

ROAD TO RIO

7: Immigration and Sport



Hugh Southey QC specialises in public law in a wide range of fields including [human rights](#), [prison law](#), [inquests](#), [crime](#), [extradition](#), [mental health](#), terrorism (including TPIMs and the Special Immigration Appeals Commission), [immigration](#), [discrimination](#) and [elections](#). He has advised both [sports](#) teams and players regarding immigration control and public law generally.

Sport is a global business. That means that those who participate in it need to travel in order to play their sport. However, despite their fame and fortune they remain subject to normal immigration control. How many football transfers are said to be subject to obtaining a work permit? This all may be obvious but it is an important starting point. Firstly, it means that employers such as a sports teams need to ensure their stars have immigration status. Secondly, the fact that it is general immigration law that applies means that the solution to immigration problems in a sports context are not necessarily sports specific.

EU law

Probably the most obvious example of how general immigration law can have an impact on sport is the Bosman¹ and Kolpak² rulings. These rulings have revolutionised some sports. For example, in cricket the Kolpak ruling has allowed professional county clubs to sign large numbers of players who were not developed within the English system. However, despite the impact these rulings have had on sport, they are not based on principles that are specific to sport. They depend on EU law governing free movement of labour.

Under EU law ‘free movement of persons constitutes one of the fundamental freedoms of the internal market’³. That means, for example, that it is unlawful for an English professional sports league to prevent teams recruiting French nationals. More relevantly for the purposes of this article, it would be unlawful for the UK to impose restrictions on French sports players travelling to the UK. None of this is likely to be surprising to anyone who has a passing interest in professional football.

¹ *Union Royale Belge des Sociétés de Football Association ASBL v Jean-Marc Bosman* C-415/93

² *Deutscher Handballbund eV v Maros Kolpak* C-438/00

³ Recital 2 to Directive 2004/58/EC

It is primarily free movement law that has allowed English teams to recruit large numbers of foreign nationals.

What is perhaps less obvious is the full scope of EU law. Firstly, it extends to certain family members. A Brazilian footballer married to a Portuguese national may well be able to benefit from EU law. In addition, it can have implications for nationals of states that have entered into association agreements with the EU. Most significantly, Turkish nationals have rights under EU law. The Turkish association agreement gives rise to particularly valuable rights for nationals of Turkey.

The importance of EU free movement law means that the Brexit vote has the potential to have a significant impact on British sport. That explains why all 20 Premier League clubs backed the remain campaign⁴. However, precisely what that impact will be is very hard to tell. Countries such as Iceland are subject to the same free movement rules as a consequence of the free trade arrangements that they have entered into with the EU. The UK may be required to enter into similar arrangements if it is to maintain free trade. However, those who support Brexit have suggested a system similar to the Australian points based system⁵. In principle, that would restrict immigration to people who met a certain skill level. That could reduce the number of foreign youth players.

Other aspects of general immigration law

EU free movement law is not the only area of immigration law that has the potential to permit sportspeople to work in the UK. There are various categories of immigration status that carry with them a right to reside and work in the UK, which are too numerous to be listed in this article. In general these provisions are less relevant to professional sport because they are not intended to facilitate a skilled person to be employed. However, it is important to be aware that sports stars have qualified to play sport in the United Kingdom through provisions permitting people to reside as refugees, as spouses of UK nationals etc. For example, Fabrice Muamba, the footballer who suffered a heart attack while playing for Bolton, entered the United Kingdom as an asylum seeker.

It is important to note that some forms of immigration status expressly prevent people working as sportspeople.

Sport specific provisions

⁴ <http://www.independent.co.uk/news/uk/home-news/eu-referendum-premier-league-clubs-back-remain-brexit-vote-what-happens-to-football-teams-a7091201.html>

⁵ <http://www.telegraph.co.uk/news/2016/05/31/eu-referendum-boris-and-gove-pledge-tough-new-immigration-system/>

There are essentially two forms of immigration control that are specifically aimed at professional sportspeople.

Firstly, there are rules enacted to facilitate specific events such as the Olympics. For example, in the lead up to London 2012, the UK Government introduced changes to the immigration rules to manage the entry and stay of athletes, officials, technical staff and broadcasters etc in connection with the Games⁶.

Secondly, there are rules that permit specific sportspeople to apply for leave to remain. In principle, these rules are aimed at particularly talented people. For example, rule 245H of the Immigration Rules describes one of these sets of rules as being intended to 'enable UK employers to recruit workers from outside the EEA to fill a particular vacancy that cannot be filled by a British or EEA worker'⁷. As a consequence, the rules essentially require a governing body to confirm that a sportsperson is:

- (i) internationally established at the highest level,
- (ii) will make a significant contribution to the development of their sport at the highest level in the UK, and
- (iii) filling a post that could not be filled by a suitable settled worker.

Decisions of this nature are extremely difficult to challenge because they are so subjective. A judicial review may be possible. However, it is better to ensure that the application is correct in the first place.

Who does this matter to?

Obviously immigration control is directly relevant to sportspeople. However, the UK has adopted a system of civil and criminal penalties that potentially create liability for employers. As a consequence, sports teams and event organisers need to seek advice about their employment policies. This is a rapidly changing area of the law and so there is no simple guidance that can be provided in a short briefing such as this. The reputational risk associated with employing a star unlawfully is too great to get this wrong.

Hugh Southey QC

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Further information

Find out more about our sports team at Matrix at matrixlaw.co.uk.

⁶ <https://www.gov.uk/government/speeches/changes-in-immigration-rules-october-2011>

⁷ Rule 245H of the Immigration Rules (HC 395)