

The New Melting Pot: As American Attitudes Toward Foreigners Continue to Decline, Athletes Are Welcomed With Open Arms.

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I. INTRODUCTION

Imagine that you are standing at the base of the Statue of Liberty. The words inscribed under Lady Liberty suggest an openness, a tolerance, an outstretched helping hand. "Give me your tired, your poor, your huddled masses, yearning to breathe free, The wretched refuse of your teeming shore, Send these, the homeless, tempest-tost to me: I lift my lamp beside the golden door!"¹ Now picture conservative politician Patrick Buchanan, standing next to a wall that some would like to build around this country to keep foreigners out.² There appears to be an inconsistency between the two images. Of course, in all fairness to Mr. Buchanan, those whom he opposes would not even consider passing through the proper channels that Lady Liberty is talking about.³ However, one

1. Emma Lazarus, *The New Colossus: Inscription for the Statute of Liberty, New York Harbor* (1883). BARTLETT'S FAMILIAR QUOTATIONS. 16th Ed. (1992), at 558.

2. See Mike Glover, *Buchanan Draws Line at Border*, STAR-LEDGER NEWARK, March 21, 1996, at 13.

3. See *id.* Buchanan was concerned with keeping illegal immigrants from crossing the border. *Id.*

cannot believe that illegal immigration is the only target of American xenophobia.⁴ The reality of the situation is that foreigners are about as welcome today as they were at the turn of the century when the "Know Nothings" and other nativist organizations wanted to build a wall around the country.⁵

Attitudes seem to change, however, when a foreigner can throw a ninety-eight mile per hour fastball or when a foreigner hits a key three pointer for their favorite basketball team.⁶ New York Rangers' fans do not seem to mind that National Hockey League superstar Wayne Gretzky is from another country.⁷ The fact is that there are hundreds of foreign athletes playing professional sports in the United States.⁸ In July of 1996, billions of people around the world focused their attention on Atlanta, Georgia as the United States opened its doors to the world's best athletes for the 1996 Summer Olympic Games. There were no walls to keep out these athletes, their coaches, and their families; rather, there were special immigration courts set up in Atlanta's Hartsfield Airport to hear emergency asylum claims.⁹ There were more nations represented at the 1996 Games than any other in the history of the Olympics.¹⁰ Through it all, American xenophobia took a back

4. Defined as "fear and hatred of strangers or foreigners or of anything that is strange or foreign." WEBSTER'S NEW COLLEGIATE DICTIONARY 1356 (1977).

5. Nativist groups were generally comprised of Anglo-Americans who wished to maintain "Native America." Note that their definition of American natives consisted of Europeans who emigrated to America in the 17th, 18th and early 19th centuries. The Know Nothings was a nativist group, prevalent in the 19th century as a group vehemently opposed to all groups of immigrants. See James S. Olson, *THE ETHNIC DIMENSION IN AMERICAN HISTORY* 168-78 (2d ed. 1994).

6. For example, the New York Yankees signed Japanese pitcher Hideki Irabu, for \$12.8 million. See John Deleos, *Yankees Deserve a Whiff on Irabu*, YORK DAILY RECORD, June 3, 1997, at B1. See also Brian Hanley, *Kukoc Gets MJ the Ball*, CHICAGO SUN-TIMES, June 17, 1996, at 10, (discussing Croatian Tony Kukoc's role for the Chicago Bulls.)

7. See Mark J. Czerwinski, *Younger Rangers to Get a Shot*, THE RECORD NORTHERN N.J., September 12, 1996, at S3.

8. See Michael Clough, *The (Multi) National Pastime; As Professional Sports Go Global, Will Local Communities Be Shunted Aside?* LOS ANGELES TIMES, March 31, 1996, at M1. For example, more than 100 Russians and Europeans are playing in the National Hockey League. See *id.* Also, more than 100 players in Major League Baseball are from countries other than the United States. See Wayne Lockwood, *Baseball Goes International, Major Leagues in a Scramble to Sign Best of Foreign Talent*, THE SAN DIEGO UNION-TRIBUNE, May 20, 1996, at D5.

9. See George Gedda, *Atlanta Increases Watch for Illegal Immigrants*, DAYTON DAILY NEWS, July 7, 1996, at A13.

10. See William Branigin, *The Olympic Sport of Entry, Atlanta Braces for Athletes, Visitors and 'Undesirable Aliens'*, THE WASHINGTON POST, July 12, 1996, at A1.

seat to the spirit of The Games.

Why is it then, that once the Games were over, once the foreign athletes returned to their homelands, the United States returned to its familiar practice of exclusion?¹¹ This comment examines the immigration laws and their application to athletes, and discusses the notion that athletes receive special treatment when it comes to immigration, and that they seem to be exempt from the general disfavor that Americans show toward foreigners. Part II begins with a general discussion of immigration law including temporary entry into the United States and permanent immigration. The section concludes with a comparison of the treatment of foreign athletes versus the treatment of non-athlete immigrants. Part III is focused on foreign athletes and sports: including the impact that foreign-born athletes have on American sports, particularly their increasing influence on our national pastime of baseball; and more specifically analyzes the unique pattern of Cuban immigration to the United States and its influence on sports. Part IV shifts the focus to the Olympics, discussing the impact that the Games have on the host country and on the international political stage. Moreover, it will closely examine the 1996 Summer Olympiad in Atlanta and its impact on the United States and American public opinion towards foreigners. The comment concludes by discussing the idea that the immigration trends in sports may spill over into the non-athletic arena, ultimately changing negative attitudes toward non-athlete foreigners.

II. GENERAL DISCUSSION ON IMMIGRATION LAW

In 1990, Congress enacted the *Immigration Act of 1990*¹² which dramatically changed the landscape of United States immigration law as it pertained to athletes seeking temporary entry into the country.¹³ No longer did athletes have to prove that they had "distinguished merit and ability" and that the

11. For discussion of exclusionary policy in United States immigration laws, see *infra* notes 51-99 and accompanying text.

12. Pub. L. No. 101-649, 104 Stat. 4978 (1990) (hereinafter "1990 Act"). The 1990 Act amended and created sections of U.S.C. dealing with immigration (generally contained in 8 U.S.C.)

13. For analysis of temporary immigration law, see *infra* notes 22-50 and accompanying text.

United States needed their services.¹⁴ Under the new law, they could either show that they have "extraordinary ability in athletics,"¹⁵ or that they are "internationally recognized" athletes.¹⁶ As a result of the 1990 Act, it is now much easier for foreign athletes to enter the United States than it is for the average immigrant.¹⁷

With regard to permanent immigration, history has shown that the "melting pot" of America has been replaced with a "melting cup."¹⁸ While laws were passed to reduce the general flow of immigrants to the shores of America,¹⁹ more and more foreign born athletes have been occupying roster spots on American sports teams.²⁰ Even though there are specific rules and regulations governing asylum claims and deportation proceedings for aliens, the vast wealth involved in professional sports may influence the outcome of those proceedings where foreign athletes are concerned.²¹ This section will examine United States immigration law as it pertains to both foreign athletes and foreign non-athletes, comparing the treatment that both groups receive, and concluding with the suggestion that foreign athletes have an advantage over foreign non-athletes in successfully emigrating to the United States.

A. Temporary Visas

Before the 1990 Act, the most common means of admission into the United States for foreign athletes was the "H" nonimmigrant visa category.²² There were two subcategories of the

14. Before the 1990 Act, athletes typically sought temporary immigration via an "H" non-immigrant visa (see *infra* notes 22-28 and accompanying text), which was available only to athletes with "distinguished merit and ability." 8 U.S.C. §1101(a)(15)(H) (U.S.C.S. 1987).

15. 8 U.S.C. §1101(a)(15)(O)(i)(1997). See *infra* notes 29-40 and accompanying text.

16. 8 U.S.C. §1101(a)(15)(P)(i)(1997). See *infra* notes 41-44 and accompanying text.

17. For analysis of changes in non-immigrant visa categories see *infra* notes 22-50 and accompanying text.

18. For discussion of immigration patterns and changes see *infra* notes 51-99 and accompanying text.

19. For examination of previous immigration laws see *infra* notes 51-99 and accompanying text.

20. For discussion of influx of alien athletes in U.S. colleges, see Richard Hoffer, *Foreign Legions*, SPORTS ILLUSTRATED, June 6, 1994, at 46. For analysis of immigrants in professional sports, see Clough, *supra* note 8.

21. For discussion on special treatment of athletes see *infra* notes 100-115 and accompanying text.

22. See 8 U.S.C. §1101(a)(15)(H) (U.S.C.S. 1987). While student-athletes could also

"H" category which were useful to athletes: the "H-1" category and the "H-2" category.²³ Under the H-1 category, aliens who had "distinguished merit and ability . . . coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability," qualified for an H-1 nonimmigrant visa.²⁴ For purposes of H visas, "distinguished merit and ability" was defined as a "high level of achievement shown by "prominence" in the performer's field, as demonstrated by sustained national or international acclaim."²⁵

The H-2 category differed substantially from the H-1 in that it was limited to aliens coming to the United States to perform services or labor where there were no unemployed Americans available.²⁶ This category however, was not used by athletes as often as the H-1 because of the burden of proving that there were no available Americans for the services.²⁷ This requirement imposed a burden on employers as well, because they had to go through a process set forth by the United States Department of Labor.²⁸

qualify for "F" visas (available to aliens coming to the United States to study at an established college, university, high school, etc. (8 U.S.C. § 1101(a)(15)(F))), professional non-student athletes mainly used "H" visas because they could not qualify for any of the other nonimmigrant categories including aliens who are: (A) diplomats; (B) visiting the United States on temporary business or pleasure; (C) in immediate and continuous transit through the United States; (D) crewmen of a fishing vessel; (E) entering pursuant to a treaty of commerce and navigation; (F) students; (G) resident representatives of a foreign government recognized by the United States; (I) members of a foreign media; (J) teachers, scholars, etc. coming to teach, lecture, study, etc. in the United States; (K) fiances of United States citizens; (L) managers or executives of corporations coming temporarily to work in the United States; (M) pursuing study in a vocational or other nonacademic institution; (N) parents of certain minor aliens. 8 U.S.C. §1101(a)(15)(A-N) (U.S.C.S. 1987).

23. See 8 U.S.C. §1101(a)(15)(H) (U.S.C.S. 1987). All H visa candidates had to show that they had "a residence in a foreign country which [they] had no intentions of abandoning." *Id.*

24. 8 U.S.C. §1101(a)(15)(H)(i) (U.S.C.S. 1987). Note however that the term athlete is found nowhere in this section of the statute.

25. Jon Jordan, Note, *The Growing Entertainment and Sports Industries Internationally: New Immigration Laws Provide for Foreign Athletes and Entertainers*, 12 U. MIAMI ENT. & SPORTS L. REV. 207, 209 (1994) (Citing 55 Fed. Reg. 2,606 (1990)).

26. See 8 U.S.C. §1101(a)(15)(H)(ii)(b) (U.S.C.S. 1987). H-2A visas were limited to agricultural laborers. See 8 U.S.C. §1101(a)(15)(H)(ii)(a) (U.S.C.S. 1987).

27. See Jordan, *supra* note 25, at 210. Specifically the statute provides a temporary visa for aliens coming "to perform other temporary services or labor if unemployed persons capable of performing such service or labor cannot be found in this country." 8 U.S.C. §1101(a)(15)(H)(ii)(b) (U.S.C.S. 1987).

28. See Jordan, *supra* note 25, at 210. The employer had to prove to the Department of Labor, "that there were insufficient workers in the United States available, willing,

The 1990 Act created two new nonimmigrant categories designated "O" and "P" that were of significance to athletes and also eliminated the applicability of the H category to athletes.²⁹ Once the "O" and "P" categories went into effect,³⁰ athletes had a new means of entering the United States.³¹ The current "O" nonimmigrant visa category is much broader than the old H-1 category in that it also covers assistants and spouses.³² The O-1 category provides a nonimmigrant visa for "an alien who has extraordinary ability in . . . athletics which has been demonstrated by sustained national or international acclaim. . . ."³³ The O-2 category provided admission for aliens who were accompanying O-1 aliens for the purpose of "assisting in the . . . athletic performance" of the O-1 alien.³⁴ Finally,

and qualified to perform the job that the nonimmigrant alien was coming to the country to perform, and that the wages and working conditions of workers in the United States would not be disturbed by allowing the alien to perform." *Id.* (Citing 20 C.F.R. §621 (1984)).

29. See Jordan, *supra* note 25, at 213.

30. The original "O" and "P" categories were to have gone into effect on October 1, 1991. However, due to controversy around the Act, Congress enacted the Armed Forces Immigration Adjustment Act of 1991, Pub. L. No. 102-110 §3, which delayed the implementation of the "O" and "P" categories until April 1, 1992. See Jordan, *supra* note 25 at 213. During the interim, athletes were classified under the "H-1B" category, which was specially created by Congress in the Armed Forces Immigration Adjustment Act. See *id.* at 211. The H-1B category was essentially the same "distinguished merit and ability" standard that athletes had previously used under the old H-1 category. See *id.* The reason the H-1B category was created was that the H category was amended by the 1990 Act to remove the "distinguished merit and ability" provision. See *id.* As a result, athletes and entertainers really had no means to qualify for a temporary visa into the United States, thus, the H-1B was created. See *id.*

31. The real debates and controversy surrounding the newly created nonimmigrant visa categories were focused on artists and entertainers and their concerns over the changes. See Judith A. Kelley, Note: *New O and P Nonimmigrant Visa Categories: A Lesson in Compromise*, 16 COLUM.-VLA J. L. & ARTS 505 (1992).

32. See 8 U.S.C. §1101(a)(15)(O) (1997).

33. 8 U.S.C. §1101(a)(15)(O)(i) (1997). The O category also applies to aliens with "extraordinary ability in the sciences, arts, education, [and] business," as well as athletics. *Id.* The sustained recognition requirements are slightly different for aliens seeking to enter the United States to work in the motion picture and television production fields on O-1 visas. See *id.* The original O-1 category also contained a provision that required "the Attorney General [to] determine that the alien's entry into the United States will substantially benefit prospectively the United States." Jordan, *supra* note 25, at 214. (Citing 8 U.S.C. §1101(a)(15)(O)(i) (Supp. II 1990)). This provision was subsequently deleted by the Miscellaneous and Technical and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733 (1991). See Jordan, *supra* note 25, at 214.

34. 8 U.S.C. §1101(a)(15)(O)(ii) (1997). The O-2 alien must be "an integral part of such actual performance," and "have critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals. . . ." *Id.* There are additional requirements for aliens in the motion picture and television produc-

the O-3 category covers alien spouses and children of O-1 and O-2 aliens.³⁵ One important change from the "H" standard to the new O-1 standard is that under the O-1 standard there is no requirement that the O-1 alien have "a residence in a foreign country which he has no intention of abandoning."³⁶ Another change in procedure is that the new statute requires aliens to provide advisory opinions from organizations in their field.³⁷

"O" visas require extraordinary ability, which for athletes means "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."³⁸ In order to demonstrate that an athlete has "extraordinary ability," he must "demonstrate sustained national or international acclaim and recognition . . ."³⁹ Since

tion industries, which are set forth in 8 U.S.C. §1101(a)(15)(O)(ii)(III)(b) (1997) requiring that the alien "has skills and experience with such [O-1] alien which are not of a general nature and which are critical either based on a pre-existing long-standing working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production."

35. See 8 U.S.C. §1101(a)(15)(O)(iii) (1997).

36. 8 U.S.C. §1101(a)(15)(H) (U.S.C.S. 1987). Although, Congress did place that requirement on O-2 accompanying aliens. See 8 U.S.C. §1101(a)(15)(O)(ii)(IV) (1997).

37. See Frida P. Glucoft and Amy Lynne Pucker, *The O and P Categories for Entertainers, Athletes, Professors, Business Persons and Persons in the Arts*, 486 PLI/Lit 297, 319 (1993). Under the old law, if an alien's distinguished merit and ability was not clearly approvable, the Immigration and Naturalization Service (hereinafter "INS") would solicit an advisory opinion from a representative in the alien's field (i.e. Major League Baseball Players Association, or National Hockey League). See *id.* Under the new law, however, "O" and "P" petitions "must be accompanied by a written advisory opinion from the relevant union or guild." *Id.* While this may be an unnecessary burden for aliens who will easily qualify for an "O" or "P" visa, it will also help expedite the process for those athletes who are not clearly approvable. See *id.*

38. 8 C.F.R. §214.2(o)(3)(ii) (1997).

39. 8 C.F.R. §214.2(o)(3)(iii) (1997). Specifically, the regulation requires "(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or (B) *At least three* of the following forms of documentation: (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor; . . . (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation; (8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence." *Id.* (emphasis added). The regulation also provides a catchall provision: "if the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit *comparable evidence* in order to establish the beneficiary's eligibility." 8 C.F.R. §214.2(o)(3)(iii)(C) (1997) (emphasis added). So essentially, any three proofs that the alien is an "exceptional athlete" will suffice.

these requirements are not very difficult for foreign professional athletes to meet, United States professional sports teams can scour the globe to bring in top international talent.⁴⁰

Likewise, three groups of people are covered in the "P" classification.⁴¹ Unlike the "O" classification, all aliens seeking to enter on a "P" nonimmigrant visa are required to have "a foreign residence which they have no intention of abandoning."⁴² P-1 visas are available to internationally recognized athletes coming to the United States to perform individually or on a team.⁴³ The requirements for P-1 athletes are mere formalities, especially for athletes coming to participate in professional sports leagues like the National Basketball Association or Major League Baseball.⁴⁴

The new "O" and "P" categories are considerably more leni-

40. See Jordan, *supra* note 25 at 235. Jordan however, suggests that amateur athletes and emerging stars will have difficulties in meeting these standards because they do not have the professional experience and exposure needed to demonstrate "exceptional ability." See *id.* However, the discussion in the text accompanying notes 115-57 *infra* addresses Jordan's fears with regard to emerging stars, particularly in Major League Baseball.

41. See 8 U.S.C. §1101(a)(15)(P) (1997). Only P-1 visas will be discussed here as P-2 and P-3 visas deal with artists and entertainers. See *id.* P-4 visas apply to spouses and children of aliens qualifying under P-1, P-2, or P-3. See *id.*

42. 8 U.S.C. §1101(a)(15)(P) (1997).

43. See 8 U.S.C. §1101(a)(15)(P)(i) (1997). 8 U.S.C. §1101(a)(P)(i)(a) (1997) pertains to an alien who "(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition." 8 U.S.C. §1184(c)(4)(A) (1997). As far as "P" visas are concerned, the term "internationally recognized" means, "having a high level of achievement in a field 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." 8 C.F.R. §214.2(p)(3) (1997).

44. 8 C.F.R. §214.2(p)(4)(ii)(B) (1997) provides: "A petition for a P-1 athlete or athletic team shall include: (1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and (2) Documentation of *at least two* of the following: (i) Evidence of having participated to a significant extent in a prior season with a major United States sports league; (ii) Evidence of having participated in international competition with a national team; (iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition; (iv) A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized; (v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized; (vi) Evidence that the individual or team is ranked if the sport has international rankings; or (vii) Evidence that the alien or team has received a significant honor or award in the sport." (emphasis added).

ent on foreign athletes seeking to perform in the United States than when foreign athletes used "H" visas.⁴⁵ Under the old "H" category, individuals sometimes went to great lengths to satisfy the requirements.⁴⁶ Currently, even athletes who are convicted criminals can enter the United States to participate in sporting events.⁴⁷ However, as with anything involving a government bureaucracy, decisions of the INS are anything but predictable.⁴⁸ While other aliens may enter the United States temporarily on non-immigrant visas,⁴⁹ the various requirements are not as lax as they are for an international athlete who is under contract to play for an American sports team.⁵⁰

45. For example, aliens seeking "O" visas may submit "any comparable evidence" to show that they have extraordinary ability. 8 C.F.R. §214.2(o)(3)(iii) (1997). *See supra* note 39 and accompanying text.

46. Consider the plight of boxing promoter Dan Duva, who attempted to have two Canadian boxers on a fight card in Virginia. *See* Michael J. Ybarra, *Foreign Imports Sometimes Travel On A Cosmic Plane*, THE WALL STREET JOURNAL, September 16, 1993, at A1. Because the boxers were unknown and did not qualify under H-1 extraordinary ability status, Duva had to place an ad in the classified section of the New York Times. *See id.* The ad sought "two boxers capable of engaging in pro boxing matches of up to ten rounds." *Id.* Since very few boxers look for work in the New York Times, none applied. *See id.* Thus the boxers now qualified under H-2 status because there were no American workers available. *See id.*

47. *See infra* notes 101-07 and accompanying text.

48. In August of 1994, Paul Ereng of Kenya was denied an extension of his O-1 visa. *See* John Markon, *Ereng Runs Into Federal Wall, Track Star Loses Bid to Train in U.S.*, RICHMOND TIMES-DISPATCH, August 18, 1994, at D1. Ereng won the gold medal in the 800-meter run at the 1988 Seoul Olympics, and holds the unofficial indoor world record. *See id.* Originally, the INS said Ereng did not qualify as an elite athlete. *See id.* They eventually acknowledged Ereng's elite status, but nevertheless denied the O-1 extension saying that it would leave Ereng in the country too long. *See id.*

49. Other classes of non-immigrant visas codified in 8 U.S.C. §1101(a)(15) (1997) are: (A) ambassadors and other diplomats; (B) temporary business or vacation visitors; (C) aliens passing through the United States en route to another country; (D) crewmen of international ships or airplanes temporarily stopping in the United States; (E) aliens entering pursuant to a treaty of commerce; (F) students; (G) "designated principal representatives of foreign governments"; (H) registered nurses, fashion models, seasonal agricultural workers, and graduate medical students; (I) members of the foreign media; (J) scholars, teachers, etc. coming temporarily to either teach or be taught; (K) fiancées of United States citizens coming to be married; (L) high level foreign employees of United States corporations; (M) vocational students; (O) those with "extraordinary ability in the sciences, arts, education, [or] business"; (Q) participants in cultural exchange programs; (R) members of religious organizations; and (S) aliens with information needed to assist in the investigation or prosecution of a crime. 8 U.S.C. §1101(a)(15) (1997).

50. *See* Jordan, *supra* note 25, at 229.

B. Permanent Immigration⁵¹

From the time Europeans started colonizing America, through the war for American independence, and on into the middle of the nineteenth century, America truly was a "melting pot."⁵² However, in 1875⁵³ Congress passed the first legislation restricting immigration, which prevented "felony criminals and prostitutes" from entering the United States.⁵⁴ Xenophobia began to sweep through those interested in labor, and in 1882 Chinese laborers became the first group excludable based on race.⁵⁵ The same act also excluded any one who was a "convict, lunatic, idiot, or other person likely to become a public charge."⁵⁶ For the next seven decades, Congress passed law after law that added to the list of excludable aliens.⁵⁷ After World War I, Congress took a new approach to immigration control by instituting a quota system based on national origin.⁵⁸ The national origin-based quota systems remained in effect until the Immigration Act of 1965.⁵⁹ With this new legislation, Congress had for the first time placed a limit on the

51. This section is a brief examination of the history of United States immigration law up to the present day. For a more in depth analysis, see James F. Smith, *A Nation that Welcomes Immigrants? An Historical Examination of United States Immigration Policy*, 1 U.C. DAVIS J. INT'L L. & POL'Y 227 (1995).

52. See Smith, *supra* note 51, at 228. Smith also notes that many early American leaders viewed immigration as "a welcome source of national strength and wealth." *Id.*

53. The Immigration Act of 1875 (18 Stat. 378 (1875)).

54. Smith, *supra* note 51, at 230.

55. See *id.* The Chinese Exclusion Act of 1882 (22 Stat. 58 (1882)) "banned the immigration of Chinese laborers for ten years, provided for the deportation of illegal Chinese immigrants, and prohibited Chinese from becoming United States citizens." *Id.*

56. *Id.*

57. See *id.* at 231. Specific excludable groups included: "paupers, polygamists, the insane and diseased, (Act of March 3, 1891, 26 Stat. 1084 (1891)), anarchists or subversives, (Act of March 3, 1903, 32 Stat. 1214 (1903)), the disabled, stowaways, illiterates over age 16, alcoholics and psychotics, (Act of February 5, 1917, 39 Stat. 875 (1917)), persons ineligible to become citizens (most Asians) and non-immigrants without proper documents, (Act of May 26, 1924, 43 Stat. 153 (1924)), drug addicts, immoral sex-offenders, laborers not in demand in the United States, those previously deported for any reason and those aiding illegal aliens. (Immigration and Nationality Act, Pub. L. No. 414, 66 Stat. 163, 182-185 (1952))." *Id.*

58. See Smith, *supra* note 51, at 232; Act of May 19, 1921, 42 Stat. 5 (1921). "The Act limited immigration to a three percent quota based on the number of aliens of that nationality living in the United States in 1910. Immigrants from the Western Hemisphere were exempted." Smith, *supra* note 51 at 232. (citing 42 Stat. 5 (1921)). Then the National Origins Act of 1924 changed the quota based on the United States population in 1890. See *id.*

59. See Smith, *supra* note 51, at 234; 79 Stat. 911 (1965). See Smith, *supra* note 51, at 234. "Eastern Hemisphere immigration was limited to 160,000 with a per-country

number of immigrants from Latin America.⁶⁰ However, there were no serious attempts to “close the borders” to illegal immigrants until the early 1980s,⁶¹ when the *Immigration Reform and Control Act of 1986* (“IRCA”) was passed.⁶² When the 1990 Act was passed, Congress reaffirmed its intentions to keep lesser skilled immigrants out of the United States.⁶³ “The practical effect of the Act was to give preferential treatment to the “better” immigrants such as millionaires and the highly-educated or highly-skilled.”⁶⁴ Immigration laws remained essentially unchanged until the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*⁶⁵ was passed. The main focus of the new law was to crack down on illegal immigrants, including both those who originally entered the United States illegally and those who entered legitimately but have illegally overstayed their visas.⁶⁶ Additionally, amendments to the fed-

limit of 20,000 immigrants per year.” *Id.* Western Hemisphere immigration was limited to 120,000. *See id.*

60. *See id.* at 234.

61. *Id.* at 235-36. “Both Presidents Gerald Ford and Jimmy Carter stated their support for a special quota for Mexico, but neither administrations took action to make this a reality.” *Id.* (citation omitted). It was during the Reagan administration that the Mexican immigration problem severely intensified. *See id.* “Many were concerned that the United States had lost control of its borders.” *Id.* at 236.

62. *See id.* at 236-37. “The major reforms of the Immigration and Nationality Act by the IRCA were: 1) to impose employer sanctions in the form of civil fines (8 U.S.C. §1324a(e)(4) (1988)) and possible criminal penalties (8 U.S.C. §1324a(f) (1988)) for the knowing hiring or continued employment of an “unauthorized alien” (8 U.S.C. §1324a(a)(1) (1988)); 2) to create the so-called amnesty program under which aliens unlawfully in the country since before January 1, 1982 could apply for the newly created status of “temporary resident” (if successful, such aliens could later apply for permanent residence) (8 U.S.C. §1255a (1988)); 3) to create a category of “Special Agricultural Workers” (8 U.S.C. §1160 (1988)) and “Replenishment Agricultural Workers” (8 U.S.C. §1161 (1988)) who could more easily qualify as temporary residents on the basis of having worked in “seasonal agricultural services,” (8 U.S.C. §1160(h) (1988) and 4) to create a new category of non-immigrant workers (H-2A). (8 U.S.C. §1101(a)(15)(H)(ii) (1988).” *Id.*

63. Under the current Act, immigration (aliens admitted for permanent residence) is generally limited to allow only 480,000 “family-sponsored immigrants,” 140,000 “employment-based immigrants,” and 55,000 “diversity immigrants” annually. 8 U.S.C. §1151 (1997).

64. Smith, *supra* note 51, at 241. Smith quotes Congressman Bereuter who sarcastically suggested changing the inscription on the Statue of Liberty from “Give me your tired, your poor” to “Give me a million bucks.” *Id.* (Citation omitted).

65. Pub. L. 104-208. Although the changes to the immigration laws made it more difficult for illegal aliens, resident aliens, and others, it will have little impact on athletes. *See infra* notes 66-68 and accompanying text.

66. *See* Pamela Constable, *Pall Over Immigrants' American Dream; Many Are Alarmed by New Law's Tougher Requirements for Remaining in U.S.*, THE WASHINGTON POST, March 27, 1997, at A1.

eral statutes severely altered the asylum process,⁶⁷ and virtually eliminated judicial review of many INS decisions.⁶⁸

Having discussed exactly "who" gets into the United States, now an examination of "how" one gets to stay in the United States is warranted. As already discussed above, aliens may enter the country as non-immigrants, and may remain for a specified duration. However, many aliens come to this country with the hopes of becoming United States citizens. In order to do so, they first must obtain the status of permanent resident aliens.⁶⁹ Because the number of available immigrant visas is considerably limited,⁷⁰ Congress has legislated its preference as to how the visas are to be allocated among the categories.⁷¹ Congress has also created a long list of aliens who are excludable from immigration into the United States.⁷²

67. See 8 U.S.C. § 1255 (1997). As the law now reads, an asylum officer makes the determination "whether the alien has a 'credible fear' of persecution." Paul S. Jones, Note and Comment *Immigration Reform: Congress Expedites Illegal Alien Removal and Eliminates Judicial Review from the Exclusion Process*, 21 NOVA L. REV. 915, 925 (1997). "Credible fear" of persecution means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under § 1158 of this title." 8 U.S.C. § 1225(b)(1)(B)(v) (1997). "If applicants do not demonstrate 'credible fear,' they will be removed without further review unless they request review by an immigration judge," whose review must take place within 7 days of the original determination. Jones, *supra*, at 925. If the reviewing judge finds that "credible fear" does not exist, the alien is removed. See *id.* Otherwise, "the applicant will be detained pending 'non-expedited' consideration of the application." *Id.*

68. Subject to very specific exceptions, "no court shall have jurisdiction to review . . . any individual determination or to entertain any other cause or claim, arising from the expedited removal process." Jones, *supra* note 67, at 920 (citing 8 U.S.C. § 1252(a)(2)(A)).

69. "The term 'lawfully admitted for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." 8 U.S.C. § 1101(a)(20) (1997).

70. See *supra* note 63 and see 8 U.S.C. § 1151(a) (1997).

71. Under the "family-sponsored immigrants" category, visas are allocated: first to "unmarried sons and daughters of immigrants," second, to "spouses and unmarried sons and unmarried daughters of permanent resident aliens," third, to "married sons and married daughters of citizens," and fourth, to "brother and sisters of citizens." 8 U.S.C. § 1153(a) (1997). Under the "employment-based immigrants" category, visas are allocated: first, to "priority workers," including "aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers," second, to professional aliens "holding advanced degrees or aliens of exceptional ability," third, to "skilled workers, professionals, and other workers," and fourth, to "certain special immigrants." 8 U.S.C. § 1153(b) (1997).

72. Excludable aliens included among others, those with "a communicable disease of public health significance," certain criminals (including those convicted of "a crime involving moral turpitude," drug offenders, and prostitutes), suspected terrorists, aliens

Once an alien has determined that he is not on the list of ineligible aliens, then he may file a petition with the Attorney General for immigrant status.⁷³ An alien who is already legally in the United States as a non-immigrant may seek to have his status adjusted to that of an alien admitted for permanent residence.⁷⁴ The requirements that must be satisfied in order to be eligible for permanent residence are fairly straightforward.⁷⁵

Only those aliens who have been lawfully admitted as permanent residents may apply for naturalization.⁷⁶ While there are eight general requirements that an alien must satisfy in order to be eligible for naturalization,⁷⁷ the requirements can be summarized as merely requiring aliens to live here legally for five years, and be "a person of good moral character,"⁷⁸ at-

likely to become public charges, and former "illegal entrants and immigration violators." 8 U.S.C. §1182(a) (1997).

73. See 8 U.S.C. §1154(a) (1997).

74. See 8 U.S.C. §1255 (1997).

75. Generally, "any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status . . . may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application." 8 C.F.R. §245.1 (1997).

76. See 8 C.F.R. §316.2 (1997).

77. See 8 C.F.R. §316.2 (1997). Specifically an alien must show that he or she "(1) is at least 18 years of age; (2) has been lawfully admitted as a permanent resident of the United States; (3) has resided continuously within the United States for . . . at least five years after having been lawfully admitted . . . ; (4) has been physically present in the United States for at least thirty months of the five years preceding the date of filing the application; (5) . . . has resided . . . for at least three months in a State . . . in which the alien seeks to file the application; (6) has resided continuously in the United States from the date of application for naturalization up to the time of admission to citizenship; (7) . . . has been and continues to be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and (8) is not . . . [someone who left] the United States to evade military service. . . ." *Id.*

78. "Good moral character" is not specifically defined in the C.F.R., however, 8 C.F.R. §316.10 (1997) provides that the applicant bears the burden of demonstrating that he is a person of good moral character and that the INS will consider "the standards of the average citizen in the community of [the applicant's] residence." An applicant will be found to lack good moral character if he: "has been convicted of murder at any time. . . . Convicted of an aggravated felony. . . . An applicant will be found to lack good moral character if during the statutory period the applicant: [Was convicted of] one or more crimes involving moral turpitude, other than a purely political offense. . . . [Was convicted of] two or more offenses for which . . . the aggregate sentence actually imposed was five years or more. . . . Violated any law . . . relating to a controlled substance [except for possession of less than thirty grams of marijuana]. . . . Admits committing any criminal act listed above [regardless of charges, convictions, etc.]. . . . Is or was confined

tached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."⁷⁹ Once an alien has satisfied the eligibility requirements, then he or she can apply for naturalization and become a United States citizen.

Now that the formal processes for legally *entering* the United States has been discussed, an analysis of deportation proceedings is necessary.⁸⁰ Initially, it should be noted that Congress has specifically listed classes of deportable aliens,⁸¹ the most notorious of which is criminals.⁸² While a majority of deportation proceedings are actually informal proceedings at United States' borders and I.N.S. offices,⁸³ the focus here will be on the formal deportation proceedings and appeals held in

to a penal institution for an aggregate of 180 days pursuant to a conviction. . . . Has given false testimony to obtain any benefit from the Act. . . . Is or was involved in prostitution. . . . Is or was involved in the smuggling of a person or persons into the United States. . . . Has practiced or is practicing polygamy. [Was convicted of] two or more gambling offenses. . . . Earns his income principally from illegal gambling activities; or is or was a habitual drunkard." *Id.*

79. 8 U.S.C. §1427(a) (1997).

80. "An alien is 'deportable' if she is within United States borders, whether legally or illegally, while an alien who has not yet entered the country . . . is considered 'excludable' and receives more limited protections." Peter H. Schuck and Theodore Hsien Wang, *Continuity and Change: Patterns of Immigration Litigation in the Courts, 1979-1990*, 45 STAN. L. REV. 115, 122 (1992). For purposes of this section, only deportation proceedings are analyzed. However, the immigration laws applicable to the two are very similar.

81. See 8 U.S.C. §1227(a) (1997). Specifically, the statute divides deportable aliens into 6 classes: (1) aliens who were "inadmissible at [the] time of admission or of adjustment of status," (2) aliens convicted of certain criminal offenses, (3) aliens who failed to register or who falsified documents, (4) aliens deportable for various national security measures, (5) aliens who have become public charges, and (6) aliens who have voted illegally. *Id.*

82. For a detailed discussion of how the criminal alien is treated by the Immigration Act of 1990, see Craig H. Feldman, *The Immigration Act of 1990: Congress Continues to Aggravate the Criminal Alien*, 17 SETON HALL LEGIS. J. 201 (1993). The 1990 Act significantly frustrates the opportunities for aliens with criminal records to come into the United States, and it also significantly increased the likelihood that aliens with criminal records already in the United States would be deported. See *id.* 8 U.S.C. §1251(a)(2) (1997) lists the various offenses which may subject an alien to deportation, including: (1) crimes of moral turpitude, (2) aliens with multiple convictions, (3) aliens convicted of aggravated felonies, (4) aliens convicted under 18 U.S.C. § 758 ("relating to high speed flight from an immigration checkpoint"), (5) aliens convicted of violating drug laws, (6) drug abusers and addicts, (7) aliens convicted of firearms offenses, (8) aliens convicted of various domestic violence crimes, and (9) other miscellaneous crimes. *Id.*

83. See Schuck, *supra* note 80, at 135-36. "Of the more than 1,044,000 deportable aliens who were expelled during 1990 . . . 1,019,371 were permitted to depart voluntarily." *Id.* (citation omitted). Interestingly, when the 1996 Act was passed, these informal hearings before INS officials became very informal, with practically no judicial review of the INS's decisions. See *supra* notes 67-68 and accompanying text.

the various courts. When an alien receives a deportation order, he may petition a United States Court of Appeals to review the order.⁸⁴ Normally, these judicial proceedings are attempts by aliens to obtain relief from deportation.⁸⁵

Before examining alien athletes and the treatment that they receive, an examination of several typical deportation proceedings will provide a background to which the athletes' treatment can be compared. In many cases, aliens are deported based on their criminal records. In *Camilleri v. I.N.S.*,⁸⁶ the petitioner initially lied to I.N.S. officials about his criminal record when he was filing for permanent residency based on his marriage to a United States citizen.⁸⁷ The Court of Appeals upheld the order of deportation issued by the immigration judge in lieu of granting petitioner a voluntary departure.⁸⁸

In *Achacoso-Sanchez v. I.N.S.*,⁸⁹ an alien married to a United States citizen, who had children that were United States citizens,⁹⁰ was deported after overstaying her temporary visa.⁹¹ While the government has the discretion to adjust

84. See *id.* at 122. If the alien is appealing an order of exclusion, the only avenue of review available is a *habeas corpus* petition in a United States District Court. See *id.*

85. See *id.* "Among the most frequently requested forms of relief are political asylum, voluntary departure, suspension of deportation, deferred status, waiver of grounds, and adjustment of status." *Id.*

86. 986 F.2d 1426 (Table), (Unpublished Disposition) No. 92-9514, 1993 WL 34720 (10th Cir. 1993).

87. See *id.* at *1. In fact, the petitioner had actually received "numerous traffic violations in the United States, three drug convictions in Canada, and after being refused entry at one port in 1989, he entered the United States illegally at a different port." *Id.*

88. See *id.*

89. 779 F.2d 1260 (7th Cir. 1985).

90. See *id.* Petitioner was a citizen of the Philippines, and entered the United States on a one month visitor's visa in February 1979. See *id.* at 1261. In September 1979, long after her visa had expired, petitioner's two children also entered the United States. See *id.* Petitioner married a man who had been admitted to the United States for permanent residence on January 14, 1980. See *id.* Petitioner's children became citizens when her husband later became a citizen. See *id.*

91. See *id.* Petitioner continuously thwarted I.N.S. attempts to deport her for overstaying her welcome. See *id.* In fact, she was still in the United States when her husband became a citizen in November 1984. See *id.* The Board of Immigration Appeals held that petitioner used the system to remain in the United States for nearly five years on a one month visitor's visa. See *id.* at 1262. The Board gave several reasons for its decision: "(1) she did not depart voluntarily pursuant to the immigration judge's final order of deportation; (2) she neither departed in 1982 nor appealed from the Board's decision but instead she waited until an order of deportation issued and then filed a patently frivolous appeal; (3) when she asked the Board to reopen in 1983 she made no new arguments in support of her position; (4) although she is married to a citizen, she married her husband only

an alien's status in order to keep families together, it declined to do so here in light of petitioner's course of conduct.⁹² Petitioner was ultimately deported to the Philippines where she had to petition to enter as a permanent resident as the spouse of a United States citizen.⁹³

Another typically litigated problem is that of sham marriages. In *Ghaly v. I.N.S.*,⁹⁴ the petitioner twice married women for money in order to facilitate his adjustment of status to that of an alien admitted for permanent residence.⁹⁵ The court affirmed the ruling of the I.N.S. and the Board of Immigration Appeals, thus revoking petitioner's visa petition.⁹⁶

While current immigration laws provide a variety of ways to avoid deportation, none is more prevalent than asylum. However, successfully meeting the standards for asylum can be rather difficult for most aliens who have to demonstrate past persecution or fear of persecution if they are returned to their countries.⁹⁷ For Cuban athletes, this requirement has been relatively easy to meet.⁹⁸ However, for Haitian refugees, winning an asylum case is not always an easy process.⁹⁹

one day before the hearing at which the outstanding order of deportation was entered. When an alien marries in the shadow of an order of deportation, the equities gained are reduced." *Id.*

92. *See id.*

93. *Achacoso*, 779 F.2d at 1262. Petitioner ended up being separated from her family for nearly a year, which could have been avoided or at least shortened had she obeyed the immigration laws. *See id.*

94. 48 F.3d 1426 (7th Cir. 1995).

95. *See id.* Petitioner's first "wife" admitted receiving \$1500 to marry him. *See id.* at 1427.

96. *See id.* Many years after petitioner's second sham marriage fell through, he was able to secure a visa petition through the University of Illinois at Chicago, who sought to employ petitioner as a neuroanesthesiologist. *See id.* at 1428. It was this petition that was revoked by the I.N.S. when it learned (through a signed affidavit from his first wife) that petitioner's marriage had been a sham. *See id.*

97. *See* Gerrie Zhang, *U.S. Asylum Policy and Population Control in the People's Republic of China*, 18 Hous. J. INT'L L. 557, 575 (1996). (Citing 8 U.S.C. §1101(a)(42)(A)). To establish eligibility for asylum, an alien will have to qualify as a "refugee," which is defined in 8 U.S.C. §1101(a)(42)(A) (1997) as an alien "that is unwilling or unable to return to his country because of past persecution or a well-founded fear of persecution if returned to his country, based on race, religion, nationality, membership in a particular social group, or political opinion." *Id.* at 574-75. However, under the 1996 Act, this determination is made by an asylum officer in an informal proceeding, with very limited review by an immigration judge. *See* Jones, *supra* note 66, at 925.

98. *See infra* notes 162-93 and accompanying text.

99. *See Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993). Eight members of the United States Supreme Court (Justice Blackmun dissented) held that neither United States refugee legislation nor United Nations refugee legislation applied to Haitians in-

C. *Special Treatment of Athletes*

Now that the relevant immigration laws have been briefly described, the question is, "How do they apply to athletes?" As discussed earlier, there are non-immigrant visa categories ("O" and "P") which specifically apply to athletes, so legally, athletes have an arguably easier path of entry into the United States for a temporary stay. Once in the United States, athletes are supposed to be held to the same standards as other aliens, or are they? Remember that the 1990 Act made it even more difficult for criminal aliens to enter or remain in the United States.¹⁰⁰ Consider the situation of National Hockey League "bad boy" Bob Probert.¹⁰¹ In 1989, Probert was caught trying to smuggle cocaine into the country and pleaded guilty to criminal charges.¹⁰² Even though he was suspended by the N.H.L. and deportation proceedings were brought against him, Probert was eventually reinstated by the N.H.L. and was not deported.¹⁰³ In July of 1994, Probert was involved in a motor vehicle accident in which he was found to have a blood alcohol content of .31, (triple the legal limit in Michigan), and high on cocaine.¹⁰⁴ On August 1, 1994, a Detroit I.N.S. official ordered Probert deported.¹⁰⁵ Notwithstanding this, Probert managed

tercepted by the Coast Guard on the high seas, and thus authorized the return of the refugees to the country from which they were fleeing. According to Justice Blackmun, however, "[The refugees] demand only that the United States, land of refugees and guardian of freedom, cease forcibly driving them back to detention, abuse, and death. That is a modest plea. . . . We should not close our ears to it." *Id.* at 208. (Blackmun, J. dissenting).

100. See *supra* note 82.

101. "Probert is a Canadian citizen and temporary Michigan resident who has been permitted to reside and work in this country since 1986 as a non-immigrant." *Probert v. I.N.S.*, 954 F.2d 1253, 1254 (6th Cir. 1992).

102. See *id.* Probert was sentenced to "three months imprisonment and three years of supervised release, with the first three months of release to be served in a community confinement facility. In November 1989, the sentencing judge issued a Judicial Recommendation Against Deportation requiring that the I.N.S. not use Probert's conviction as the basis for deportation." *Id.* (citing *United States v. Probert*, 737 F. Supp. 1010, 1011 (E.D. Mich. 1989)).

103. See *id.* The I.N.S. initiated the proceedings because Probert's suspension caused him to fail to meet the employment conditions of his visa. See *id.* The I.N.S. relied on Probert's alcoholism and unemployment as grounds for deportation. See *id.* Probert was not deported based on a "Judicial Recommendation Against Deportation" issued in connection with his sentence for the 1989 drug conviction. *Id.*

104. See Fred Girard, *Chicago I.N.S. Helps Probert Beat Threat of Deportation*, THE DETROIT NEWS, April 2, 1995, at E3.

105. See *id.*

to dodge a bullet by utilizing his recent move to the Chicago Black Hawks, thereby making it possible for his lawyers to have his case transferred to the Chicago district of the I.N.S.¹⁰⁶ Instead of being deported, Probert signed a four-year contract for over six million dollars.¹⁰⁷

Now consider Phil Anderson, autoworker, drug offender, and unwelcome in the United States.¹⁰⁸ Arrested with marijuana in May 1981, he pleaded guilty to "conspiracy to traffic in narcotics" and received a sentence of three years in prison.¹⁰⁹ Once he finished serving his sentence, Anderson went on with his life, routinely crossing the U.S. - Canadian border without incident.¹¹⁰ However, in 1989, he was formally denied admission to the United States by an immigration judge because of his conviction.¹¹¹ Since that judgment, Anderson has not been able to cross the border despite numerous appeals and petitions to various political entities.¹¹² Anderson also went public, complaining that there were rules for average people like himself, and there were different rules for athletes like Bob Probert.¹¹³ Anderson contended that if he was a rich athlete or entertainer with the right attorney, he would have been allowed into the United States long ago.¹¹⁴ Yet, not all alien athletes can glide through their immigration problems like Bob Probert. For example, a Canadian member of the National Hockey League, Yves Racine, nearly had his petition for permanent residency status revoked by the I.N.S.¹¹⁵

106. See *id.* Probert's deportation hearing was canceled upon the recommendation of an I.N.S. District Director saying he "granted [Probert's] application for advance permission to enter the United States. . . notwithstanding his inadmissibility, so the basis for the hearing no longer exists." *Id.*

107. See *id.*

108. See Gord Henderson, *Editorial — Border: So Near, Yet So Far Away*, WINDSOR STAR, August 15, 1995, at A6.

109. *Id.*

110. See *id.*

111. *Id.*

112. See Henderson, *supra* note 108 at A6.

113. See *id.*

114. See *id.*

115. *Racine v. I.N.S.*, (not reported in F. Supp.) No. 94 C 2548, 1995 WL 153319 (U.S.D.C. N.D.Ill. Feb. 27, 1995). Despite a large assortment of evidence supporting Racine's claim to be an alien of extraordinary ability, the I.N.S. nevertheless revoked his petition, unsatisfied that he had "risen to the top of his field." *Id.* "In support of this petition, Racine submitted his hockey career summary; a trading card referring to him as a 'top prospect' and giving his playing statistics for the years 1988-1991; an employment letter from Bryan Murray, the general manager of the [Detroit] Red Wings; pages from

Athletes have their own track into the United States for temporary stays through the "O" and "P" nonimmigrant visa categories. All aliens seeking to become citizens or to stay here permanently must first seek adjustment of their status to that of aliens admitted for permanent residence. At all times, aliens in the United States must abide by its laws or possibly face deportation. Considering also that the number of immigrant visas available is limited, not all petitions are granted. Successful athletes generally make very good money both for themselves and for their teams. It is thus plausible to assume that the money, power, and knowledgeable attorneys associated with professional sports could help an alien athlete through any immigration problems.

III. IMMIGRATION AND SPORTS

While there has been talk about a possible "Baseball Dream Team" in future Olympics,¹¹⁶ consider another possible "dream team," composed entirely of players from Puerto Rico.¹¹⁷ When you consider that many of these players are revered superstars of our National Pastime, it's hard to believe that the same people who root for Hideo Nomo and Juan Gonzalez want to build a wall around this country to keep aliens out.¹¹⁸ This section examines the impact that immigration has on American sports

the Detroit Red Wings' media guide regarding Racine; an affidavit of Darren Pang, a hockey analyst and broadcaster regarding Racine's ability as a hockey player; an article from Sports Illustrated picking the Detroit Red Wings to win the Stanley Cup for 1992-93; and articles from newspapers and publications: HOCKEY DIGEST, CHICAGO SUN-TIMES, DETROIT RED WINGS EXTRA, DETROIT FREE PRESS, LES NORDIQUE, and LEQUEQUE." *Id.* at *1. Ultimately, Racine was successful in having the revocation overturned by the United States District Court. *See id.* at *4. *See also Muni v. I.N.S.*, 891 F. Supp. 440 (N.D.Ill. 1995) (reversing an I.N.S. denial of a visa petition as a worker with extraordinary ability), *but see Grimson v. I.N.S.*, (not reported in F. Supp.) No. 93 C 3354, 1993 WL 792443 (U.S.D.C. N.D.Ill. Sept. 10, 1993). "[M]embership on a major league athletic team, standing alone, does not automatically qualify an alien for approval of his or her visa petition." *Id.* at *3.

116. *See* Don Ketchum, *Diamond of Dreams Major-League Team of Olympic Proportions*, THE ARIZONA REPUBLIC, July 8, 1996, at D1.

117. *See id.* RH starter - Jaime Navarro. LH starter - Angel Miranda. Closer - Roberto Hernandez. C - Ivan Rodriguez. 1B - Juan Gonzalez. 2B - Carlos Baerga. SS - Roberto Alomar. 3B - Rey Sanchez. LF - Pedro Munoz. CF - Bernie Williams. RF - Ruben Sierra. *See id.* Or, how about the "Dominican Dream Team": RH starter - Ramon Martinez. LH starter - Yorkis Perez. Closer - Jose Mesa. C - Tony Pena. 1B - Julio Franco. 2B - Mariano Duncan. SS - Andujar Cedeno. 3B - Jose Vizcaino. LF - Moises Alou. CF - Sammy Sosa. RF - Raul Mondesi. *See id.*

118. *See* Glover, *supra* note 2.

including Major League Baseball and its foreign players, and the special impact that Cubans have had on United States sports.

A. *International Flavor of Major League Baseball*¹¹⁹

"You know what we say in America. Give us your tired, your poor, your huddled masses yearning to breathe free. Also, your sprinters and triple jumpers, midfielders and goalies, swimmers and divers, and just about any kid with a backhand good enough to rank him or her among the top 500, worldwide. We'll take 'em all."¹²⁰ Two of the most identifiable immigrant groups in the United States, Asians and Latinos, have borne the brunt of the anti-immigrant sentiment for many years.¹²¹ However, these same groups are now not only having a major impact on Major League Baseball, but even more ironically they are doing it in cities where anti-immigration sentiments run the highest.¹²²

Foreign participation in Major League Baseball is not new to the sport. On the contrary, there have been Latin Americans in the game since the 1920s.¹²³ The number of Latin Americans in Major League Baseball began to increase in the late 1950s, although they were not as high as they are today.¹²⁴

119. Only Baseball is discussed here in detail. However, the National Basketball Association has several international leaders of its own with "Africans—Hakeem Olajuwon (Nigeria) and Dikembe Mutombo (Zaire)—and Europeans—Vlade Divac (Serbia), Rik Smits (Holland), Detlef Schrempf (Germany)—leading the surge of foreign players. See Clough, *supra* note 8. Fans of the National Hockey League are also able to enjoy the talents of many international players from Canada, Europe, and Asia. Also, the newly created Major League Soccer will rely on many international soccer stars to help fill seats with fans. There are also gymnasts, runners, jumpers, throwers, rowers, tennis players, and scores of other foreign born athletes training and competing in the United States.

120. Hoffer, *supra*, note 20, at 46.

121. See Monica Maske, *Minority Groups in Poll Share Sense of Discrimination, Bigotry By Whites*, STAR-LEDGER NEWARK, March 3, 1994. See also Adrienne Knox, "American Cultures," STAR-LEDGER, NEWARK, August 30, 1992.

122. For example, at the beginning of the 1996 season, the Los Angeles Dodgers had the "United Nations of pitchers: Hideo Nomo from Japan, Ismael Valdes and Antonio Osuna from Mexico, Ramon Martinez and Pedro Astacio from the Dominican Republic and soon, Chan Ho Park from Korea." Clough, *supra* note 8, at M1. Also, there are the aforementioned members of the Puerto Rican Dream Team (see Ketchum, *supra* note 112) Ivan Rodriguez and Juan Gonzalez, who are perennial American League All-Stars for the Texas Rangers.

123. See Clough, *supra* note 8, at M1. Between the two World Wars, approximately fifty major leaguers did not call America home. See *id.*

124. See *id.* Clough calls this the "Latinization" of American baseball teams, crediting

Today, notwithstanding the public relations disaster created by Baltimore Orioles second baseman Roberto Alomar,¹²⁵ Latinos permeate every major league organization.¹²⁶

The international makeup of Major League Baseball was put on the national stage in 1996 when the "World" Series was played between the New York Yankees and the Atlanta Braves.¹²⁷ The 1997 World Series also involved a variety of Latin Americans,¹²⁸ including National League Championship Series and World Series Most Valuable Player Livan Hernandez, who is from Cuba.¹²⁹

stars like Roberto Clemente, Luis Tiant, Orlando Cepeda, Juan Marichal, Tony Oliva, Mike Cueller, and Zoilo Versailles for opening the doors to baseball for our neighbors to the south. *Id.*

125. Alomar, a native of Puerto Rico, spit in the face of American League umpire John Hirschbeck arguing a called third strike on September 27, 1996. *See* Associated Press, *Alomar Insists Hirschbeck's Curses Provoked Spitting*, *NEWSDAY*, November 9, 1996, at A34. Regardless of who provoked the spitting, the real controversy surrounded Alomar's suspension, which would not occur until the 1997 season. *See id.* After a threatened umpire's union strike during the American League Division Series, the baseball playoffs went on despite Alomar's incident. (He was allowed to play). *See id.* Alomar didn't help matters when he mentioned Hirschbeck's dead child during an interview after the incident. *See* Bill Livingston, *Alomar Needs Lesson in Humanity*, *THE PLAIN DEALER CLEVELAND OH*, October 29, 1996, at D1. Even Alomar's fellow Puerto Ricans were "ashamed" by his antics. *See* Shelley Emling, *Winter Baseball in Puerto Rico Stirs Deep Passion, Competition*, *PITTSBURGH POST-GAZETTE*, October 27, 1996, at D12.

126. *See* Lockwood, *supra* note 8, at D5. "A survey of current major league rosters shows that roughly 120 players (the number changes daily) developed their 'national pastime' skills in other nations. They represent 17 percent of all big leaguers and a background of 14 different nations, with the Dominican Republic and Puerto Rico being the most prominent." *Id.*

127. *See* Don Bostrom, *Joe Torre's Brother Receives Heart Transplant, and Frank Will be able to Watch his Little Brother Go After His First World Series Championship Tonight*, *ALLENTOWN MORNING CALL*, October 26, 1996, at A64. International participants included Atlanta's Andruw Jones (Curacao), Eddie Perez (Venezuela), Rafael Belliard and Luis Polonia (Dominican Republic) and Javier Lopez (Puerto Rico). *See id.* From the Yankees: Luis Sojo (Venezuela), Mariano Duncan (Dominican Republic), Graeme Lloyd (Australia), Bernie Williams (Puerto Rico), Mariano Rivera (Panama) and coach Jose Cardinal (Cuba). *See id.*

128. *See* Jennifer Frey, *On World Series Diamonds, Latin Players Sparkle*, *THE WASHINGTON POST*, October 25, 1997, at A1. Florida Marlins' latin players included Antonio Alfonseca, Moises Alou, Alex Arias and Felix Heredia (Dominican Republic), Bobby Bonilla (Puerto Rico, but born in New York), Alex Fernandez and Livan Hernandez (Cuba, although Fernandez was born in Miami) and Edgar Renteria (Colombia). *See id.* Cleveland Indians from Latin America included Tony Fernandez, Jose Mesa and Manny Ramirez (Dominican Republic), Sandy Alomar, Jr. (Puerto Rico), and Omar Vizquel (Venezuela). *See id.*

129. *See* *Marlins' Hernandez MVP*, *THE NEWS & OBSERVER*, *RALEIGH N.C.*, October 15, 1997, at C2. Hernandez was named Most Valuable Player of the National League Championship Series after recording two of Florida's four victories against the Atlanta

The recent boom of international participation in Major League Baseball has necessitated that teams spend increasing sums of money scouring the globe looking for international talent.¹³⁰ According to California Angels General Manager Bill Bavasi, teams have to explore international markets or be left behind.¹³¹ However, as one might suspect, the wealthier teams spend more money and seem to have an advantage.¹³² As the rules currently stand, baseball's amateur draft does not apply to most foreigners, so they are available to anyone with enough money in their checking account.¹³³

As a result, teams like the Angels are trying to get the amateur draft extended to cover ballplayers from around the world to help level the playing field in the international talent search.¹³⁴ Without a worldwide draft, the international scouting game is only contested among the wealthy teams.¹³⁵ According to Angels scouting director Bob Fontaine, "Which clubs do the best job in international scouting? Which teams have the most money in baseball?"¹³⁶

While Latinos have been playing Major League Baseball for decades now, a virtually untapped source of international talent is the Pacific Rim.¹³⁷ The success of Japanese pitcher

Braves, including a National League Championship Series record fifteen strikeout performance in game five. *See id.* Hernandez was named World Series Most Valuable Player after defeating the Cleveland Indians twice. *See* Dick Kaegel, *Florida's Hernandez a Hero in the U.S. and Cuba*, THE KANSAS CITY STAR, October 25, 1997, at D1.

130. *See* Lockwood, *supra* note 8, at D5.

131. *See* Bill Shaikin, *Angels Take Small International Step - The Inroad Into Mexico Doesn't Overcome Their Developmental Absence in Other Latin Countries*, THE PRESS-ENTERPRISE RIVERSIDE, CA, September 10, 1996, at D1. Bavasi notes, "The talent pool is dwindling. Part of the reason is expansion. Part of the reason is the growing popularity of other sports. All the ball clubs will need to branch out into the world market." *Id.*

132. *See id.* While the Atlanta Braves send their 18 international scouts to find prospects, the Los Angeles Dodgers continue to find foreign talent from as far away as Japan, and George Steinbrenner's millions continue to float around the globe in search of baseball talent, it is difficult for the smaller market teams like the California Angels and Montreal Expos to compete. *See id.*

133. *See* Lockwood, *supra* note 8, at D5. In fact, only players from the United States, Canada, and Puerto Rico are subject to the draft, players from anywhere else are considered free agents. *See id.*

134. *See* Shaikin, *supra* note 125, at D1.

135. *See id.*

136. *Id.*

137. *See* Lockwood, *supra* note 8, at D5. According to San Diego Padres' international baseball consultant Tom House, "There's still potential for growth in the Latin countries, but the Pacific Rim is a sleeping giant. When you look at Japan, Taiwan, Korea and Australia, the possibilities are huge." *Id.*

Hideo Nomo has opened the possibility of many Japanese players coming to play here.¹³⁸ However, the exodus of Japanese players to Major League Baseball may be a long time away. The way Japanese rules stand now, the only way a Japanese baseball player can realistically attempt to come over here is to "retire" from Japanese baseball and then negotiate with American teams.¹³⁹ There is also speculation that Japanese baseball leagues may try to prevent more players from "retiring" to the United States by banning them for life from Japanese baseball.¹⁴⁰

Things aren't always rosy for foreign baseball players in the United States. They are far from the comforts of their home towns where they were heroes. They are in a strange new culture where they don't speak the language and can't read street signs or even menus.¹⁴¹ The Texas Rangers tried to help Latinos in their transition to America by hiring Luis Mayoral from Puerto Rico to help their Latin stars Juan Gonzalez and Ivan Rodriguez interact with the media and the community.¹⁴² Mayoral believes that all teams should follow the Rangers' lead, even going so far as to suggest a league run program to help ease the Latinos into America.¹⁴³ Currently, clubs are providing English classes for their foreign born minor leaguers. However, Mayoral claims that they are simply not

138. See notes 151-54 *infra* and accompanying text. For example, the New York Yankees signed Japanese pitcher Katsuhiko Maeda for \$1.5 million in 1996. See Shaikin, *supra* note 125, at D1. They then spent \$12.8 million on Hideki Irabu in 1997. See DeLeos, *supra* note 6. Although some doubt whether Irabu has been a positive influence. See Hal Bodley, *Irabu's Start Makes Him a Hard Sell*, USA TODAY, September 9, 1997, at C6.

139. See Barrie McKenna, *Mooring the Rising Sons - Japan Ponders Steps to Discourage its Ballplayers From Taking Flight*, TORONTO GLOBE AND MAIL, June 23, 1996, at B1. Nomo, retired before negotiating with the Dodgers. Japanese players can also wait until they become free agents, however, "free agency is only granted at the end of 10 years of service, when most players are past their prime. And then, players only win their freedom after appearing in a minimum of 1,500 games - a particular penalty for pitchers, who don't play every game." *Id.*

140. See *id.*

141. See Jerry Crasnick, *Lost in America - South-of-the-Border Players Searching For Better Treatment*, DENVER POST, August 8, 1994, at D1.

142. See *id.* Mayoral will also broadcast Ranger games in Spanish. See *id.*

143. See *id.* According to Mayoral, "Someone has to take these kids by the hand when they're in the minor leagues and tell them what to expect. They have to be told, 'You can't go to bed with a 16-year-old girl, or you will go to jail.' They have to be taught how to read signs on the highway. Just basic things. They might have questions about the law, or getting a passport, or buying a plane ticket for someone in their family. The problem isn't in uniform. It's out in the streets." *Id.*

enough.¹⁴⁴

To see the success that foreign born players can bring to an organization, one only need to look at the 1996 World Champion New York Yankees. Many sportswriters considered the team's most valuable players to include Mariano Rivera (from Panama), Bernie Williams (from Puerto Rico), and Mariano Duncan (from the Dominican Republic).¹⁴⁵ The Yankees "found" Bernie Williams back in the 1980s when scout Fred Ferreiro saw him play in Puerto Rico.¹⁴⁶ Ferreiro feared that other teams would discover his prized center fielder and wanted to get Williams under contract. But Williams wasn't old enough yet, so Ferreira took him back to the United States to attend a baseball academy in Connecticut.¹⁴⁷ On his sixteenth birthday, Bernie Williams signed with the Yankees, collecting a signing bonus of \$16,000.¹⁴⁸ Today, even with a multi-million dollar contract, Bernie Williams still lives in Puerto Rico, relatively unchanged by his new found wealth.¹⁴⁹

Based on the success of their current and past alien athletes, the Yankees decided to invest \$1.6 million in a sixteen year old Venezuelan named Jackson Melian.¹⁵⁰ The summer of 1996 also saw the Yankees purchase Japanese pitcher Kat-suhiro Maeda.¹⁵¹ Maeda had hoped to become the third Japa-

144. See *id.*

145. Other foreign Yankees during their championship season were: Mark Hutton and Graeme Lloyd (Australia), Dave Pavlas (born in Germany), Ramiro Mendoza and Ruben Rivera (Panama), Robert Eenhoorn (Netherlands), Ruben Sierra and Jorge Posada (Puerto Rico). See Lisa Winston, *Rickwood Relives its Glory Crowd Enjoys Grand Old Game*, BASEBALL WEEKLY, July 11, 1996, at 31.

146. See Gordon Edes, *In Signing Williams, Ex-Yank Scout 1 for 2*, SUN-SENTINEL [Fort Lauderdale], October 15, 1996, at C1.

147. See *id.* Williams wanted to bring his cousin, but Ferriera said they couldn't afford it. "And that's how I missed out on signing [1996 American League Most Valuable Player] Juan Gonzalez." Ferreira said. *Id.*

148. See Joe Strauss, *He's a Special Player*, ATLANTA JOURNAL AND CONSTITUTION, October 26, 1996, at E4.

149. See Juan Forero, *A Yankee's Roots in his Puerto Rico Town, Bernie Williams isn't Just a Star*, THE STAR-LEDGER NEWARK NJ, October 20, 1996, at 1. According to Williams' neighbors, "He is a guy who went to the big leagues and he stayed respectful and humble. He never forgot us, and he planted the name Vega Alta in the United States." *Id.*

150. See Jack O'Connell, *Melian May Just Need Some Time*, THE HARTFORD COURANT, July 4, 1996, at C1. He is named after famous New York Yankees Hall of Fame right-fielder Reggie Jackson. See *id.*

151. See Pat Borzi, *Yanks Flag Down Japanese Hurler Clocked at 98 mph*, THE STAR-LEDGER NEWARK NJ, May 17, 1996, at 59. The 24-year-old right-hander with a (wild) 98 mile-per-hour fast ball earned himself a \$1.5 million signing bonus. See *id.*

nese-born pitcher in Major League Baseball,¹⁵² however, he was beaten to the major leagues by the Yankees newest import, Hideki Irabu.¹⁵³ The second, is well known Hideo Nomo,¹⁵⁴ while the first was San Francisco's left-hand pitcher Masanori Murakami, who was purchased from the Nankai Hawks in 1964.¹⁵⁵

When it comes to revolutionizing the game of baseball, the Los Angeles Dodgers always seem to be in the forefront. From breaking baseball's color barrier with Jackie Robinson, to taking baseball to the West Coast, the Dodgers have impacted the game. In 1982, after a players' strike damaged relations between baseball and its fans, a Mexican named Fernando Valenzuela helped fill stadiums.¹⁵⁶ However, "Fernandomania" eventually gave way to California's Proposition 187.¹⁵⁷ Then, in 1995, after another costly players' strike, which canceled the 1994 World Series and kept fans from coming to the ballparks, there was another foreign born player in a Dodgers uniform helping to gain fan support.¹⁵⁸ This time, that player, Hideo Nomo, was from Japan. Only time will tell now if Hideo Nomo (and possibly Hideki Irabu) opens the baseball doors to Japan.¹⁵⁹

152. See Rafael Hermoso, *A Promising Pitch Japan's Maeda Signs With His Dream Team*, THE RECORD, NORTHERN NEW JERSEY, May 18, 1996, at S1.

153. Hideki Irabu made his first start for the Yankees on July 10, 1997 leaving the game to a standing ovation in the seventh inning. See Joe Gergen, *Irabu Makes Believers Fast: Debut Long on Hype, but Hideki Delivers*, NEWSDAY, July 11, 1997, at A87.

154. See *infra* note 156.

155. See Borzi, *supra* note 151, at 59. Maeda said, "Nomo's doing very well here, that's why I came here. Andrew Linker, *Maeda's Goal: Next Nomo*, THE HARRISBURG PATRIOT, August 23, 1996, at D1. Hideki Irabu's goal, however, was to pitch only for the New York Yankees, despite the fact that the San Diego Padres had negotiated with Japanese baseball for Irabu's rights. See Delcos, *supra* note 6.

156. See Gordon Smith, *Two Pitches on Baseball - Japanese Star Gives Game a Lift - Hopes Ride High on Nomomania*, THE SAN DIEGO UNION-TRIBUNE, July 11, 1995, at A1. Proposition 187 was "aimed at limiting public benefits for illegal Latino immigrants." *Id.*

157. See *id.*

158. See *id.*

159. See *id.* Stuart Fischhoff, a professor of media psychology at California State University Los Angeles said, "If Nomo turns out to be the only Japanese player of his era to make it to the major leagues, any influence he had will quickly fade. On the other hand, if Nomo is the first of many, the way Jackie Robinson was the first of many black ballplayers, he could be remembered for a long time." *Id.* Since Nomo has come over, other Japanese baseball players have been involved in Major League Baseball, including Irabu and Maeda (New York Yankees), Shigetoshi Hasegawa (Anaheim Angels), Takayasu Kato (Boston Red Sox), Makoto Suzuki and Masayuki Nakayama (Seattle Mariners), Tomohiro Hasimoto (Oakland Athletics), Koji Hoshima (Montreal Expos), and Takashi

Wherever international scouts and influence goes in Major League Baseball, the Dodgers will be among the leaders. Currently, "some 45.2 percent of all players in the Dodgers' organization call somewhere other than the United States home."¹⁶⁰ As for the rest of baseball, if they want to stay competitive, they must look internationally, especially now that expansion is stretching rosters.¹⁶¹ With such lofty opinions of international baseball players, perhaps opinions of international non-athletes will change with the changing landscape of our national pastime.

B. *The Cuban Experience*

A recent phenomenon in athletic immigration has involved Cuba's world-class athletes leaving their homeland, and coming to the United States to cash in on their athletic talent.¹⁶² As the economy in Cuba continues to decline and the privileges given to athletes continue to dwindle, it is possible that many more Cuban athletes will come to the United States seeking to earn overinflated athletic salaries. The defection of Cuban athletes may have its roots in the break-up of the Soviet Union.¹⁶³ When the Cuban economy was supported by imports from the Soviet Union, athletes, particularly baseball players and boxers, were treated extremely well.¹⁶⁴ However, once the Soviet supplies stopped coming, there simply wasn't enough to go around to pamper the athletes.¹⁶⁵

The wave of Cuban defections began in 1991 when Cuban National team pitcher Rene Arocha left his friends and family behind and came to the United States.¹⁶⁶ Arocha's defection

Kashiwada (New York Mets). See David Cataneo, *Baseball Did You Know . . .*, BOSTON HERALD, July 20, 1997, at B14.

160. Lockwood, *supra* note 8, at D5.

161. See *id.*

162. See e.g. Cuban baseball players Rene Arocha, Osmani Estrada, and Alexis Cabreja, discussed *infra* notes 166-75 and accompanying text.

163. See Barry Horn, *Cubans Travel Long Road to Join Rangers*, THE SUNDAY OKLAHOMAN, July 11, 1993, at 7.

164. See *id.* In the words of one Cuban baseball player, "We were treated special. We were taken care of. We had the right to better food that we could take home to our families. In the street, people would give us special treatment." *Id.*

165. See *id.*

166. See Sharon Robb, *Cuban Pitcher Defects to Chase Major League Dream*, CHICAGO TRIBUNE, August 7, 1991, at 4.

came as a surprise to Cuban officials.¹⁶⁷ The commissioner's office decided to conduct a lottery style draft to determine who would get the rights to Arocha.¹⁶⁸ The St. Louis Cardinals won the lottery and drafted Arocha. After spending one season in the minors, the twenty-eight-year-old rookie had success as a starter, compiling an 11-8 record with a 3.78 E.R.A.¹⁶⁹ Arocha's defection made him the first Cuban to play Major League Baseball in over thirty years, and has been credited with starting the flow of Cubans into the league.¹⁷⁰

Other members of Cuba's national team waited to see if anything would happen to Arocha's family as a result of his defection.¹⁷¹ When they saw that nothing happened, Osmani Estrada and Alexis Cabreja decided that they too would go to the United States to play baseball.¹⁷² Estrada and Cabreja contacted Arocha, who convinced his agent to help get them across the border.¹⁷³ After sorting out their legal difficulties,¹⁷⁴ Estrada and Cabreja were both drafted by the Texas Rangers, making them the third and fourth Cuban defectors to sign with Major League teams.¹⁷⁵

The Cubans who have come to the United States after Arocha credit him with helping to inspire them to leave Cuba.¹⁷⁶ Arocha has definitely had an impact on Major League

167. See *id.* Roberto Valdez Perez, director of sports, exclaimed, "He had a higher salary than the average worker in Cuba. He didn't have to work at all, just play baseball. No other country in the world treats a baseball player like we do. A Cuban athlete should stay here. They are given everything free from age eight." *Id.*

168. See Associated Press, *Cuban Will Be Allowed to Play Major League Baseball*, AUSTIN AMERICAN-STATESMAN, September 11, 1991, at C4. This announcement came after INS determined that Arocha could stay and work in the United States. See *id.*

169. See Kevin Baxter and Fernando Dominguez, *Baseball Si, Cuba No - Castro's Island May be a Gold Mine for Major League Talent, but Under his Regime, We May Never Know to What Extent*, THE SPORTING NEWS, March 21, 1994, at 1214.

170. See *id.*

171. See Horn, *supra* note 163, at 7.

172. See *id.*

173. See *id.*

174. See Baxter, *supra* note 169, at 1214. Unlike Arocha, who requested political asylum as soon as he defected, Cabreja, Estrada and pitcher Ivan Alvarez came into the United States illegally seeking to become unrestricted free agents, and thus not subject to a draft. See *id.* However, after pressure from the commissioner's office they eventually requested political asylum, subjecting themselves to the draft. See *id.* Also, as a result of their standoff, the commissioner's office no longer holds lottery-style drafts for defectors and they have to wait until the June amateur draft. See *id.*

175. See Horn, *supra* note 163, at 7. The second was Ivan Alvarez who was drafted ahead of Estrada and Cabreja in the 1993 amateur draft. See *id.*

176. See Baxter, *supra* note 169, at 1214. New York Mets shortstop Rey Ordóñez said

Baseball.¹⁷⁷ Many people believe that those on the Cuban national team could definitely play in the majors. However, the defectors have primarily been those who were not on the national team.¹⁷⁸

Baseball players are not the only Cuban athletes who are defecting. In 1993 at the Central American and Caribbean Games in Puerto Rico, more than fifty Cuban athletes defected, none of which were baseball players.¹⁷⁹ Before leaving for the Games, the Cuban athletes were organized at a rally where they were given a patriotic send-off by their president Fidel Castro.¹⁸⁰ However, many of those athletes ignored Castro's words and chose not to return.¹⁸¹ While there were many factors contributing to the 1993 defections, the Cuban economy and United States immigration policy were among the heaviest.¹⁸² Even if they don't get six-figure contracts in the United

of Arocha, "All the ballplayers in Cuba are aware of what Arocha is doing. He has been our motivation for defecting." *Id.* They also indicated that the Castro government does not paint an appealing picture of the United States and that they wouldn't have even wanted to defect if they hadn't seen it first hand during an amateur tournament. *See* Horn, *supra* note 163 at 7. They didn't seem to mind either that Cuban newspapers referred to them as "traitors to the revolution" when they defected. *Id.*

177. *See* Baxter, *supra* note 169, at 1214. According to his agent, "Somebody had to be the first. Rene took the first step, and when they saw that nothing happened to him or his family, (others) decided to risk it." *Id.* Two more Cuban baseball players defected during the World University Games in Buffalo, New York. Edilberto Orapesa and Reynaldo Ordonez fled to Miami seeking political asylum and hoping for major league contracts. *See* David Germain, *Cuban Baseball Players Defecting but None are Among the Best Prospects*, DAYTON DAILY NEWS, July 14, 1993, at D6. While neither was given much of a chance to make the major leagues, Ordonez eventually became the starting shortstop for the New York Mets earning a lot more than the \$118 a month he made in Cuba. *See id.*

178. *See id.* "The infield—third baseman Omar Linares, shortstop German Mesa, second baseman Antonio Pacheco and first baseman Orestes Kindelan—is worth, at a rough estimate, about \$50 million collectively based on their potential and today's hyperinflated market." Steve Fainaru, *Defects in the System? Recent Exodus of Cuban Athletes Has Been Cause for Alarm*, THE BOSTON GLOBE, December 5, 1993, at 47. But the success of Ordonez and others who were not on the national team could be an inspiration to other similarly situated Cuban players.

179. *See* William Booth, *For Cubans, Finish Line is the U.S.: At Games, Defectors Keep on Running*, THE WASHINGTON POST, December 2, 1993, at A1. The 1993 Games saw the defections of cyclists, softball players, divers, archers, weight-lifters, gymnasts, and officials, many of whom defected for political and economic reasons instead of lucrative contracts and endorsements. *See* Associated Press, *Cuban Athlete Defections Surpass 40*, THE CINCINNATI ENQUIRER, December 1, 1993, at D3.

180. *See* Booth, *supra* note 179, at A1.

181. *See id.*

182. *See* David Beard, *Cuban Athletes Keep Trying to Leave no Future Situations*, THE ARIZONA REPUBLIC, November 30, 1993, at C4.

States, many of the defectors felt that they could do a lot better for themselves in the United States than in Cuba.¹⁸³ The 1993 defections further intensified the political battle between the Castro government and anti-Castro exiles.¹⁸⁴

Pitcher Ariel Prieto, believing that Cuban officials knew he was considering leaving, took advantage of United States refugee legislation and came to the United States to seek political asylum.¹⁸⁵ Prieto was then drafted by the Oakland Athletics and received a \$1.2 million signing bonus, which is considerably more than the \$125 a month he made in Cuba.¹⁸⁶ Two others who also couldn't wait for Atlanta are pitchers Osvaldo Fernandez and Livan Hernandez.¹⁸⁷ However, they found a way around the amateur draft¹⁸⁸ and as a result of their free agent status, cashed in on baseball's shortage of quality pitching.¹⁸⁹ Hernandez has also recently cashed in on national exposure, winning the 1997 National League Championship Series and World Series Most Valuable Player awards.¹⁹⁰

In 1996, the Olympic Games came to Atlanta, Georgia. However, before the games started, several Cuban athletes de-

183. *See id.*

184. *See id.*

185. *See* Tom Maloney, *Cuban Could Prove AL Answer to Nomo*, THE SAN DIEGO UNION-TRIBUNE, July 1, 1995, at D2.

186. *See* A's Prieto has Visions of Riches, THE RECORD, NORTHERN NEW JERSEY, July 18, 1995, at S4.

187. *See* Frederick C. Klein, *Millions for Cuban Pitcher*, THE WALL STREET JOURNAL, March 4, 1996, at A12.

188. *See* Murray Chass, *Cubans Take New Route to Majors*, THE FORT WORTH STAR TELEGRAM, December 7, 1995, at 10. Because they defected to the Dominican Republic, they were not subjected to the amateur draft (which applied to Cubans seeking asylum in the United States), thus they were free agents and available to the highest bidders. *See id.*

189. *See id.* Fernandez signed a three-year contract with the San Francisco Giants for \$3.2 million. *See id.* Hernandez signed a four-year contract with the Florida Marlins for \$6 million. *See id.*

190. *See* Marlins, *supra* note 129, at C2; Kaegel, *supra* note 129, at D1. While Hernandez has enjoyed success in the United States, members of his family have suffered. His brother Orlando "El Duque" Hernandez was a famous national baseball star in Cuba before being banned for life from Cuban baseball after he was linked to a sports agent in a "defection plot." Bruce Jenkins, *Hernandez is Marlins' Major Presence Now*, THE SAN FRANCISCO CHRONICLE, October 3, 1997, at E8. Hernandez had not seen his mother, Miriam Carreras, in over two years since his defection, but he was reunited with her prior to the start of game seven of the World Series after United States and Cuban officials untangled themselves from all of their red tape. Jennifer Frey and Mark Maske, *Marlins' Hernandez Celebrates a Mother and Child Reunion*, THE WASHINGTON POST, October 27, 1997, at D4.

cided to forego participation as members of Cuba's Olympic team, and instead sought political asylum in the United States. Even though they were favored to win gold medals in boxing, Ramon Garbey and Joel Casamayor left the Cuban training camp in Mexico and crossed the border.¹⁹¹ Instead of competing for gold medals, the two Cubans now compete for money as members of "Team Freedom," consisting of eleven Cuban boxers and two Cuban trainers, all defectors.¹⁹² The last Cuban athlete to defect before the Games started was a member of the coveted baseball team. Pitcher Rolando Arrojo left the team's training facility in Georgia and went to Miami to seek political asylum.¹⁹³

The 1996 Olympic saga for Cubans will be further discussed in Part IV *infra*. However, even before the Olympics, many Cuban athletes decided to leave everything that they had and travel to either the United States, Puerto Rico, or the Dominican Republic. Some went to cash in with large contracts, others simply wanted to begin a new life away from the Castro regime. Whatever their reasons were for leaving, they had and will continue to have an impact on the sports world of both their former country and their new homes. They have paved the way for many future athletes who choose to leave Cuba.

IV. THE OLYMPICS

A. *Olympics and Politics*

When the modern Olympic Games were created back in 1896, its founder, Baron Pierre de Coubertin, hoped that they would be a great sporting event, from which political motivations and demonstrations would be absent.¹⁹⁴ However, as his-

191. See Associated Press, *Fighting in the U.S. is Big Chance for Cuban Defectors*, ST. LOUIS POST-DISPATCH, September 22, 1996, at F5. Casamayor, a 119-pound bantam-weight, won the gold medal at Barcelona in 1992 and was favored to repeat in Atlanta. See *id.* Garbey, at 175-pounds, was favored to win the light-heavyweight gold. See *id.*

192. See *id.* A lawsuit was brought by a rival boxing promoter who claims to have Garbey and Casamayor under contract, but attorneys for Team Freedom's promoter said that those contracts are unenforceable because they were signed under duress. See *id.*

193. See Tim Franklin, *Answering Freedom's Call, Chance to Defect May Entice Potential Medal Winners*, CHICAGO TRIBUNE, July 11, 1996, at 1. Although Arrojo will probably seek asylum in another country so that he may become a free agent. See *id.*

194. See Paul Mastrocola, Note, *The Lords of the Rings: The Role of Olympic Site Selection as a Weapon Against Human Rights Abuses: China's Bid for the 2000 Olympics*, 15 B.C. THIRD WORLD L.J. 141, 152 (1995).

tory has shown, de Courbetin's ideal never materialized.¹⁹⁵ Generally, the connection between politics and the Olympics can be divided into five categories, "(1) to attain prestige; (2) to effect nonrecognition of nations; (3) to institute propaganda; (4) to protest, and (5) to combat human rights violations."¹⁹⁶

The goal of prestige is a product of nationalism, evidenced by nations rallying to support their countrymen.¹⁹⁷ However, prestige also comes to the nation that hosts the Games, for they are put on a stage for the entire world to see their government, economy, tourism, and other industries.¹⁹⁸ Certain events during the Olympics can also negatively affect a nation's prestige.¹⁹⁹

According to the Olympic Charter, nations are forbidden from using the Games as a propaganda tool.²⁰⁰ However, the reality of the situation is quite the contrary.²⁰¹ At the 1996 Games in Atlanta, the Cuban Civil Council Inc. made its presence felt by applying constant "support" for would-be Cuban defectors.²⁰²

Protest has been the most prevalent of all political actions at Olympic games in the past. They can be separated into two categories, individual protests and official protests.²⁰³ An example of an individual protest is the famous "Black Power Sa-

195. Some incidents of using the Olympic Games as a political forum include: "(1) the attempt by De Courbetin to bar Germany from the first Olympics in 1896; (2) the refusal of the Americans to dip their flag in honor of King Edward VII at the 1908 London Olympic Games; (3) the use of the Olympic Games as a propaganda tool for the Nazis at the 1936 Berlin Games; (4) the Palestinian terrorist assault at the 1972 Munich Games; and (5) the boycotts of the 1980 Moscow and 1984 Los Angeles Games by the United States and the Soviet Union respectively." JoAnne D. Spotts, *Global Politics and the Olympic Games: Separating the Two Oldest Games in History*, 13 DICK. J. INT'L L. 103, 114-15 (1994).

196. *Id.* at 115.

197. *See id.*

198. *See* Mastrocola, *supra* note 194, at 155-56.

199. Anti-Castro groups had hoped before the 1996 Games that a substantial wave of Cuban defections during the Games would paint an embarrassing picture of Castro for the entire world to see. *See* Don Melvin and Jeff Schultz, *More Cuban Athletes May Defect*, SAN ANTONIO EXPRESS-NEWS, July 3, 1996, at B1.

200. *See* Spotts, *supra* note 195, at 116.

201. *See id.* at 114-15. For example, Hitler used the Berlin Games to raise support for the Nazi party. *See id.* Also, various national and international groups and organizations can commonly be found at the Games attempting to gather support for their particular positions. *See id.*

202. *See* Melvin, *supra* note 199, at B1.

203. *See* Spotts, *supra* note 195, at 117.

lute" that occurred in the 1964 Mexico City Games.²⁰⁴ Official protests are usually in the form of boycotts, like the United States boycott of the 1980 Olympics and the Soviet Union's boycott of the 1984 Olympics.²⁰⁵

Using the Olympics to combat human rights violations can be evidenced by two situations. The first was the exclusion of South Africa from the Games in an effort to combat the policy of apartheid; the other is the rejection of China's bid to host the 2000 Olympics based on their poor human rights record.²⁰⁶

Regardless of how you classify a particular politically motivated action on the international sports scene, the bottom line is that it is usually motivated by nationalism. The "us against them" mentality is clearly evident around the Games. Even when the Games are years away, the national support is extremely high.²⁰⁷ Fidel Castro rallies his nation around his athletes by equating a victory on the baseball diamond to a victory for the Cuban way of life.

204. See *id.* The incident involved two African-Americans who had won gold and silver medals. See *id.* During the playing of the "Star Spangled Banner," the athletes bowed their heads and raised their fists in the air, refusing to face the American flag. See *id.* The International Olympic Committee responded by barring the athletes from future Olympics. See *id.*

205. See *id.* at 117-18. Not only are boycotts contrary to the spirit of the Olympic Games, they are rarely effective. See *id.* For example, the United States boycotted the 1980 Games as a protest against the Soviet occupation of Afghanistan. See *id.* However, the Soviets remained in Afghanistan, obviously undeterred by the United States boycott. See *id.*

206. See Mastrocola, *supra* note 194, at 158-59. While the exclusion from the Olympics was not the sole reason why South Africa abandoned its policy of apartheid, it has been suggested that the importance of sports and competition to their culture may have helped with the rejection of apartheid. See *id.* The decision to award the 2000 Olympics to Sydney, Australia was definitely influenced by the United States strong lobbying against China based on their human rights record. See *id.* at 159-65. Senator Bill Bradley wrote to the International Olympic Committee that, "Holding the Olympics in China, while the government routinely imprisons and tortures peaceful political dissidents, would have conferred upon China's leaders a stamp of approval which they clearly do not deserve." *Id.* at 163.

207. Famous United States Olympian Carl Lewis illustrated this nationalism when he criticized United States colleges for giving athletic scholarships to foreign students: "We are bankrolling the world Olympic movement when we should be helping our Olympic movement. . . . If the foreign athletes want to come and pay their own way, or have their country help them, that is fine. But the money from scholarships needs to go to American kids. It's American taxpayers' money, its American sponsors' money, and it should go to American kids." Martin J. Greenberg and James T. Gray, *Citizenship Based Quota Systems in Athletics*, 6 MARQ. SPORTS L.J. 337, 339-40 (1996).

B. *The 1996 Games in Atlanta*

In preparing for the Summer Games, the Immigration and Naturalization Service was bracing for an expected three-hundred-thousand foreign visitors in Atlanta.²⁰⁸ In addition to nearly doubling the number of INS employees in the Atlanta district, immigration judges would be "on call" at Hartsfield Airport twenty-four hours a day.²⁰⁹ There were also the "Olympic Identity Cards" which were distributed to the various Olympic athletes and officials, to help speed up processing at the airport.²¹⁰ However, even with the stringent new security measures, the INS was prepared for a flood of "undesirable aliens" who would either enter the country illegally during the games or enter with valid visas but then overstay their visas.²¹¹

INS officials were also gearing up for what may have been a flood of political asylum claims from athletes representing Cuba, Iraq, North Korea, and other nations. The extra staff at Hartsfield Airport was prepared to handle any emergency situations involving athletes seeking asylum.²¹² In addition to INS officials, anti-Castro groups and United States sports agents

208. See Gedda, *supra* note 9, at A13.

209. *Id.* While the United States was busy preparing for the Olympics by setting up special immigration offices and procedures, at least one nation was not going to bend its immigration rules to cash in on athletic success. See Ian Thomsen, *Danes Not Tempted by Gold; Favorite Might Miss Atlanta*, INTERNATIONAL HERALD TRIBUNE, December 14, 1995, at 22. The world champion in the 800-meters, Wilson Kipketer, would not be eligible to run in the Games because he did not meet the citizenship requirements for either his new home (Denmark) or his native land (Kenya). See *id.* Kipketer has lived in Denmark since 1990, but unfortunately, Denmark requires seven years of residency for citizenship, a requirement Kipketer will not fulfill until 1997. See *id.* According to Denmark officials, they do not want to make exceptions to their laws just because Kipketer can run fast. See *id.* When the 800-meter final was run in Atlanta, it did not have the then-current world champion, a champion who had run the fifth fastest 800-meters ever. See *id.*

210. Branigin *supra* note 10, at A1. The I.D. cards, which had "sixty-four state-of-the-art security features," were distributed by United States Embassies abroad. *Id.*

211. *Id.* Apparently, "Olympics related immigration fraud" began in October of 1995 when a woman from Kazakhstan tried to convince INS officials that she was a gymnastics judge. *Id.* However, the woman was eventually sent back to Central Asia when a check with Olympic officials in Atlanta revealed that the woman was a fraud. See *id.*

212. See Gedda, *supra* note 9, at A13. Particularly, Olympic personnel have been instructed by the INS to shield any Cuban, Iraqi, or other athlete who approaches them seeking asylum. See Steve Wulf, *The Olympics: Cuban Long Jump, Seven Athletes Have Already Defected From Castro's 1996 Teams. How Many Will Bolt in Atlanta?* TIME MAGAZINE, July 29, 1996, Vol. 148, No. 6, at 70.

were also welcoming the possibility of defections from Cuba.²¹³ One agent, Joe Cubas, prepared for the Olympic Games by following the Cuban baseball team during its entire exhibition trip around the United States.²¹⁴

While Americans were anticipating the defection of Cubans, Castro was denouncing those who had already fled Cuba as traitors.²¹⁵ There was also speculation, however, that the Cuban government would send additional security to the Games to make sure that its athletes would return home.²¹⁶ The tension between Cuba and the United States over the recent defections may have manifested itself on the baseball diamond when Cuban starter Omar Luis hit United States lead off batter Jason Williams with the first pitch of a game.²¹⁷ The rest of the game involved brush back pitches from each team, perhaps each sending a message to the other regarding the status of defecting Cuban athletes.²¹⁸

The Games were set to begin on July 19, 1996, and the world watched, waiting to see what would happen. Waiting to see who would defect, waiting to see how the United States would fare as host of the Olympic Games. By August 4, 1996, the Games were over. The big story was not an account of Cuban defections, rather it was the tragic bombing of the Olympic village which left two dead.²¹⁹ Not one Cuban athlete defected during the Olympics. Instead, the lone defector was a weight lifter from Iraq.²²⁰ Raed Ahmed, who carried Iraq's flag during the opening ceremonies was able to escape what he called, "a

213. See Melvin, *supra* note 199, at B1. One such group, the Cuban Civil Council, Inc., planned to help many defectors who would be presented with the "golden opportunity" to defect. *Id.* A spokesman for the Cuban American National Foundation said, "Oh, yes, we definitely plan to help defectors. We'll be in Atlanta." Tom Carter, *Group Plans to Aid Cuban Defectors 3 Athletes Have Left Olympic Team*, THE WASHINGTON TIMES, July 12, 1996, at A15.

214. See *id.* Cubas helped several Cubans defect, most notably, pitcher Osvaldo Fernandez. See *id.*

215. See Franklin, *supra* note 193, at 1.

216. See *id.*

217. See Jim Litke, *Olympic Games: Cubans Still Baseball Power*, THE PATRIOT LEDGER, Quincy MA, July 29, 1996, at 19.

218. See *id.*

219. See Richard Hoffer, *Atlanta '96 in the Centennial Games, Athletic Competition Survived a Tragic Interlude*, SPORTS ILLUSTRATED, August 5, 1996, at 8.

220. See William Drozdiak, *Ahmed's is a Flight Fraught with Peril; Asylum has Long Been Iraqi Athlete's Dream*, THE WASHINGTON POST, August 2, 1996, at D7.

living hell.”²²¹ Before leaving Iraq for the Olympics, Ahmed made sure his family was in a safe area, away from the persecution of Saddam Hussein. He knew that Hussein’s government would retaliate for his defection so he insured their safety before asking for asylum.²²²

The only defectors/immigrants that made an impact on the Olympic Games were those who had come to the United States years before. Bela Karolyi and his wife Martha guided the United States women’s gymnastics team to its first ever gold medal, after they had defected from Romania in 1981.²²³ Ha-keem Olajuwon, a native of Nigeria, was instrumental in the United States’ mens basketball team capturing the gold medal.²²⁴ And Monica Seles, a native of Yugoslavia played for the United States women’s tennis team.²²⁵

The question is then, why weren’t there more defections? Why didn’t any Cubans decide to seek political asylum? One explanation is that there was enhanced security around the Cuban athletes, thus making it next to impossible for them to break away. But Cuban officials said that they were not going to bring any extra personnel, and would rely on the security provided by the United States. Another explanation, advanced by Cuban officials, is that the athletes simply did not want to defect. For whatever reasons, Cuban baseball players and boxers found incentives to stay with their native teams. Some suggest that Castro’s promise to his star athletes that they could keep future prizes or that they would be able to earn money playing in Japan and other countries kept the defections from occurring.²²⁶ Perhaps though the explanation can be summed up in the words of Cuban third baseman Omar Linares, who has long been a staunch supporter of Castro, “I’d rather play for 11,000,000 Cubans than \$11,000,000

221. *Id.*

222. *See id.*

223. *See* Athelia Knight, *Officials Preparing for Athlete Defections: INS Increases Staff in its Atlanta Office*, THE WASHINGTON POST, July 18, 1996, at D6.

224. *See* Charles J. Hanley, *U.S. gets Foreign Aid: Olympians Just Call These Immigrants the American-Dream Team - Immigrants Playing for the Home Team*, THE SALT LAKE TRIBUNE, August 4, 1996, at A1.

225. *See id.*

226. *See* Peter Gammons, *Much Trade Talk to Contend With*, THE BOSTON GLOBE, July 14, 1996, at 56.

dollars.”²²⁷

V. CONCLUSION

The 1996 Summer Olympics in Atlanta Georgia were supposed to be remembered as the Olympics that oppressed athletes from around the world defected to the United States. Instead, they were the corporate sponsored, Olympic Park bombed, traffic congested Atlanta Games. Perhaps, the speculation of defectors was exaggerated by American arrogance. Perhaps all of the athletes who had wanted to defect, did so before the Games. Notwithstanding the defections that failed to occur, the United States opened its doors to the world, allowing athletes from around the world to compete for the gold. During those two weeks in Atlanta, Americans put aside their desires to close off the borders to the rest of the world. They cheered for former immigrants as their own, in the likes of Hakeem Olajuwon and Konstantine Starikovitch. One-hundred and ninety six nations, the largest ever, were represented in Atlanta. Since the United States was able to welcome such an impressive contingency of international athletes, there is no reason why that openness cannot be extended beyond the athletic fields to the ordinary citizens of the world. If the immigration policies of the United States can be changed in order to accommodate athletes, there is no reason why they cannot be altered to accommodate other potential employees in the global economy.²²⁸ The Winter Olympics will return to the United States in the year 2002. Perhaps in the time between the Atlanta Games and the Salt Lake City Games, the rest of United States immigration policy will catch up to United States international sports policy.

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227. Michael Mayo, *Top Cubans May Make Dash for Dollars*, CHICAGO TRIBUNE, August 3, 1996, at 6.

228. While the government certainly has a compelling interest in keeping out illegal immigrants and others who will only burden our economy, there is no reason why immigration laws need to close the door on legitimate immigrants seeking to become productive members of society and help the United States of America and the global economy move into the twenty-first century.