able to fill niche contemporary roles central to the modern economy.²⁹

B. RELEVANT VISA TYPES AND REQUIREMENTS

A variety of visas are commonly used by athletes seeking admission to the United States. These include B-1/B-2, F-1, P-1A, and O-1 visas. The exact visa that applicants apply for depends on their ability to satisfy each visa's strict criteria.

1. Business and Tourism Visas: B-1/B-2

B-1/B-2 visas are nonimmigrant visas intended for foreign nationals who will engage in business or pleasure while in the United States.³⁰ The general criteria for B-1/B-2 visa eligibility require: (1) the foreign national has "a residence in a foreign country which he has no intention of abandoning"; (2) the visit is "temporarily for business or temporarily for pleasure"; (3) a showing that they will depart at the end of their temporary stay; (4) they have permission to enter another country at the end of their temporary stay; and (5) they have sufficient financial arrangements to enable their visit and departure.³¹ Foreign nationals entering on B-1/B-2 visas are generally not permitted to accept work within the United States.³² But there are a few exceptions to this rule. Athletes entering on B-1/B-2 visas to compete are permitted to participate in their respective competitions, but they may only receive prize money from tournaments and may not receive a salary from a U.S. source.³³ Similarly, athletes are permitted to enter on B-1/B-2 visas if they intend to participate "in an international competition for prize money and expenses."³⁴ If an individual on B-1/B-2 status violates the terms of their visa by engaging in unauthorized employment, it is considered a "failure to maintain status."³⁵ Failing to maintain status has several significant consequences with potentially long-lasting effects. Most significantly, failure to maintain status can ultimately lead to the initiation of removal proceedings and eventual deportation.³⁶ In addition, violators become ineligible for extensions, changes, or adjustments of status.³⁷

29. Charles Hirschman, *Immigration to the United States: Recent Trends and Future Prospects*, 51 MALAYS. J. ECON. STUD. 69, 72, 82 (2014).

30. See 22 C.F.R. § 41.31 (2024); *B-1 Temporary Business Visitor*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 25, 2025), <https://www.uscis.gov/working-in-the-united-states/temporary-visitors-for-business/b-1-temporary-business-visitor> [https://perma.cc/A67H-FgYT].

31. 8 U.S.C. § 1101(a)(15)(B); see 22 C.F.R. § 41.31(a).

32. See 8 U.S.C. § 1101(a)(15)(B).

33. See U.S. DEP'T OF STATE, 9 FOREIGN AFFAIRS MANUAL § 402.2-4(A)(7) (2025) [hereinafter 9 FAM]; *id.* § 402.2-5(C)(4).

34. IRA J. KURZBAN, KURZBAN'S IMMIGRATION LAW SOURCEBOOK 2058 (18th ed. 2022–2023); 9 FAM, *supra* note 33, § 402.2-5(F)(5).

35. 8 C.F.R. § 214.1(e).

36. See 8 U.S.C. § 1227(a)(1)(C).

37. See 8 C.F.R. § 248.1(b); *id.* § 214.1(c)(4)(i); *id.* § 1255(c).

Arguably the most significant result of failure to maintain status is the consequences of accruing “unlawful presence.”³⁸ If a foreign national remains present in the United States after the expiration of their authorized stay without getting an extension, they begin to accrue unlawful presence.³⁹ The consequences of accruing unlawful presence vary depending on how much unlawful presence is accrued.⁴⁰ Fewer than 180 days of unlawful presence does not trigger an entry ban; however, the individual will have to disclose any previous unlawful presence when applying for future admission.⁴¹ In contrast, if a foreign national accrues more than 180 days of unlawful presence but less than one year of unlawful presence, they are subject to a three-year statutory ban on reentry to the United States.⁴² One of the most severe cases is when a foreign national accrues more than one year of unlawful presence, whereupon departure or removal the foreign national is subject to a ten-year statutory ban on reentry.⁴³

2. Student Visas: F-1, J-1, and M-1

Student visas are split primarily into three categories: F-1, J-1, and M-1.⁴⁴ Which category of visa a foreign national seeks depends on the type of education they intend to pursue, with the majority applying for F-1 visas.⁴⁵ J-1 visas are used for exchange visitor programs, often including visiting scholars, researchers, and professors.⁴⁶ M-1 visas are granted exclusively for foreign nationals who will enroll in vocational or nonacademic programs.⁴⁷ F-1 visas, on the other hand, are for general academic study.⁴⁸ Although admission on

38. See 8 U.S.C. § 1182(a)(9)(B); *Unlawful Presence and Inadmissibility*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 25, 2025), <https://www.uscis.gov/laws-and-policy/other-resources/unlawful-presence-and-inadmissibility> [<https://perma.cc/C8MX-VDTN>] (“Unlawful presence is any period of time when you are present in the United States without being admitted or paroled, or when you are present in the United States after your ‘period of stay authorized by the Secretary’ expires.”).

39. 8 U.S.C. § 1182(a)(9)(B)(ii).

40. See *id.* § 1182(a)(9)(B)(i).

41. See *id.* USCIS and consular adjudicators may take any past unlawful presence into account when reviewing applications. Accordingly, applicants must truthfully disclose such information. See *id.* § 1182(a)(6)(C)(i) (outlining the requirement for truthful disclosure); see also 8 C.F.R. § 103.2(b) (discussing the range of potential evidence adjudicators may use or request).

42. See 8 U.S.C. § 1182(a)(9)(B)(i)(I).

43. See *id.* § 1182(a)(9)(B)(i)(II).

44. See *id.* § 1101(a)(15)(F), (J), (M).

45. F-1 visas accounted for approximately fifty-eight percent of the new principal student visas sought in 2023. See BUREAU OF CONSULAR AFFS., U.S. DEP’T OF STATE, NONIMMIGRANT VISAS ISSUED BY CLASSIFICATION: FISCAL YEARS 2019-2023, https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2023AnnualReport/FY2023_AR_TableXVB.pdf [<https://perma.cc/Z3YS-MLFN>]. J-1 visas account for around forty-one percent. *Id.* Meanwhile, the number of M-1 visas sought in 2023 was less than one percent. *Id.*

46. See 8 U.S.C. § 1101(a)(15)(J); *Exchange Visitor Visa*, U.S. DEP’T STATE — BUREAU CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/study/exchange.html> [<https://perma.cc/q286-27VU>].

47. 8 U.S.C. § 1101(a)(15)(M); see also *Student Visa*, *supra* note 11 (outlining the practical visa options for students). Flight schools are examples of non-academic schools.

48. 8 U.S.C. § 1101(a)(15)(F); see also *Student Visa*, *supra* note 11.

an M-1 or J-1 visa is possible for a student athlete, the number of applicants is minimal, making F-1 visas the only option that merits further discussion in this context.⁴⁹ To qualify, students must show that: (1) they have been accepted at a Student and Exchange Visitors Program (“SEVP”) approved school; (2) they will be enrolled full-time; (3) they are proficient in English or will enroll in courses leading to English proficiency; (4) they have sufficient funds to support their study; and (5) they have ties to their home country that show intent to return.⁵⁰ Additionally, student visa applicants must interview with a consular officer to determine whether they are admissible.⁵¹

In part due to the history of abuse associated with student visas and their classification as nonimmigrant visas, student visas are subject to strict limitations.⁵² One of the most prominent limitations is placed on employment.⁵³ Individuals in F-1 status ordinarily cannot work off campus during their first year of study, but after their first year, some students with severe economic hardship may receive authorization to work off campus.⁵⁴ Meanwhile, on-campus employment is limited in hours and options, generally limited to student services.⁵⁵ After their first year, individuals in F-1 status may additionally seek authorization to participate in three limited types of practical employment.⁵⁶ In addition to other requirements, this practical employment must be related to the student’s area of study and considered practical training.⁵⁷

Because of the variability in the length of time it takes to complete different academic programs, F-1 visas are ordinarily valid for the “duration

49. See *Student Visa*, *supra* note 11.

50. See *Students and Employment*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Apr. 8, 2025), <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment> [<https://perma.cc/TMJ4JPDU>]. SEVP is a Department of Homeland Security program that provides approval and oversight to schools to preserve national security. *Student and Exchange Visitor Program*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/sevis> [<https://perma.cc/43WB-PT3N>]. SEVP works with authorized schools to ensure that the school and international students maintain their status. *Id.*

51. 22 C.F.R. § 41.102(a) (2024); see *Student Visa*, *supra* note 11.

52. 8 U.S.C. § 1101(a)(15)(F); see also *Students and Employment*, *supra* note 50 (outlining employment restrictions); KURZBAN, *supra* note 34, at 2065–69.

53. 8 C.F.R. § 214.2(f)(g); see also *Students and Employment*, *supra* note 50 (discussing employment restrictions).

54. 8 C.F.R. § 214.2(f)(g)(ii); see also *Students and Employment*, *supra* note 50 (discussing the case-by-case nature in which these exemptions are granted).

55. 8 C.F.R. § 214.2(f)(g) (both on- and off-campus employment is generally limited to twenty hours per week); see also Justin Auh, Note, *Leveling the Playing Field: How to Get International Student-Athletes Paid Under Name, Image, and Likeness*, 43 NW J. INT’L L. & BUS. 347, 353–54 (2023) (discussing employment limitations for international student athletes).

56. After the first year, individuals in F-1 status are permitted to engage in Curricular Practical Training (“CPT”), Optional Practical Training (“OPT”), and STEM OPT. The primary difference between these categories is that CPT is related to an established curriculum and occurs before graduation, whereas OPT can be completed before or after graduation. 8 C.F.R. § 214.2(f)(10); see *F-1 Curricular Practical Training (CPT)*, HOMELAND SEC. (Apr. 28, 2025), <https://studyinthestates.dhs.gov/sevis-help-hub/student-records/fm-student-employment/f-1-curricular-practical-training-cpt> [<https://perma.cc/4YDA-P7UA>]; *Students and Employment*, *supra* note 50.

57. 8 C.F.R. § 214.2(f)(10); see *Students and Employment*, *supra* note 50.

of status.”⁵⁸ Accordingly, individuals in F-1 status are authorized to remain in the United States for as long as it takes to complete their program.⁵⁹ By having this variable duration, individuals in F-1 status will only accrue “unlawful presence if a concrete action is taken by an immigration court in removal proceedings or USCIS in denying them a benefit they seek.”⁶⁰ As a result, individuals in F-1 status who engage in unauthorized employment will have violated their status and may become subject to removal proceedings; however, they will not begin to accrue unlawful presence toward the three- and ten-year statutory reentry bans unless these formal actions are taken.⁶¹ Although this may appear lenient, designated school officials are required to immediately report violations related to unauthorized employment by terminating the student’s SEVIS record, which notifies Immigration and Customs Enforcement (“ICE”), who may decide to initiate formal removal proceedings.⁶² The student must then immediately depart the United States.⁶³ By that point, the required formal procedures are satisfied, so if the student does not depart the United States, they would begin to accrue unlawful presence, counting toward the three- and ten-year bans.⁶⁴

3. Professional Visas: P-1A and O-1

P-1A and O-1 visas are ideal for professional athletes but also permit the status holder to enroll in a course of study if they wish.⁶⁵ Although P-1A visas

58. See 8 C.F.R. § 214.2(f)(5).

59. *Id.*

60. KURZBAN, *supra* note 34, at 2070.

61. See *Guilford Coll. v. McAleenan*, 389 F. Supp. 3d 377, 384 (M.D.N.C. 2019). The first Trump Administration issued a memorandum that would have changed the date that unlawful presence would begin to accrue to be backdated to the date the violation occurred, instead of the formal adjudication date that currently exists. *Id.* at 384–85. This new rule was enjoined in part for its failure to conform to proper notice-and-comment procedures. *Id.* at 392–93, 398; see also *Guilford Coll. v. Wolf*, No. 18-CV-891, 2020 WL 586672, at *10 (M.D.N.C. Feb. 6, 2020) (enjoining the new rule nationwide). During the first one hundred days of the second Trump Administration, there has been a significant focus on making changes to immigration policies and procedures. Laurence Benenson & Nicci Matthey, *The First 100 Days of the Second Trump Administration: Key Immigration-Related Actions and Developments*, NAT’L IMMIGR. F. (Apr. 28, 2025), <https://immigrationforum.org/article/the-first-100-days-of-the-second-trump-administration-key-immigration-related-actions-and-developments> [<https://perma.cc/GU5U-AL29>]. Therefore, changes to the current rule may once again come into the Trump Administration’s crosshairs.

62. See Broadcast Message, SEVIS, U.S. Immigr. & Customs Enf’t., F-1 Student Employment Reminders (Jan. 21, 2015) (on file with the *Iowa Law Review*).

63. *Id.*

64. If the student departs the United States, their unlawful presence will stop accruing at that time; however, any unlawful presence that has accrued may trigger the statutory bans. KURZBAN, *supra* note 34, at 159.

65. 8 U.S.C. § 1101(a)(15)(O)–(P); 1 ARI SAUER & GREG SISKIND, *AILA’S IMMIGRATION LAW PRACTICE AND PROCEDURE MANUAL: A “COOKBOOK” OF ESSENTIAL PRACTICE MATERIALS* 1865 (3d ed. 2023) (outlining what visa categories permit the holder to engage in formal study). See generally *P-1A Athlete*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 26, 2021), <https://www.uscis.gov/working-in-the-united-states/temporary-workers/p-1a-athlete> [<https://perma.cc/C2KC-ZSEW>]; *O-1 Visa: Individuals with Extraordinary Ability or Achievement*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 3, 2023), <https://www.uscis.gov/working-in-the-united-states/temporary-workers/o-1-visa-individuals-with-extraordinary-ability-or-achievement> [<https://perma.cc/8DRW-NYP6>].

are tailored for professional athletes, the necessary qualifications for this category are stringent. To be eligible, the foreign national must compete individually or as part of an internationally recognized team or group.⁶⁶

An individual becomes “internationally recognized” when they have “a high level of achievement . . . 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.”⁶⁷ Additionally, athletes hoping to qualify for P-1A visas must intend to participate in an event that requires the participation of athletes with international reputations.⁶⁸ By considering “(1) the level of viewership, attendance, revenue, and major media coverage of the events; (2) the extent of past participation by internationally recognized athletes or teams; (3) the international ranking of athletes competing; or (4) documented merits requirements for participants,” it is possible to determine whether an event is internationally recognized.⁶⁹

All of the evidence must be well-documented, and if the sport typically uses employment contracts, an executed contract must be presented as well.⁷⁰ Assuming these qualifications are met, the foreign national must also show that their primary intent in obtaining the P-1A visa is to participate in the event itself, not to participate in opportunities related to the event.⁷¹ Individuals in P-1A status are permitted to engage in additional employment opportunities only if those opportunities relate to the event they will participate in, such as sponsorships and promotional appearances.⁷²

The alternative O-1 visa option is issued to foreign nationals with “extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim.”⁷³ The bar for extraordinary ability is quite high—defined for “the field of . . . athletics” as “a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.”⁷⁴ In athletics, proof of extraordinary ability can be shown by “[r]eceipt of a major, internationally recognized award” or by submitting three or more of the following: (1) documentation showing receipt of a nationally or internationally recognized award; (2) documentation showing the foreign national is a member of an organization that requires outstanding achievement to join; (3) proof that a professional or major trade publication published materials about the foreign national; (4) evidence that the foreign national

66. 8 C.F.R. § 214.2(p)(1)(ii)(A)(1) (2024); see *P-1A Athlete*, *supra* note 65 (noting that amateur athletes are eligible for P-1A visas if the team they are joining is located within “the United States and is a member of a foreign league”; additionally, theatrical ice skaters are permitted to apply for P-1A visas).

67. 8 C.F.R. § 214.2(p)(3).

68. *Id.* § 214.2(p)(1)(ii)(A)(1).

69. KURZBAN, *supra* note 34, at 2225–26.

70. 8 C.F.R. § 214.2(p)(4)(ii)(B)(1).

71. See *id.* § 214.2(p)(1)(ii)(A)(1).

72. See KURZBAN, *supra* note 34, at 2226, 2231.

73. 8 C.F.R. § 214.2(o)(1)(ii)(A)(1).

74. *Id.* § 214.2(o)(3)(ii).

judged work performed by others in the same field; (5) evidence of the foreign national's critical or essential employment at an organization with a distinguished reputation in the field; or (6) evidence that the foreign national has been paid or will be paid a high salary in relation to others in the field.⁷⁵ In addition, such proof of extraordinary ability must be well-documented in reliable sources.⁷⁶ Importantly, determinations on whether an individual has extraordinary ability are rarely overturned by courts.⁷⁷ Given the high bar and typical lack of reviewability, O-1 visas are realistically only an option for the most internationally recognized athletes.⁷⁸

C. CLASSES OF ATHLETES

Traditionally, there have been two classes of athletes: amateurs and professionals.⁷⁹ The key distinction between these two classes depends on how much they earn from playing their sport.⁸⁰ Ordinarily, amateur athletes are not paid for their athletic pursuits, while professional athletes are.⁸¹ Although a vast majority of very talented athletes never become professional athletes, in some cases, through newly emerged revenue streams, they receive compensation rivaling their professional peers.⁸² These newly emerged revenue streams include massive contracts; Name, Image, and Likeness ("NIL") deals; and social media followings, which have vastly decreased the difference in earnings

75. *Id.* § 214.2(o)(3)(iii). There are additional ways to submit evidence showing extraordinary ability that have been excluded from the list. These excluded prongs require the authorship of scholarly articles; this is an incredibly unlikely prong for an athlete to have. Although there is a provision to submit comparable evidence, it is unclear what comparable evidence of authorship of scholarly articles would be for athletes.

76. *See id.* § 214.2(o)(3)(iii)(B).

77. *See* *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 541 (S.D.N.Y. 2012) (discussing how courts should generally defer to the decision of an agency unless the record shows that the decision meets the arbitrary, capricious standard of review).

78. *See id.* at 545–46 (finding that being ranked 284th in the world at table tennis does not meet the extraordinary ability requirement); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 915, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify since his skill was as a player, not a coach).

79. *See* Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 3701, 106 Stat. 4227, 4227 (1992) (drawing distinctions between professional sports leagues and amateur sports leagues), *abrogated by* *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 474 (2018) (finding that the Professional and Amateur Sports Protection Act violates the anticommandeering doctrine).

80. *Compare* 9 FAM, *supra* note 33, § 402.2-4(A)(7), *with id.* § 402.2-5(C)(4). *See Amateur vs. Professional Athletes*, USLEGAL, <https://education.uslegal.com/amateur-athletics/amateur-vs-professional-athletes> [<https://perma.cc/EX5U-VGJK>].

81. Earnings refers to the traditional annual salaries. Reward money from participating or winning competitions is not viewed as a form of earning for this distinction. *See Amateur vs. Professional Athletes*, *supra* note 80.

82. *See* Bruce Bode, *The Rise of Amateur Adult Athletes in a Society of Pros*, USASA (Sept. 12, 2024), <https://usadultsoccer.com/2024/09/12/the-rise-of-amateur-adult-athletes-in-a-society-of-pros> [<https://perma.cc/4YDH-Y7KK>] ("The National Collegiate Athletic Association (NCAA) estimates that just 0.9 percent of collegiate athletes go on to compete professionally . . .").

between professional and amateur athletes.⁸³ As a result, the line between amateur and professional sports has become increasingly hazy.⁸⁴

The number of classically amateur athletes who have started to receive compensation on par with their professional counterparts is staggering, and through their unique status, these individuals have formed a class of their own—semiprofessional athletes.⁸⁵

1. Student Athletes and NIL

The vast majority of the athletes who classify as semiprofessional athletes are student athletes. Despite these athletes' traditional amateur status, collegiate sports and financial interests have been intertwined for over a century.⁸⁶ It was not until 1948 that the National Collegiate Athletic Association ("NCAA") placed limitations on collegiate athlete earnings.⁸⁷ Compensation for student athletes has primarily been limited to scholarships.⁸⁸ This limitation was put in place "on the basis that fans would be less interested in watching professional athletes compete in college sports, and that players would be less engaged in their academic studies and communities if they were compensated with anything other than scholarships."⁸⁹ However, in 2021, the U.S. Supreme Court ruled against the NCAA by upholding the district court's finding that the NCAA's prohibition on other forms of earning for collegiate athletes violated antitrust laws.⁹⁰ Following this decision, the NCAA quickly issued an interim policy permitting collegiate athletes to "benefit from their name, image and likeness."⁹¹ Subsequently, collegiate athletes around the country cumulatively earned more than \$900 million during just the first year of the NIL era.⁹²

83. *See id.*

84. *See id.*

85. *See* Nick Cottongim, *Top 20 College Athletes with the Highest NIL Valuations*, FAN (Mar. 21, 2025), <https://1075thefan.com/playlist/top-20-college-athletes-with-the-highest-nil-valuations> [<https://perma.cc/ZW3R-Z2SK>] ("Arch Manning – \$6.5M Valuation"); Reem Abdalazem & Joe Brennan, *This Is the Lowest Paid Player in the NFL: Is There a Minimum Salary in American Football?*, AS (Feb. 9, 2025, 5:15 PM), <https://en.as.com/nfl/who-is-the-lowest-paid-player-in-the-nfl-is-the-re-a-minimum-salary-in-american-football-n-5> [<https://perma.cc/DUT9-5X9R>] ("The average NFL salary is around \$3.2 million in 2024, up from \$2.8 million last year in 2023.").

86. *See* Nat'l Collegiate Athletic Ass'n v. Alston, 594 U.S. 69, 74–77 (2021).

87. *See id.* at 77.

88. *See* O'Bannon v. Nat'l Collegiate Athletic Ass'n, 802 F.3d 1049, 1054–55 (9th Cir. 2015) ("In August 2014, the NCAA announced it would allow athletic conferences to authorize their member schools to increase scholarships up to the full cost of attendance.").

89. Elysse Bell, *Why College Athletes Are Being Paid*, INVESTOPEDIA (Feb. 16, 2025), <https://www.investopedia.com/should-college-athletes-be-paid-8576572> [<https://perma.cc/CZ3F-NGAC>].

90. *See* Alston, 594 U.S. at 107; *see also* Emma S. Fowler, Case Note, NCAA v. Alston, 90 TENN. L. REV. 447, 452 (2023) ("While the NCAA may point to 'tradition' and 'defining characteristics' all it wants, those labels do not stand up to 'ordinary principles of antitrust law.'")

91. Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/5NYB-ZV4F>].

92. *See* Drew Butler, *The Highest-Paid College Athletes in the NIL Era*, ICON SOURCE, <https://iconsource.com/blog/highest-paid-college-athletes> [<https://perma.cc/GBP9-ZNXX>].

In 2025, the NCAA finalized a landmark settlement on student athlete compensation.⁹³ This settlement, often referred to as the *House* settlement, makes significant changes to permissible student athlete compensation.⁹⁴ The key terms require the NCAA and its conferences to pay \$2.8 billion in damages to student athletes who played Division I sports between 2016 and 2024, introduce direct “revenue-sharing” compensation to student athletes, impose roster limits on NCAA teams, eliminate scholarship limits, and impose greater NIL compensation oversight.⁹⁵ With the implementation of the new direct compensation system, college athletes are expected to be paid from a pool of almost \$20.5 million per school.⁹⁶ However, this settlement does not come without a few important caveats regarding these direct payments. First, the settlement does not dictate how this compensation will be distributed to athletes; hypothetically, a college could award the entire \$20.5 million to a single athlete if it wished.⁹⁷ Additionally, the \$20.5 million is a cap; there is no floor for payments that must be made.⁹⁸ Finally, the settlement permits colleges to facilitate NIL deals for their student athletes; any NIL deals facilitated by the college count toward this \$20.5 million cap.⁹⁹ Although it is unclear exactly how these funds will be distributed among college athletes, it is fair to say that for some college athletes, college athletics no longer fall within the realm of amateurism.¹⁰⁰

The impacts that the *House* settlement will have on domestic student athletes are game-changing; however, as domestic student athletes begin getting paid, their international student athlete peers remain restricted from partaking in these opportunities.¹⁰¹ Their F-1 status generally denies them the opportunity to engage in what may be considered off-campus employment

93. Opinion Regarding Order Granting Motion for Final Approval of Settlement Agreement at 72, *In re Coll. Athlete NIL Litig.*, No. 20-cv-03919, 2024 WL 5360139 (N.D. Cal. June 9, 2025).

94. See generally KNIGHT COMM’N ON INTERCOLLEGIATE ATHLETICS, BRIEF ON *HOUSE V. NCAA SETTLEMENT* (2025), https://www.knightcommission.org/wp-content/uploads/KnightCommissionBrief_HousevNCAA_182025.pdf [<https://perma.cc/4ZJ3-45ZU>] (outlining key terms of the proposed *House* Settlement).

95. See Amended Stipulation and Settlement Agreement Appendix A at 2–32, *In re College Athlete NIL Litig.*, 2024 WL 5360139 (No. 20-cv-03919); Opinion Regarding Order Granting Motion for Final Approval of Settlement Agreement at 11–13, *supra* note 93; see also KNIGHT COMM’N ON INTERCOLLEGIATE ATHLETICS, *supra* note 94 (providing a more thorough discussion of the settlement terms).

96. See KNIGHT COMM’N ON INTERCOLLEGIATE ATHLETICS, *supra* note 94.

97. See Amended Stipulation and Settlement Agreement Appendix A, *supra* note 95, at 13; see also KNIGHT COMM’N ON INTERCOLLEGIATE ATHLETICS, *supra* note 94 (discussing key terms and highlighting relevant details that were excluded from the settlement, such as how payments will be distributed).

98. See KNIGHT COMM’N ON INTERCOLLEGIATE ATHLETICS, *supra* note 94.

99. See *id.*

100. See Dan Wetzel, *No More Charades: College Amateurism Is Officially Dead, and Good Riddance*, ESPN (Apr. 12, 2025, 7:38 AM), https://www.espn.com/college-sports/story/_/id/44633521/a-mateurism-ever-existed-college-sports-officially-dead [<https://perma.cc/Y8FH-3PUX>].

101. See Bryan Dearing, *Name, Image, and Likeness: International Student-Athletes*, U. OR., <https://generalcounsel.uoregon.edu/name-image-and-likeness-international-student-athletes> [<https://perma.cc/5QUV-Z94V>].

(NIL deals) and to work more than twenty hours on campus (direct compensation).¹⁰² Many student athletes have been advised that they should avoid these opportunities, given the uncertainty around how engaging in them may impact their immigration status.¹⁰³ Traditionally, restricting international student employment has been widely accepted under the rationale that these students are here “to study, not to work.”¹⁰⁴ However, as collegiate sports shift away from amateurism and more international athletes are recruited to participate in college sports, this past rationale falls into question.¹⁰⁵ Although efforts to resolve this disparity have been proposed, there has been no resolution to this discrepancy in permissible earnings.¹⁰⁶ Additionally, while they may fall outside of the traditional amateur categorization, due to receiving compensation for playing their sport, without more demonstrated experience, international student athletes are unlikely to satisfy the criteria to qualify for P-1 or O-1 visas.¹⁰⁷

2. Esports Athletes

Simply put, esports—electronic sports—are video games played in organized and competitive leagues.¹⁰⁸ The genre of video games is incredibly broad, ranging from team-oriented multiplayer online battle arenas to farming

102. See *supra* Section I.B.2; NCAA, TIME MANAGEMENT: WHAT STUDENT-ATHLETES SHOULD EXPECT (2024), http://fs.ncaa.org/Docs/eligibility_center/Student_Resources/Time_Management_DI_DII_DIII.pdf [<https://perma.cc/86ZQ-CUBW>] (discussing how many hours student athletes can expect to spend on different activities in college, suggesting based on 2019 data that student athletes spend more than thirty hours on athletics). The employment status of student athletes is a contentious area. However, based on a recent regional National Labor Relations Board decision, and the potential for direct compensation to some student athletes, it seems increasingly likely that at least some student athletes will be considered employees. See *Trs. of Dartmouth Coll. & Serv. Emps. Int’l Union, Local 560, N.L.R.B. No. 01-RC-325633*, at 2 (Feb. 5, 2024) (finding that basketball athletes are university employees).

103. See Dearing, *supra* note 101. The first Trump Administration used “its lawmaking power to terrorize immigrant communities . . . without enacting meaningful longstanding changes.” Stella Burch Elias, *Law as a Tool of Terror*, 107 IOWA L. REV. 1, 5 (2021). By terrorizing these communities, the Administration aimed to make these communities “so afraid that they would no longer be able to bear living in the United States and would return voluntarily to their countries of origin.” *Id.* at 15. Given the second Trump Administration’s aims at international students who have minor (if any) tarnishes on their records, international student athletes may decide that competing is not worth the potential risk. Kyle Cheney & Josh Gerstein, *Trump Administration Reverses Abrupt Terminations of Foreign Students’ US Visa Registrations*, POLITICO (Apr. 25, 2025, 11:53 AM), <https://www.politico.com/news/2025/04/25/trump-admin-reverses-termination-foreign-student-visa-registrations-00309407> [<https://perma.cc/US5N-ZUGV>].

104. See Dearing, *supra* note 101.

105. See Wetzel, *supra* note 100; Martin Rogers, *How Australian Punters Are Taking Over College Football*, FOX SPORTS (Dec. 28, 2021, 5:40 PM), <https://www.foxsports.com/stories/college-football/how-australian-punters-are-taking-over-college-football> [<https://perma.cc/Q52Y-RZ25>].

106. See Name, Image, and Likeness for International Collegiate Athletes Act, S. 3054, 118th Cong. (2023); Bianca Hillier, *International Students Still Restricted from NIL Deals*, WORLD (Jan. 17, 2024), <https://theworld.org/stories/2024/01/17/international-students-still-restricted-nil-deals> [<https://perma.cc/FE3F-HN8B>].

107. See *supra* Section I.B.3.

108. See Marc Leroux-Parra, *Esports Part 1: What Are Esports?*, HARV. INT’L REV. (Apr. 24, 2020), <https://hir.harvard.edu/esports-part-1-what-are-esports> [<https://perma.cc/8WRR-V5TK>].

simulators.¹⁰⁹ Currently dominated by Counter-Strike, Valorant, and League of Legends, esports have had tremendous growth since 2016.¹¹⁰ Estimates predict that esports will have more viewers than most traditional sports leagues in the United States (with the exception of the National Football League) by 2030.¹¹¹

With this immense viewership comes massive contracts and compensation deals for some of the most prominent esports athletes.¹¹² As esports popularity grows, so does external interest in the world of esports—so much so that countless universities have begun to promote esports teams as a tool for recruiting and retaining students.¹¹³ In the alternative, many people wish to compete on esports teams and in leagues outside of the realm of university-sponsored competitions.¹¹⁴

The NCAA had previously declined to govern collegiate esports due to the preexisting financial model of esports involving individual sponsorships and the NCAA's belief in preserving amateurism in college sports.¹¹⁵ However, with the changes to the NCAA's policies in the wake of the *House* settlement, the NCAA could decide to begin regulating esports as well.¹¹⁶ Even if the NCAA started regulating collegiate esports, its regulation would not resolve the other issues that international esports athletes encounter, such as their ability to qualify for appropriate visas. F-1 visas would require esports athletes to be enrolled at a university, which may not be desired by all international esports athletes.¹¹⁷ USCIS has granted P-1A and O-1 visas to some esports athletes

109. See *id.*

110. See *Popular Esports Games in 2025 by Viewership*, ESPORTS CHARTS, <https://escharts.com/top-games?order=peak> [<https://perma.cc/LX6T-KRV5>]; *With Viewership and Revenue Booming, Esports Set to Compete with Traditional Sports*, SYRACUSE U., <https://onlinegrad.syracuse.edu/blog/esports-to-with-traditional-sports> [<https://perma.cc/34NL-6V42>].

111. Logan Tooker, *Tuning In: Esports vs Sports Viewership Shifts Further Going into 2025*, ESPORTS.NET (Mar. 14, 2025), <https://www.esports.net/news/esports-vs-sports-viewership> [<https://perma.cc/544X-HBU5>].

112. See Jacob Wolf & Pablo Suárez, *Sources: Cloud9 Makes Perkz Available on Buyout Market*, DOT ESPORTS (Oct. 28, 2021, 2:58 PM), <https://dotesports.com/league-of-legends/news/source-s-cloud9-makes-perkz-available-on-buyout-market> [<https://perma.cc/7BYP-45LP>]; Martin Arévalo-Östberg, *Faker's Salary Reportedly Larger than Entire LCK Teams*, STRAFE (Aug. 19, 2024), <https://www.strafe.com/news/read/faker-salary-reportedly-matches-that-of-whole-geng-team> [<https://perma.cc/J6YT-MHJ5>].

113. See Adam Stone, *Collegiate Esports Programs Serve as Recruitment and Retention Tools*, EDTECH (May 28, 2024), <https://edtechmagazine.com/higher/article/2024/05/collegiate-esports-programs-serve-recruitment-and-retention-tools> [<https://perma.cc/H74W-SKQY>].

114. See Wil Fisackerly & Yongjin Hwang, *Where Do Amateurs Go to Become Pros? A Comparison of the Current Competition Systems in Collegiate Esports to Traditional Collegiate Sport Environments*, J. ELEC. GAMING & ESPORTS 1–2 (Apr. 2024), <https://journals.humankinetics.com/downloadpdf/view/journals/jege/2/1/article-jege.2023-0009.pdf> [<https://perma.cc/X8BX-9HBF>].

115. See Justin M. Jacobson, *NIL Rights Provide Clear Path for College Esports Pros*, JMJ, <https://jmsesq.com/nil-college-esports> [<https://perma.cc/B9VV-ZgU2>].

116. See *id.*

117. See 8 U.S.C. § 1101(a)(15)(F) (specifying that to qualify for a student visa (F-1), the applicant must be seeking to study at a qualifying university).

in the past.¹¹⁸ However, like any P-1A or O-1 visa application, these applicants must show sufficient documentation of international reputation or acclaim.¹¹⁹ Furthermore, given the difficulty in equating different esports and what different ranks and championship titles mean across games, it is possible that even qualified applicants may be denied because of their adjudicators' unfamiliarity with esports.¹²⁰ As esports continue to grow in popularity and revenues, an increasing number of esports athletes will meet the criteria of a semiprofessional athlete. However, many foreign national esports athletes will be unable to qualify for a visa that meets the needs of a semiprofessional athlete.

II. THE MODERN IMMIGRATION SYSTEM IS INSUFFICIENT

Although there are significant differences in public opinion on immigration, a vast majority of Americans support the admission of highly skilled foreign nationals.¹²¹ Some of the most popular of these foreign nationals, such as Lionel Messi, Nikola Jokic, Miguel Cabrera, Giannis Antetokounmpo, and Shohei Ohtani, are also some of the most popular athletes in the modern era, driving team revenues through the roof.¹²² Additionally, many of the sports industry's most popular athletes are also some of the most skilled and successful.¹²³ More and more teams are hoping to capitalize on this growth by recruiting an international superstar; however, the desire to recruit highly skilled athletes is not unique to the United States.¹²⁴

118. See Jonathan Brannon, Note, *Are You Not Entertained? Considering the P-3 Visa as an Alternative Option for International Esports Professional Gamers*, 60 ARIZ. L. REV. 753, 754 (2018).

119. 8 C.F.R. § 214.2(o)(1)(ii)(A)(1), (p)(1)(ii)(A)(1) (2024).

120. See McLaughlin, *supra* note 1.

121. One poll found that the American public's attitude toward the country's openness has decreased in recent years. Laura Santhanam, *Americans Are Increasingly Worried About Immigration and National Identity, Poll Shows*, PBS (Feb. 7, 2024, 5:00 AM), <https://www.pbs.org/newshour/politics/where-voters-stand-on-immigration> [<https://perma.cc/E6Z7-VPJN>]. However, in contrast, a recent study found that seventy-one percent of Republican voters and eighty-seven percent of Democratic voters support admitting more highly skilled foreign nationals into the United States. See Sahana Mukherjee & Jens Manuel Krogstad, *Trump and Harris Supporters Differ on Mass Deportations but Favor Border Security, High-Skilled Immigration*, PEW RESEARCH CTR. (Sept. 27, 2024), <https://www.pewresearch.org/race-and-ethnicity/2024/09/27/trump-and-harris-supporters-differ-on-mass-deportations-but-favor-border-security-high-skilled-immigration> [<https://perma.cc/6EKN-N7H9>].

122. See *Ranking the Top 100 Professional Athletes Since 2000*, ESPN (July 18, 2024, 7:00 AM), https://www.espn.com/espn/story/_/id/40446224/top-100-athletes-21st-century [<https://perma.cc/598G-Z9UW>]; Jack Harris, *'A Shohei Economy': How Shohei Ohtani's First Year Transformed the Dodgers Financially*, L.A. TIMES (Dec. 9, 2024, 3:00 AM), <https://www.latimes.com/sports/dodgers/story/2024-12-09/dodgers-shohei-ohtani-financial-impact-first-year> [<https://perma.cc/4CNE-EZFR>] (discussing the significant economic benefits the Dodgers have received since signing Shohei Ohtani).

123. Morgan Smith, *Women's Sports Could Bring in over \$1 Billion in 2024—Record-Breaking Viewership, Stars like Caitlin Clark Are Driving Growth*, CNBC MAKE IT (Mar. 20, 2024, 3:25 PM), <https://www.cnbc.com/2024/03/08/womens-sports-could-bring-in-over-1-billion-in-2024-whats-driving-growth.html> [<https://perma.cc/JA5P-FQGL>].

124. Laura Entis, *Study: If Your Team Has Too Many Superstars, Performance Will Suffer*, ENTREPRENEUR (Oct. 14, 2014), <https://www.entrepreneur.com/living/study-if-your-team-has-t>

Many countries recruit these athletes to compete on the country's behalf in international tournaments.¹²⁵ High levels of nationalism emerge around prominent international sports competitions, and the competition to get these athletes to immigrate and compete for different countries can be fierce.¹²⁶ The United States holds a unique position in this fierce recruitment battle as it is one of the only places in the world where talented athletes can pursue both academics and athletics at the same time.¹²⁷ In 2024, there were more than 24,000 international student athletes at NCAA universities in the United States.¹²⁸ At the same time, the National Association of Collegiate Esports ("NACE") has grown to encompass more than 170 schools and over 5,000 student athletes, some of whom are likely to have immigration status of some kind.¹²⁹ Although the United States admits many promising athletes for schooling, the current immigration system does little to retain these promising athletes after they graduate. Additionally, highly skilled athletes who do not want to pursue academics and do not yet have the international acclaim or recognition needed for professional visas are left with almost no pathways to admission based on their skill.

A. THE PROCESS FAILS TO ACCOMPLISH ITS GOAL

One of the goals of U.S. immigration is to attract highly skilled individuals.¹³⁰ At one point in history, the economic, cultural, and educational dominance of the United States was sufficient to attract and retain these immigrants.¹³¹ However, the advances of other countries have diminished this competitive advantage.¹³² This is exacerbated for young developing talent because the current U.S. immigration system is inefficient and ineffective in retaining these

oo-many-superstars-performance/238531 [https://perma.cc/V4TK-8MWA] ("[C]onventional wisdom dictates that one should always try and select the superstars . . ."); see Jonathan Horowitz & Stephen R. McDaniel, *Investigating the Global Productivity Effects of Highly Skilled Labour Migration: How Immigrant Athletes Impact Olympic Medal Counts*, INT'L J. SPORTS POLY & POL. 19–21 (Apr. 2014), <https://www.tandfonline.com/doi/full/10.1080/19406940.2014.885910> [https://perma.cc/R2UT-J7DV].

125. See Horowitz & McDaniel, *supra* note 124, at 11.

126. Kathleen E. Powers, *Do the Olympics Promote Nationalism – and International Conflict? Here's the Research*, WASH. POST (July 26, 2021, 7:45 AM), <https://www.washingtonpost.com/politics/2021/07/26/do-olympics-promote-nationalism-international-conflict-heres-research/> (on file with the Iowa Law Review).

127. Connor Bran, *College Sports Proves Integral to Olympic Movement*, NCAA (July 23, 2021, 8:12 AM), <https://www.ncaa.org/news/2021/7/23/general-college-sports-proves-integral-to-olympic-movement.aspx> [https://perma.cc/NN76-BAKH].

128. *International Student-Athlete Participation*, NCAA, <https://www.ncaa.org/sports/2018/3/21/international-student-athlete-participation.aspx> [https://perma.cc/X9TJ-64JY].

129. Shilo Lucyk, *Esports in College: What You Need to Know* (2025), APPILY (Jan. 30, 2025), <https://www.appily.com/guidance/articles/academics-college-readiness/esports-in-college-what-you-need-know> [https://perma.cc/KN6H-TFLV].

130. See *How the United States Immigration System Works*, *supra* note 28.

131. See Jeff Papa & Jessica Whelan, *Regaining the Economic Edge: Policy Proposals for High-Skill Worker and Student Authorizations*, 25 IND. INT'L & COMPAR. L. REV. 33, 46 (2015).

132. See *id.*

emerging highly skilled individuals.¹³³ Restrictions on the ability of the spouses of individuals in F-1 status to work or study, limited flexibility on enrollment, and potential unauthorized employment issues that may arise from NIL and direct compensation for student athletes make the current system ineffective for some student athletes.¹³⁴ In some cases, the restrictive nature of the U.S. immigration system may even act as a deterrent for these highly skilled athletes.¹³⁵

A 2015 study found that after surveying numerous individuals in F-1 status, there were several recurring issues. Particularly relevant were the issues that individuals in F-1 status have with the current U.S. immigration system.¹³⁶ The first of these issues is the inability of spouses and unmarried children to work while the individual in F-1 status (the student) is pursuing their course of study.¹³⁷ Although at one point in time, this restriction may have made sense, these policies can act as a recruitment deterrent “in modern times where often both spouses work and/or study.”¹³⁸ Combined with the general limitations on employment opportunities for individuals in F-1 status, many highly skilled athletes worth recruiting may be unable to afford the opportunity to compete.¹³⁹

The second issue the study found is the inflexibility of “the courses of study for international students.”¹⁴⁰ Restrictions on online course enrollment are a common complaint.¹⁴¹ After the COVID-19 pandemic, online course enrollment hit record-level highs.¹⁴² While the number of enrolled students has decreased in recent years, a majority of college students are still enrolled in at least one online course.¹⁴³ Despite this increase in the overall enrollment in online courses for college students, the number of online courses that individuals in F-1 status are permitted to take has not increased in recent years.¹⁴⁴ The inability to take online courses like their peers creates “a disincentive for the best and brightest to study [and compete] in the United States.”¹⁴⁵ Athletes in particular often prefer to take online courses to

133. See *id.* at 34–35.

134. See *id.* at 35–36; Dearing, *supra* note 101.

135. See Papa & Whelan, *supra* note 131, at 35.

136. See *id.* at 35–39.

137. See *id.* at 35–36.

138. See *id.* at 35.

139. See Alicia Jessop, *International Intercollegiate Athletes: A Legal Pathway to Benefit from Their Name, Image, and Likeness in the United States*, 52 CAL. W. INT'L L.J. 309, 321 (2022) (explaining that individuals in F-1 status cannot work off campus during the first year of their studies and can only work off campus in later years if it is related to their studies or they have “severe economic hardship”).

140. See Papa & Whelan, *supra* note 131, at 36–37.

141. See *id.*

142. Lauren Coffey, *Students Distancing from Distance Learning*, INSIDE HIGHER ED (Jan. 30, 2024), <https://www.insidehighered.com/news/tech-innovation/teaching-learning/2024/01/30/online-college-enrollment-continues-post-pandemic> [<https://perma.cc/SDM5-NDGR>].

143. *Id.* (finding that in the 2022 to 2023 academic year 53.4 percent of college students were enrolled in at least one online course).

144. 8 C.F.R. § 214.2(f)(6)(i)(G) (2024).

145. See Papa & Whelan, *supra* note 131, at 36.

accommodate their demanding schedules and training requirements.¹⁴⁶ By restricting the ability of individuals in F-1 status to schedule their classes around their training, some of the world's most talented student athletes may opt not to study and train in the United States.

Finally, the inability to engage in NIL and direct compensation within the United States negatively impacts these talented athletes' desire to train and compete in the United States. Missing out on opportunities that are available to your teammates and peers because of your status can easily drive talented athletes to seek other opportunities abroad without these restrictions.¹⁴⁷ Even for athletes who are not directly in the spotlight, for whom the loss in potential earnings is not as significant, the restrictions limit their ability to build their personal brand and negatively impact their student athlete experience.¹⁴⁸ The discrepancy in opportunities between domestic and international student athletes will make some athletes question whether or not it is worth traveling to the United States.¹⁴⁹ The "desire to have a great experience[,] feel a sense of belongingness with the team, connecting with the head coach and coaches, as well as succeeding academically and athletically" are several of the primary reasons student athletes decide to come to the United States.¹⁵⁰ The inability to participate in the same opportunities as their teammates could harm any one of these reasons and could, accordingly, disincentivize talented international student athletes from coming to the United States.

B. FALLACIES OF CURRENT OPTIONS

The currently available visa options fail to provide effective solutions to the immigration areas of concern that student athletes and semiprofessional athletes face. Regardless of the class of visa—F-1, B-1/B-2, O-1, or P-1A—the current visa options do not create a pathway that these semiprofessional athletes would be able to qualify for without burdensome restrictions.

146. Dalton Hunkle, *Why Student Athletes Choose Online School*, METHOD (Oct. 6, 2020), <https://www.methodschoools.org/blog-2023/why-student-athletes-choose-online-school> [https://perma.cc/6WNU-YVNZ].

147. See Paul Kasabian, *Purdue's Zach Edey: 'I'm Missing Out on a Lot of Money' Due to USA's NIL Laws*, BLEACHER REP. (Apr. 6, 2024), <https://bleacherreport.com/articles/10115774-purdues-zach-edey-im-missing-out-on-a-lot-of-money-due-to-usas-nil-laws> [https://perma.cc/NYX3-7ZBW] (explaining that a Canadian athlete "acknowledged that he's almost certainly losing out on a ton of potential earnings").

148. Jacob Unruh, *'It's Kind of Pointless': Oklahoma State, OU International Athletes Left in Dark with NIL*, OKLAHOMAN (Aug. 14, 2021, 6:09 PM), <https://www.oklahoman.com/story/sports/2021/08/14/oklahoma-state-ou-international-athletes-cant-profit-nil/8044737002> [https://perma.cc/ZMJ5-ZQ3J].

149. *Id.* ("It's the sacrifice that we had to make to come play in the States . . . This one's obviously a tough one, but I think we're all at the point it is what it is.")

150. Bryan Romsa, Katelyn Romsa, Jon Lim & Agatha Ampaire, *Analysis of Factors Influencing the College Choice Decisions of NCAA Division I International Student-Athletes*, SPORT J. 14 (Feb. 2, 2024), <https://thesportjournal.org/article/analysis-of-factors-influencing-the-college-choice-decisions-of-ncaa-division-i-international-student-athletes> [https://perma.cc/QZ3P-D98J].

There are two primary issues with F-1 visas for international student athletes: (1) their intended usage versus their actual usage; and (2) their restrictions on permissible earnings. Students who enter on F-1 visas are intended to do so “solely for the purpose of pursuing . . . a course of study.”¹⁵¹ However, international student athletes often attempt to be recruited for their athletic, not academic, abilities.¹⁵² Although competing on collegiate athletic teams is permitted while in F-1 status, the ultimate purpose of the F-1 visa is not to admit student athletes to compete, but to admit students to learn.¹⁵³ However, most of these F-1 student athletes who are offered NIL deals and direct compensation are being offered these opportunities because of their athletic abilities.¹⁵⁴ As a result, F-1 student athletes are forced to choose between passing up the opportunity to engage in lucrative compensation deals or violating their status, which could lead to potential removal.¹⁵⁵ The validity of the current usage of F-1 visas for student athletes is not questioned; however, student athletes are a unique category of student that would be better served by a more tailored visa option that focuses on their athletic prowess and does not restrict their ability to engage in lucrative deals that arise as a result of such prowess.¹⁵⁶

B-1/B-2 visas carry heavy work restrictions.¹⁵⁷ Although qualifying for a B-1/B-2 visa is relatively easy compared to other visas, they are not well suited for semiprofessional athletes.¹⁵⁸ Foreign nationals who look forward to the opportunity to concurrently pursue academics and athletics will avoid the B-1/B-2 visa because “[s]tudy leading to a U.S. conferred degree or certificate is not permitted on a visitor (B) visa.”¹⁵⁹ For esports athletes, on the other hand, the B-1/B-2 visa is an appealing choice, given the minimal qualification criteria and that B-1/B-2 visas do not restrict the status holder from competing in sporting competitions.¹⁶⁰ Even though they are not authorized to work on

151. 8 U.S.C. § 1101(a)(15)(F).

152. See *International Athletes: Your Guide to Getting Recruited in the U.S.*, NCSA COLL. RECRUITING, <https://www.ncsasports.org/recruiting/how-to-get-recruited/international-athletes> [<https://perma.cc/4Y6T-SPX9>] (detailing the optimal steps international students should take to be recruited for their athletic abilities).

153. 8 U.S.C. § 1101(a)(15)(F).

154. See generally Jay Bilas, *Why NIL Has Been Good for College Sports . . . and the Hurdles that Remain*, ESPN (June 29, 2022, 7:00 AM), https://www.espn.com/college-sports/story/_/id/34161311/why-nil-good-college-sports-hurdles-remain [<https://perma.cc/N2LU-VM DV>] (discussing how collegiate athletes benefit from being able to earn money from their athletic branding through NIL opportunities).

155. See Dearing, *supra* note 101.

156. It is important to note that while F-1 visas are still used by student athletes, these student athletes are not permitted to engage in NIL opportunities because they are considered “work.” See KURZBAN, *supra* note 34, at 2079–81.

157. See *supra* Section I.B.1.

158. Compare *supra* Section I.B.1, with *supra* Section I.B.3.

159. See *Student Visa*, *supra* note 11.

160. See 9 FAM, *supra* note 33, §§ 402.2-4(A)(7), 402.2-5(C)(4). Riot Games, the creators of *League of Legends*, one of the largest esports games of all time, investigated and “found a wide array of players that didn’t currently possess the proper immigration status to be able to work” were

this visa categorization, they are still eligible to receive prize money, and for some esports athletes, the reward of engaging in sporting competitions—borderline employment activity—is worth the potential risk of violating their status.¹⁶¹ However, as a result of the more stringent criteria and longer processing times that other visa categories possess, having esports athletes obtain B-1/B-2 visas is a common practice in the industry.¹⁶² While many athletes may compete for personal enjoyment, at the end of the day, their employment by game developers and esports teams puts their visa status at risk.¹⁶³ The B-1/B-2 restrictions forbid such conduct, meaning the prohibition on employment that accompanies B-1/B-2 visas makes their potential use meaningless to many talented esports athletes.¹⁶⁴

The last remaining options are O-1 or P-1A visas, which are not without faults. Their high qualification criteria make them an unrealistic option for most student athletes who have not already achieved international acclaim.¹⁶⁵ USCIS has wide discretion when adjudicating visa applications; individuals who should meet the qualifications to obtain an O-1 or P-1A visa are often turned away.¹⁶⁶ Using its discretionary authority, USCIS aims to have uniformity in its adjudication process.¹⁶⁷ However, given the recent emergence of esports and the uncertainty about certain qualifications for esports athletes, it is difficult to predict which applicants will be approved and which will be denied.¹⁶⁸ This lack of predictability is often related to one prominent issue: whether the esports athlete meets the “internationally recognized” requirement for a P-1A visa or the “extraordinary ability” requirement of an O-1 visa.¹⁶⁹ Although some high-profile esports athletes have received P-1A visas in the past, simply competing in world-class competitions does not guarantee that an individual

competing in esports tournaments. Bryce Blum, *The Esports Lawyer Breaks Down the Visa Issue Plaguing the LCS*, ESPN (Jan. 27, 2016, 5:44 PM), https://www.espn.com/esports/story/_/id/14661486/breaking-league-legends-visa-issue [<https://perma.cc/T24SY8EB>].

161. See 9 FAM, *supra* note 33, §§ 402.2-4(A)(7), 402.2-5(C)(4); Blum, *supra* note 160.

162. Blum, *supra* note 160 (“[A]n expedited P-1A visa takes a minimum of three weeks to process . . .”).

163. Chase Cripe, Note, *Tfue v. Faze Clan and Newly Created Players Associations: What Has Happened and How Will It Impact the Future of Esports?*, 31 MARQ. SPORTS L. REV. 151, 155 (2020) (“Given the immense impact and amount of control developers have, it is possible, perhaps even probable, that they may be considered a joint-employer, along with a player’s team, when it comes to labor decisions and disputes.”).

164. Brannon, *supra* note 118, at 767–68.

165. See 8 U.S.C. § 1101(a)(15)(O)–(P); *P-1A Athlete*, *supra* note 65; *O-1 Visa: Individuals with Extraordinary Ability or Achievement*, *supra* note 65.

166. Brannon, *supra* note 118, at 762–63.

167. See *Policy Manual*, U.S. CITIZENSHIP & IMMIGR. SERVS. (May 13, 2025) [hereinafter *USCIS Policy Manual*], <https://www.uscis.gov/policy-manual> [<https://perma.cc/26VH-FKBN>].

168. Patrick Kennedy, Note, *If You Build It, Will They Come?: eSports Regulation Challenges and International Investment Opportunities*, 19 VA. SPORTS & ENT. L.J. 54, 58 (2019).

169. 8 U.S.C. § 1101(a)(15)(O)–(P); Kennedy, *supra* note 168, at 57; Rachel Insalaco, Comment, *Making the Extraordinary Ordinary: Examining the Impact of Shifting Immigration Policies on Professional Athletics in the United States*, 28 JEFFREY S. MOORAD SPORTS L.J. 93, 103–04 (2021).

will be found to have international recognition.¹⁷⁰ For example, individuals who qualified to compete in one of “the world’s largest [esports] tournament[s]” still had some of their P-1A visa applications denied.¹⁷¹ The uncertainty around whether the esports athletes would be able to attend this same competition was severe enough that the hosting organization ultimately decided to host the competition outside of the United States.¹⁷² There is even more uncertainty for athletes with less obviously impressive qualifications. Whether they are emerging rookies or proven veterans, if they lack impressive awards and high-profile tournament wins, these esports athletes will encounter immigration issues regardless of their underlying talent.¹⁷³ The uncertainty around qualifying for P-1A visas has led to some teams and developers moving their teams and tournaments outside of the United States so that the esports athletes can compete with fewer immigration issues.¹⁷⁴

Given these complications, O-1 and P-1A visas are ineffective and inefficient options to meet the requirements that many semiprofessional athletes need. Other aforementioned visa types are also inadequate to meet the needs of semiprofessional athletes: B-1/B-2 visas heavily restrict any employment and academic opportunities, while F-1 visas are not tailored toward student athletes and restrict their ability to engage in adjacent employment opportunities, making them a workable but undesirable option for many semiprofessional athletes.¹⁷⁵

III. MODERN TALENTS REQUIRE MODERN RULES

The common theme that has developed with both international student athletes and international esports athletes is that while they are talented and often receive lucrative compensation deals, there is no singular visa option that provides an ideal combination of freedom from restraint and reasonable eligibility criteria.¹⁷⁶ Although potential solutions like using the P-3 visa as a temporary solution for esports athletes or permitting student athletes with F-1 status to enter into NIL endorsement contracts without violating their status

170. Maryanne Kline & Elizabeth C. Egan, *The Thrill of a Visa, the Agony of Denial: Visa Challenges for the Esports Athlete*, MINTZ (Feb. 22, 2019), <https://www.mintz.com/insights-center/vi ewpoints/2806/2019-02-22-thrill-visa-agony-denial-visa-challenges-esports-athlete> [<https://per ma.cc/56QT-BPWA>]; Kennedy, *supra* note 168, at 58–59.

171. Kennedy, *supra* note 168, at 59 (emphasis omitted).

172. *Id.*

173. See Jonathan Yee, *LS: Cloud9 Players and Staff Facing Visa Issues, Won’t Make LCS Lock In*, ONE ESPORTS (Jan. 6, 2022, 1:40 PM), <https://www.oneesports.gg/league-of-legends/ls-cloud9-players-visa-issues> [<https://perma.cc/R48P-ENBL>]; Gwynn, *supra* note 3 (noting that in a recent case that made headlines, players for the Moist Esports Apex Legends team had their visa applications denied multiple times due to uncertainty regarding the team’s ranking qualifications).

174. Teddy Amenabar, *OWL’s L.A. Valiant Releases Entire Roster, Citing Visa Issues in Relocation to China*, WASH. POST (Jan. 29, 2021), <https://www.washingtonpost.com/video-games/esports/2021/01/29/overwatch-valiant-china-league> (on file with the *Iowa Law Review*); Richard Scott-Jones, *Valve Will Move Dota 2 International Out of USA if Immigration Difficulties Continue*, PCGAMESN (Feb. 10, 2017), <https://www.pcgamesn.com/dota-2/dota-2-international-trump-immigration-ban> [<https://perma.cc/4CAU-47FJ>].

175. See *supra* Section II.B.

176. See *supra* Section II.B.

are sufficient to resolve some specific issues at hand, these solutions do not aim to resolve the issue for the wider range of semiprofessional athletes.¹⁷⁷ Therefore, the best solution to these issues that plague semiprofessional athletes is to create a new category of nonimmigrant visa to be used by semiprofessional athletes.

A. CREATING A NEW VISA TYPE

When Congress significantly overhauled the U.S. immigration system in 1990, it created the Jordan Commission to evaluate immigration policy and provide recommendations for future improvements.¹⁷⁸ Although the best practice to address modern immigration issues would be to create a new commission that analyzes modern immigration priorities and concerns, the current Jordan Commission Report can be used as a guide until a modern study is conducted.¹⁷⁹ The general goal of this new visa is to admit foreign nationals who show promising talent to develop into highly skilled individuals and individuals who possess atypical qualifications. Individuals who already have extensive, recognized qualifications would be ineligible because they would already be considered highly skilled. Additionally, the new visa would permit both study and employment while further developing athletic skills. To create this new visa category for semiprofessional athletes, two key elements act as touchstones to ensure that it conforms with general immigration policy goals. These elements are: (1) the active participation of the visa petitioner; and (2) a focus on highly skilled foreign nationals who are early in their careers.¹⁸⁰ On its face, the proposed visa category has significant room for abuse, so it will require additional protections to ensure it is used only by those for whom it was intended: individuals with developing skills and talents.

The first requirement of this new visa type is to require visa petitioners to perform regular performance evaluations on the status holders they petitioned for. The primary responsibility of employment-based petitioners is to submit the necessary documentation for the foreign national's application.¹⁸¹

177. P-3 visas are used to admit artists and entertainers to participate in unique performances and presentations, to further develop their art form, and require documentation showing that such performance or presentation is culturally unique and of the foreign national's skill in this area. 8 C.F.R. § 214.2(p)(6) (2024); *see also* Name, Image, and Likeness for International Collegiate Athletes Act, S. 3054, 118th Cong. (2023) (proposing a change that would permit individuals in F-1 status to engage in NIL opportunities without violating their status but not addressing the issue of student visas for athletes more broadly).

178. *See* U.S. COMM'N ON IMMIGR. REFORM, BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY 1–2 (1997).

179. A new commission would be better equipped to handle modern-day immigration issues and policy concerns. Although the immigration priorities of the 1990s and now are similar in some respects, at this point, the Jordan Commission's findings are almost thirty years old. *See How the United States Immigration System Works*, *supra* note 28.

180. A foreign national seeking admission on a P-1A or O-1 visa must first have a petitioner file form I-129 on their behalf; the foreign national cannot file this form themselves and therefore requires a petitioner's active participation during the application process. *I-129, Petition for a Nonimmigrant Worker*, U.S. CITIZENSHIP & IMMIGR. SERVS. (May 5, 2025), <https://www.uscis.gov/i-129> [<https://perma.cc/g8VF-MK6C>].

181. *See* 8 C.F.R. § 214.2(p)(2).

Expanding the responsibilities of petitioners to play a more active role after the semiprofessional athletes' admission into the United States would relieve a lot of the uncertainty that the USCIS has displayed in its decision-making. In particular, the uncertainty around what constitutes international recognition or extraordinary ability in the realm of esports varies heavily from game to game, so there is no singular standard to judge against.¹⁸² Conveniently, employers and other petitioners are in the ideal position to make these evaluations about the visa holder's performance, through processes similar to traditional employee annual reviews.¹⁸³ Although many companies still only conduct performance reviews annually, there has been a recent shift toward more frequent and consistent performance reviews.¹⁸⁴ Optimally, these visa performance reviews would be conducted at least quarterly.¹⁸⁵ These reviews would assess whether the individual continues to show signs of immense talent and skill, and if they are likely to reach levels of international recognition or extraordinary skill in the future.¹⁸⁶ If the petitioner ultimately finds that the individual has not shown sufficient promising talent to warrant their retention, the petitioner would be required to submit notice to ICE to terminate their status. This process aligns with the Jordan Commission's guiding statement that "people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave."¹⁸⁷

In the case of semiprofessional athletes, international student athletes are often recruited to participate in athletics as a priority and academics as a necessity.¹⁸⁸ Although F-1 status permits these student athletes to compete

182. The percentage of players that reach different games' highest ranks vary heavily depending on the game. *Rank Distribution*, LEAGUE OF GRAPHS, <https://www.leagueofgraphs.com/rankings/rank-distribution> [<https://perma.cc/UE7B-XWVV>] (showing that 0.026% of League of Legends players reach Challenger); *Ranked Distribution Statistics*, APEX LEGENDS STATUS, <https://apexlegendsstatus.com/game-stats/ranked-distribution> [<https://perma.cc/F5B3-JL2T>] (showing that 0.376% of Apex Legends players reach Apex Predator); *Valorant Stats - Rank Distribution Across All Regions*, VSTATS.GG (Nov. 22, 2024), <https://www.vstats.gg/ranks> [<https://perma.cc/M8EL-4MFC>] (showing that 0.04% of Valorant players reach Radiant); *CS:GO and CS2 Ranks*, TOTAL CS, <https://totalcsgo.com/ranks> [<https://perma.cc/Z25P-D2KP>] (showing that 0.75% of CS:GO players reach Global Elite).

183. Frank V. Cespedes, *How to Conduct a Great Performance Review*, HARV. BUS. REV. (July 8, 2022), <https://hbr.org/2022/07/how-to-conduct-a-great-performance-review> [<https://perma.cc/9T9A-8U39>].

184. Peter Cappelli & Anna Tavis, *The Performance Management Revolution*, HARV. BUS. REV. (Oct. 2016), <https://hbr.org/2016/10/the-performance-management-revolution> [<https://perma.cc/Y42N-N5JG>].

185. A 2021 study found that quarterly (or more) performance reviews yield better engagement scores than more spread out review alternatives. Sarah Lindenfeld Hall, *The Ultimate Guide to Mastering Performance Reviews*, LATTICE, <https://lattice.com/ebook/hrs-complete-guide-to-employee-performance-reviews> [<https://perma.cc/RFG5-GLDN>].

186. In essence, the goal would be to find individuals who in the future will qualify for O-1 or P-1A visa status and admit them on this alternative visa earlier in their careers when there is less competition for their services.

187. U.S. COMM'N ON IMMIGR. REFORM, *supra* note 26, at 3.

188. See *International Athletes: Your Guide to Getting Recruited in the U.S.*, *supra* note 152. The 2.3 grade point average requirement for international student athletes to remain eligible at D-1

while they study, many athletes study so that they can compete. On the other hand, some esports athletes are willing to violate their status in order to compete. The new visa category would aim to create a pathway for these semiprofessional athletes, allowing them to make competing their priority without having to violate their status or focus only on academics. Frequent reviews conducted by coaches would ensure that semiprofessional athletes are continuing to develop their skills so that they may one day reach the realm of international recognition.

Shifting the burden of determining whether these semiprofessional athletes should be admitted away from USCIS and to the visa petitioners eliminates concerns about unfair and inconsistent adjudication for these athletes. This kind of self-reporting is common among government agencies.¹⁸⁹ Although the ultimate authority would continue to rest with USCIS to determine whether the reporting is sufficient, visa petitioners should be given deference on whether the individuals are meeting the talent requirements. This shift would provide a higher level of predictability for these talented applicants, who would no longer have to hope that the USCIS adjudicator assigned to their application is familiar with their sport.

Advocates for keeping the immigration system as it stands now may argue that denying admission for individuals who do not currently meet the visa requirements for O-1 and P-1A visas, but who could likely meet these requirements in the future, is exactly how the immigration system was intended to perform. Admitting those who have already developed their talents elsewhere will provide only a benefit, without a risk.¹⁹⁰ In turn, the United States would only admit “people who should get in” while excluding “people who should not get in.”¹⁹¹ This argument may have been significantly more persuasive twenty or thirty years ago when the United States was unmatched economically.¹⁹² However, as other countries’ economies become more competitive, the natural incentives for highly talented or accomplished individuals to immigrate to the United States for work or study have decreased.¹⁹³ The best way to combat this natural decline is to shift to prioritizing the development of highly skilled individuals by permitting their entry before they become accomplished, so that they will want to stay and contribute these skills to the U.S. economy, not somewhere else abroad. F-1 visas, in a way, already help to accomplish this

institutions highlights the notion that many of these international student athletes are enrolled as a necessity, not as their priority. *Id.*

189. See generally Roberta Baruch & Bruce Hoffman, *Compliance Reports: Reinforcing a Commitment to Effective Orders*, FED. TRADE COMM’N (Mar. 11, 2019), <https://www.ftc.gov/enforcement/competition-matters/2019/03/compliance-reports-reinforcing-commitment-effective-orders> [<https://perma.cc/D888-GZV2>] (detailing the reporting requirements the Federal Trade Commission uses to ensure compliance).

190. See *supra* Section I.B.3.

191. U.S. COMM’N ON IMMIGR. REFORM, *supra* note 26, at 3.

192. See Papa & Whelan, *supra* note 131, at 33.

193. See Ruben Berge Mathisen, *Mapped: The World’s Largest Economies, Sized by GDP (1970–2020)*, VISUAL CAPITALIST (Apr. 26, 2022), <https://www.visualcapitalist.com/cp/the-worlds-largest-economies-1970-2020> [<https://perma.cc/S3LA-YZ22>].

goal by developing foreign nationals academically.¹⁹⁴ If U.S. immigration policy permits the admission of developing academics, a matching policy should exist to permit foreign nationals to develop their athletic skills as well. Only then will the immigration system truly admit everyone “who should get in.”¹⁹⁵

B. MORE VISAS, MORE PROBLEMS

Creating a new category of visa could have several effects such as: (1) fraudulent or abusive use of the visa to admit foreign nationals for whom the visa category was not intended; (2) student athletes and semiprofessional athletes who are admitted into the United States on a different visa type would have to file for a change of status; and (3) the proposed reporting process would be costly to enforce in a timely manner.¹⁹⁶

Unfortunately, fraud is relatively common within the employment immigration realm.¹⁹⁷ USCIS has attempted to combat fraud and abuse of the visa program “by enhancing and increasing site visits, interviews, and investigations of petitioners.”¹⁹⁸ The issue of fraud and abuse is more readily visible in less stringent visa categories, such as B-1/B-2 visas, because of how easy it is to qualify for them as opposed to O-1 and P-1A visas.¹⁹⁹ Given the somewhat broad nature of the new proposed visa category, fraud may occur similarly to other less stringent categories. Although procedures used to reduce fraud and abuse for other visa categories would be an ideal starting point, such as site visits and interviews, additional procedures would be useful to further reduce instances of fraud and abuse.²⁰⁰ For example, restricting petitioners to only verified colleges, universities, and organizations could

194. See *supra* Section I.B.2.

195. U.S. COMM’N ON IMMIGR. REFORM, *supra* note 26.

196. USCIS provides information on how to spot and combat fraud and abuse of the H-1B visa program, which is used to recruit highly skilled foreign nationals, as such illicit conduct can easily shift from one visa type to another. *Combating Fraud and Abuse in the H-1B Visa Program*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 24, 2025), <https://www.uscis.gov/scams-fraud-and-misconduct/report-fraud/combating-fraud-and-abuse-in-the-h-1b-visa-program> [<https://perma.cc/5WBV-7SCV>]; *Changing Your Immigration Status*, STAN. U., <https://bechtel.stanford.edu/navigate-international-life/changing-your-immigration-status> [<https://perma.cc/J45R-VqJP>] (“There are two different ways to change your visa status. The first is through travel and the second is by submitting an application through Premium Processing to the USCIS and remain in the U.S.”).

197. See *Combating Fraud and Abuse in the H-1B Visa Program*, *supra* note 196.

198. *Id.*

199. Fraud is particularly common among H-1B applications which require specialized knowledge versus O and P applications that have higher standards for approval. See Thomas Claburn, *H-1B Visa Fraud Alive and Well Amid Efforts to Crack Down on Abuse*, REGISTER (Apr. 9, 2024, 6:30 PM), https://www.theregister.com/2024/04/09/h1b_visa_fraud [<https://perma.cc/KKS2-VYJB>]. Given the stringent requirements for O-1 and P-1A visas, fraud and abuse are often quickly discovered. See *Woman Sentenced for Leadership Role in Visa Fraud, Identity Theft, and Human Smuggling Scheme*, U.S. DEP’T JUST. (Feb. 6, 2025), <https://www.justice.gov/opa/pr/woman-sentenced-leadership-role-visa-fraud-identity-theft-and-human-smuggling-scheme> [<https://perma.cc/9VHS-RPLW>].

200. See *Combating Fraud and Abuse in the H-1B Visa Program*, *supra* note 196.

reduce instances of fraud accomplished through fake institutions.²⁰¹ The combination of traditional efforts and limitations on acceptable petitioners could reduce fraud and abuse of the new visa category.

The creation of a new visa category would benefit future applicants. However, current individuals in F-1 status would be required to go through the lengthy change of status process.²⁰² There are some procedures already in place that can help to speed up the processing change of status applications.²⁰³ Given the potential number of applicants for the new visa category, being able to process their change of status applications at faster speeds is ideal. Expedited processing has reduced the processing time for change of status applications from over half a year to thirty days.²⁰⁴ Although the processing time has been reduced, the associated costs are still several hundred dollars.²⁰⁵ The cost may be daunting for some applicants, but the immediate benefit of being able to pursue employment opportunities related to their sport, without violating their status, would likely outweigh the upfront costs. For applicants for whom the cost is too high, standard processing still exists, which would eventually allow them to change their status.²⁰⁶

The last most likely concern with this new visa is the cost of enforcement. Determining the exact cost of this reporting and review process would require extensive study and information that is not presently known, such as the number of applicants, the time it takes for a USCIS employee to review the reports, and many other factors. Although some mandatory report filings are free, other common filings still have costs associated with them.²⁰⁷ Even if the cost of filing was free, the additional cost of hiring more USCIS employees to process the new filings would carry a consistently increasing cost. A potential solution is to mirror some of the processes that other visas use by shifting the cost burden entirely to the petitioners who wish to admit these talented athletes.²⁰⁸ As a result of this cost-bearing system, petitioners are only going to

201. See Alejandro Coca, *Designing the Application Process to Reduce Academic Fraud*, AACSB (Feb. 22, 2021), <https://www.aacsb.edu/insights/articles/2021/02/designing-the-application-process-to-reduce-academic-fraud> [<https://perma.cc/9MFL-U3R3>].

202. In some rare cases, an athlete in B-1/B-2 status may want to apply for a change of status to convert their status to the new visa category. In most cases, individuals in B-1/B-2 status are only intending to be present for a short period of time. In instances like this it may be easier and would avoid any claims of misrepresentation during the B-1/B-2 application process, for the foreign national to depart the United States and seek readmission by applying for the new visa category directly. See 8 U.S.C. § 1258(a); 8 C.F.R. § 214.2(b)(1) (2024); *id.* § 248.1(a)–(c).

203. *USCIS Policy Manual*, *supra* note 167, vol. 1, pt. A, ch. 5.

204. *Changing Your Immigration Status*, *supra* note 196.

205. U.S. CITIZENSHIP & IMMIGR. SERVS., FEE SCHEDULE (2025), <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf> [<https://perma.cc/T737-AZ9Z>].

206. *USCIS Policy Manual*, *supra* note 167, vol. 2, pt. A, ch. 4.

207. Costs for filing I-693 medical exam and vaccine reports have a filing fee of zero dollars, while an H-1B registration tool filing costs \$215 per filing in 2025. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 205.

208. For H-1B petitions, employers must often spend several thousand dollars per employment sponsorship in the form of advertising costs and legal fees. See Sadikshya Nepal, *To Pay or Not to Pay: Cost Distribution of the U.S. Employer-Based Sponsorship Model*, BIPARTISAN POL'Y CTR. (Oct. 15,

pay to petition the athletes that they believe are worth the investment.²⁰⁹ By combining a similar philosophy into the new visa category, increased cost can be combated, and improper use of the category would decrease due to the high cost of the visa category.

Regardless of the associated impacts and additional costs that the new visa category would create, these costs are easily outweighed by the positive impact that the new visa category would have, such as attracting highly skilled foreign nationals and preventing further improper use of other visa categories.

CONCLUSION

As the world steps into a new era of sports, so too should U.S. immigration policy. The current immigration system fails to provide avenues for admission to highly skilled athletes until they have already reached the peaks of their careers. The United States must match the increased competition from other countries in the world of sports by shifting its immigration policy to permit the development of highly skilled semiprofessional athletes, so that they will benefit the United States. Although temporary alternatives do exist, like using alternative visa categories or permitting some individuals to work, the only true solution is to overhaul the immigration system to reach these goals.

The creation of a new visa category is the only way in which this policy shift can truly be accomplished. By admitting foreign nationals who show the potential to develop into highly skilled individuals before they have extensive accomplishments, more individuals can contribute their unique talents to the U.S. economy. Although the admission of these talented foreign nationals is vulnerable to fraud and abuse, these faults can be combated with reporting and other anti-fraud procedures already in place for other visa categories. The costs associated with a visa category like this are unknown, but the ultimate benefit that these highly skilled foreign national athletes would contribute is bound to outweigh the risks. Many sports undergo rule changes every season, and it's time the U.S. immigration system made changes to its rules. By failing to make this shift, the U.S. immigration system continues to ignore one of the very principles it was built around—the flexibility to adjust to changing circumstances so that it can continue to admit highly skilled foreign nationals whose talents would benefit our society.²¹⁰

2020), <https://bipartisanpolicy.org/blog/to-pay-or-not-to-pay-cost-distribution-of-the-u-s-employer-based-sponsorship-model> [<https://perma.cc/47QD-HMQE>].

209. See *id.*

210. U.S. Commission on Immigration Reform (*Jordan Commission*), NUMBERSUSA, <https://www.numbersusa.com/u-s-commission-on-immigration-reform-jordan-commission> [<https://perma.cc/W6DS-E6VB>]. One of the Jordan's Commission's guiding principles was that "[r]egular review is needed to ensure flexibility to adjust to changing circumstances in the United States." *Id.*