



**Arbitration CAS 2020/A/7503 N. v. Fédération Internationale de Football Association (FIFA), award of 25 March 2021**

Panel: Mr Rui Botica Santos (Portugal), Sole Arbitrator

*Football*

*International transfer of minor players*

*Rationale of Art. 19 RSTP*

*Interpretation of Art. 19 RSTP*

*Interpretation of the exception of Art. 19 para. 2 lit. a RSTP*

*Burden and standard of proof for the exception*

1. Article 19 of the FIFA Regulations on the Status and Transfer of Players (RSTP) is entitled “*Protection of minors*”. Article 19.1 RSTP states that, in principle, international transfer of players is only permitted if the player is over the age of 18. This rule applies to amateur and professional players. Exceptions to allow international transfers of players under the age of 18 are only permitted if within the exceptions allowed in Article 19.2 RSTP. The exceptions have been admitted to provide certain flexibility – to both clubs and players – but exclusively within the aim to protect minor players. Basically, the exceptions have been established to accommodate certain reasonable circumstances that would not affect the minors, among others, in socio-economic, educational, cultural, family and psychological terms.
2. The general prohibition contained in article 19.1 RSTP is based on the fact that, while international transfers might in very specific cases, be favourable to young players’ sporting career, they are very likely to be contrary to their best interest as minors. The interest of protecting the adequate and healthy developments of a minor as a whole must prevail over purely sporting interests. Therefore, Article 19 RSTP can only be interpreted restrictively in view of the protective purpose of the rule. The exceptions established in Article 19.2 RSTP are carefully drafted, and correspond to situations where the framers of the statutes felt that minors would be adequately protected. There is no scope to narrow the application of Article 19.1 RSTP by allowing new exceptions, other than those already legislated and exhaustively listed in paragraph 2 of said provision.
3. In such cases were a CAS panel is convinced that the move of the family was motivated by a mixture of several reasons, and where each one of the other proven reasons is legitimate *per se*, the application of the exception envisaged in Article 19.2(a) RSTP will be assessed and decided based on the weight of the “football factor” within the whole range of reasons and the overall circumstances of the matter, such as: What were the other reasons? Whether all the family moved? To what extent the specific location to

which the family decided to move was chosen with due consideration of the football activity of the minor?, etc. Therefore, the most reasonable and balanced interpretation of the standards in question is that the player's registration should only be refused if the "football factor" is the prevailing element in the decision to change countries. This flexibility in the interpretation and application of the rules in no way contradicts the strictness and care that the arbitrators must have in applying the envisaged exceptions.

4. The assessment of the exception envisaged in Article 19.2(a) RSTP is not an easy task because it implies and requires the investigation of subjective intentions. The burden of proof lies with the player, who needs to prove that there were no links to football underpinning the family's decision to move to the new country. The standard for proving the exception shall be "comfortable satisfaction" and not "beyond a reasonable doubt". There is no justification to require a higher standard of proof than the one established for doping and corruption matters.

## **I. PARTIES**

1. N. (the "Appellant" or the "Player") is a minor player with US and Hungarian nationalities. The Player was born on 29 September 2005 in Seattle, United States of America ("USA"). The Appellant is the son of P. (the "Mother"), Hungarian national, and of R. (the "Father"), US national.
2. The Fédération Internationale de Football Association (the "Respondent" or "FIFA") is an international governing body of football. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials, and players belonging to its affiliates; The Player and FIFA are collectively referred to as the "Parties" and the Mother and the Father are collectively referred to as the "Parents".

## **II. FACTUAL BACKGROUND**

3. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in this award ("Award") only to the submissions and evidence it considers necessary to explain its reasoning.

**A. The background of the dispute: the Player's move to Hungary and his application to be transferred to a Hungarian club**

4. The Appellant is a North American and Hungarian minor player, who lived all his life in the USA and has been training and playing football in the USA since his early age until July 2020, when the Player moved to Hungary, the home country of his Mother. In the past, during some holiday periods, the Player used to visit Hungary.
5. In July 2020, the Player and the Mother made the decision to move to Hungary invoking the difficulties caused by the Covid-19 outbreak in the USA. The main reason why they decided to move to Hungary is related to the advanced age and delicate health conditions of the Player's Hungarian grandparents (the "Mother's Parents") and their need of care and assistance in Hungary. The Mother has a father with 82 years old and a mother with 78 years old.
6. As a result, the Player had to move with the Mother to Hungary. The Player is a minor and cannot live away from his Mother, who is the most indicated person to take care of his education.
7. After arriving in Hungary, the Mother reached out to the football club MOL Fehérvár FC (the "Club") to see if there was an opportunity for the Player to train and play in friendly matches. The Club gave a positive answer and immediately initiated the application process for the Player's transfer to Hungary.
8. On 3 September 2020, the Hungarian Football Federation (the "HFF") submitted, on behalf of the Club, an application in the Transfer Matching System (the "TMS"), for the approval of the International Transfer Certificate (the "ITC") of the Player from the U.S. Soccer Federation. The application was based on the exception foreseen in art. 19.2.a) of the Regulations on Status and Transfer of Players (RSTP), i.e. "*Move of the player's parents for reasons not linked to football*".
9. The HFF indicated in the TMS that the "*Player lives in Hungary with his mother*" and provided the following supporting documents:
  - a. A copy of the Player's birth certificate, which indicates that he was born in Seattle, USA.
  - b. A copy of the Player's Hungarian passport and the Mother's Hungarian identity card.
  - c. An employment letter signed on 17 August 2020 by the Father, in his capacity of President of the US company "I, Inc", located in [...], Washington, confirming (i) the Mother's employment with the said entity; and (ii) that the Mother "*(...) has been employed with the company in various roles beginning February 2, 2005 and continues her excellent work remotely. She is currently working out of the home in Siófok, Hungary*".
  - d. A statement dated 17 August 2020 – duly signed by the Mother – in which she declared that she "*exercise(s) the right of custody of [the Player] in Hungary*".

- e.* A copy of the Mother's Hungarian residence card issued on 16 July 2008, indicating the following address: [...] Siófok, [...] Hungary.
10. On 8 September 2020, upon FIFA's request, the Appellant provided the following additional information:
- a.* A statement from the Hungarian club dated 7 September 2020, informing that the Player "(...) is training with the team U18 of MOL Febrvár FC (...)" and that "the family is living in Siofok, Hungary". Moreover, the statement informs that the Parents "(...) asked the club at first 3 years ago for training opportunities and [the Player] took some trainings and friendly matches" and that "this year they asked again for some training opportunities but this time with transfer request".
- b.* A statement from the Mother informing that the Player arrived in Hungary on 19 July 2020 and that he "(...) was 5 years old when he started to play soccer. [the Parents] came home every summer for a few months since the kids were born. [They] lived in Siofok therefore at the beginning [the Player] trained with Siofok team as a guest player for the time being here. 3 years ago [they] took [the Player] to Vidi and he was given the opportunity for training (...). [The Player] always had a goal to be able to play soccer in Europe. Now [the Parents] would like to give him the opportunity to continue to improve his talent in soccer".
- c.* A copy of a utility bill dated 24 August 2020 proving the abovementioned leaving address.

## **B. The FIFA Decision**

11. The Single Judge of the Players' Status Sub-committee (the "PSC") passed a decision on 9 September 2020 determining that the requirement set out in art. 19.2.a) of Regulations on the Status and Transfer of Players (the "RSTP") is not met and therefore rejected the request made by the Club for the approval of the ITC of the Player (the "Appealed Decision").
12. The main grounds of the Appealed Decision are:
- (i) International transfers of players are only permitted if the player is over the age of 18 years old.
- (ii) A minor can only be transferred internationally in exceptional circumstances, among few others, when the parents move to the country in which the new club is located, and the reasons of the move are not linked to football (Article 19.2 (a) RSTP).
- (iii) The exception is not applicable in cases where the player's parents moved to the new country for reasons that are not entirely independent from the football activity of the minor. CAS has already ruled that "if one of the valid reasons for the parent's move is somehow related to football, the weight of the football-related reasons, namely the "football factor" and its impact

*on the final decision to move, shall be assessed. With regard to the standard of proof to be employed, the Single Judge confirmed that the respective exception may be granted only if its conditions are established “beyond reasonable doubt”. (...).”*

- (iv) FIFA has also emphasised that “(...) *the sequence and the timing of events is a factual and objective criteria to establish whether the player’s parents’ decision to move to the new country was driven purely by the reasons invoked or whether it was to some extent motivated by the potential football activity of their child in this country*”.
- (v) In light of the main facts and provided evidence (mainly the mother’s and club’s statements), and the strict application of the invoked exception for the registration of the Player before HFF, the PSC concluded that the facts and circumstances of this case raised doubts about the main motivation of the Player’s move to Hungary. The PSC adds that “[t]hese doubts were reinforced by the fact that the Player’s father remained in the [USA] without providing any substantial explanation as to why he would not be moving along with his family”.
- (vi) Finally, the PSC underlines that “*the Single Judge (...) was unable to exclude that the Player’s football career may have played a role in the Player’s mother’s decision to move to Hungary. As a matter of fact, the circumstances at hand rather suggest that the Player’s mother moved to Hungary “to give him the opportunity to continue to improve his talent in soccer” as he “always had a goal to be able to play soccer in Europe*”. For these reasons, PSC concluded that the requirements set out in Article 19.2 of the RSTP are not met.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 13. On 9 November 2020, in accordance with Article R47 of the Code of Sports-related Arbitration (the “CAS Code”), the Appellant filed his statement of appeal (the “Statement of Appeal”) against the Respondent with the Court of Arbitration for Sport (the “CAS”), challenging the Appealed Decision.
- 14. On 3 December 2020, in accordance with Article R51 of the CAS Code, the Appellant filed the Appeal Brief with the CAS.
- 15. On 8 December 2020, CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Arbitral Tribunal has been constituted as follows:

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- 16. On 4 January 2021, FIFA filed its Answer and, pursuant to Article R44.3 of the CAS Code, requested the production of the Player’s Mother email that originated the reply from Mr Golden on 27 June 2020.

17. On 5 January 2021, the Appellant was invited to file his comments on the FIFA's request for production of documents.
18. On 18 January 2021, the Appellant produced, by his own initiative, the requested document, *i.e.* the e-mail from the Mother to Mr Golden dated 26 June 2020.
19. On 22 January 2021, after consultation of the Parties, the Sole Arbitrator decided to hold a hearing on 10 February 2021 by video-conference, pursuant to Article R57 of the CAS Code.
20. On 25 January 2021, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.
21. On 10 February 2021, a hearing was held by videoconference. The following persons attended the hearing in addition to the Sole Arbitrator and Mr Antonio de Quesada, CAS Counsel and Head of Arbitration:
  1. For the Appellant: Mr Ricardo Oliveras Salva, the Appellant's counsel; P. (the Mother) and R. (the Father).
  2. For the Respondent: Mr Jaime Cambreleng Contreras, Head of Litigation Department and Mr Saverio Paolo Spera, Senior legal Counsel of FIFA Litigation Department
22. As a preliminary remark, the Parties were requested to confirm not having any objection to the nomination of the Sole Arbitrator and to confirm that all relevant documents were in the file.
23. Upon the preliminary introductions, the Appellant asked the Sole Arbitrator to admit in the file a new evidence, *i.e.* an English translation of an e-mail dated 7 September 2020, between the HFF and the Club, under which, among other elements, it is requested "*a statement from the player's mother describing when and for what motivation they moved to Hungary*". In the Appellant's views this email is relevant to prove the content of the Mother's declaration dated 23 September 2020. Basically, the Mother understood that the request of information was only related to the Player's interest for football and not to explain the reasons why they decided to move to Hungary. The Mother did not understand the purposes and the object of the request due to the misleading wording of the email received.
24. FIFA opposed to the admissibility of the new evidence based on lack of exceptional circumstances to justify the admissibility of a document that is dated 7 September 2020 and that was known by the Appellant before filing his appeal. FIFA has also added that the content of the email is the reproduction of the FIFA's letter dated 4 September 2020 from FIFA TMS to the HFF attached to FIFA's Answer as exhibit 3.
25. The Sole Arbitrator rejected the admissibility of the new evidence based on Article R56 of the CAS Code, because the Appellant did not establish the exceptional circumstances for the admissibility of the document. However, the Sole Arbitrator underlined that CAS has powers

to decide *de novo* based on the existing evidence and that the Appellant had the opportunity to establish that the exception under Article 19.2(a) RSTP applies to his situation.

26. Upon the preliminary introductions, the Parties were invited to address the relevance of the content of the document/e-mail which production was requested by FIFA.
27. The Parties were given full opportunity to present their case and make their pleadings. The Appellant's Parents have been heard and provided clarifications about the facts related to this case, in their capacity as legal representatives of their minor son, the Player. After the Parties' closing submissions, the hearing was closed, and the Sole Arbitrator reserved its detailed decision to this Award.
28. Before the hearing has been concluded, the Parties expressly stated that they had no objections to the way that these proceedings have been conducted and that the equal treatment of the Parties and their right to be heard has been fully respected.

#### **IV. PARTIES' SUBMISSIONS**

29. The following summary of the Parties' main positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Sole Arbitrator has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows. The Parties' written submissions, the documentary evidence, the contents of the Appeal Decision and the oral submissions at the hearing were all taken into consideration and such reference will be made in the merits section, if and when appropriate.

##### **A. The Appellant's submissions**

30. The Appellant prayed the below reliefs in its Appeal Brief:
  1. *Admit this appeal;*
  2. *Set aside the Appealed Decision;*
  3. *Order that FIFA grant the Hungarian Football Federation (MLSZ) on behalf of its affiliated club, MOL Febrvár, for the approval prior to the request for the International Certificate of the minor player, The Player.*
  4. *To order the Respondent to cover all the costs incurred with the present arbitration procedure at hand.*
  5. *To order the Respondent to bear all legal expenses of the Appellant related to the procedure at hand, including attorney's fees, translator's fees, courier fees, cost of witnesses and other expenses related to evidence that my incur the Appellant, for a total amount of not less than CHF 12,000.*
31. The Appellant advanced the below grounds in support of his appeal.

**a. *Relocation of the Player to Hungary: Decision process***

32. The Player was born in the USA and lived in this country until July 2020. The Player is also a Hungarian citizen and spent, on a regular basis with his Parents, summer holidays in Siófok, Hungary. The Father is a USA citizen, and the Mother is a Hungarian citizen. The Player has a sister with 19 years old who studies and lives in Chicago (the “Sister”). The Mother’s Parents are from Hungary and live in this country.
33. The Mother owns a house in Hungary (Siófok), and the Player understands and speaks Hungarian.
34. The decision to move to Hungary was based on the current world pandemic situation caused by Covid-19. The delicate health of the Mother’s Parents (the Mother’s mother tested positive of Covid-19), in addition to the fact of living alone without assistance, caused the Mother’s move to take care of her parents. The Mother’s father and mother are 82 and 78 years old respectively.
35. On 19 July 2020, the Player and the Mother arrived to Hungary to live in Siófok at the Mother’s Parent’s house. The Father stayed in USA to take care of his mother (95 years old) but commutes to Hungary on a regular basis.
36. The Father is the CEO of the US company “I, Inc”, based in [...] Washington State, USA. The Mother works as a secretary in this company and she carries out her work on a remote basis. This business provides a good life standard to the Player’s family and such family does not depend on the Appellant’s football evolution.
37. The Player was involved in football activities since he was 8 years old. The Player was invited to join the Barça Academy Soccer Program for 2019/2020 and he joined Barça Academy in Arizona from August 2019 until May 2020.
38. During the summers of 2017 and 2018, the Player trained and played with the Club, which had the most competitive youth academy program in the region and which facilities are 30-minute away driving from his home in Hungary.
39. The relocation of the Player and the Mother to Hungary was not linked to football reasons. The Player’s move was due to family reasons related to the Covid-19 pandemic.
40. The Father has not moved to Hungary because: (i) he needs to take care of his old mother (95 years old), who lives in an assisted living residence in [...] Seattle; (ii) to operate his company / business in USA; and (iii) to assist the Sister, who continues to study at the University in Chicago.
41. Only after the Player and the Mother moved to Hungary, the latter with the assistance of C., a former Hungarian professional football player and husband of the Mother’s cousin, contacted the Club for training opportunities at the Club’s youth football academy for the



Appellant. The Parents knew the Club from 2017 when the Player participated – during the summer holidays – in training sessions and friendly matches.

42. On 9 August 2020, the Player started training with the Club and proved to be successful. As a result, the Club became interested into incorporate the Player and requested his international transfer certificate.

**b. *Request for the International Transfer Certificate (ITC) of the Player from the U.S. Soccer Federation***

43. The Appealed Decision rejected the request for the ITC, basically for the following reasons:

*i. Player’s mother written statement together with the fact she is working remotely in Hungary for a US company, plus the fact the Player’s father remained in United States.*

*ii. Club’ statement that the Player played for the Club 3 years ago and now was asking for training opportunities but with a transfer request”.*

44. FIFA rejected the Player’s arguments, namely that his nationality and the destination country were the same.

45. This appeal is based on the unique circumstances of the Player’s and his family’s link with Hungary. FIFA has also disregarded the health crisis caused by the Covid-19 and the need to provide care and assistance to the Mother’s Parents.

46. The Player and his family are not relocating to a new country, but they are returning to a country that they had already strong ties with. This connection cannot be considered as a negative element for the Player.

47. The Player’s move to Hungary does not provide him better opportunities or advantages from a football perspective. The Club’s academy is known at domestic level and not at international level. The Player would have more opportunities to train, practice and playing football in the USA than in Hungary. As per FIFA Men’s World Raking, USA is ranked 22 while Hungary is ranked 40.

48. The weight of the “football factor” in this case is irrelevant, since the Player played for the Club three years ago in summer.

**B. The Respondent’s submissions**

49. The Respondent filed its Answer to the Appeal Brief and made the following prayers for relief:

*(a) rejecting the reliefs sought by the Player;*

*(b) confirming the Appealed Decision;*

*(c) ordering the Player to bear the full costs of these arbitration proceedings.*

50. Only now the Player argues and explains that his move to Hungary was due for health reasons of the Mother's Parents, and also to escape from the terrible public health situation in the USA due to the Covid-19 outbreak. FIFA considers that if these reasons had been truly to relocate the family, it should have been brought before the PSC in the first place.
51. The Mother's declaration, the timeline of the events and the situation of the rest of the family demonstrates that the Player's move to Hungary is related to football reasons.
52. The Mother has admitted in the declaration provided to FIFA that the Parents wanted to provide the Player the possibility to practice and develop his football skills. The Mother's declaration states that "[the Player] *always had a goal to be able to play soccer in Europe. Now [the Parents] would like to give him the opportunity to continue to improve his talent in soccer*". Still regarding the content of this statement FIFA states that "*[i]n a genuine attempt to portray the reality, the Mother revealed that the family always supported the Player's talent and wish to play football and that they wanted to go even further in this direction by moving to Hungary and – this – giving him the opportunity to satisfy this dream of playing football in Europe.*"
53. Another relevant evidence is the sequence of the events and the Player's past experience with the Club: (i) with 8 years old, the Player started practicing football with the American football team Crossfire Premier Soccer; (ii) with 11 years old, the Player was playing with the American football club Seattle Sounders and at a later stage practicing at the Barça Academy; (iii) with 14 years old, the Player moved to Arizona to practice at the Barça Academy in Arizona; (iv) during the summer breaks of 2017 and 2018 the Player trained with the Club; (v) prior to move to Hungary the Mother was in contact with Mr Gold of the Club to discuss her son's football training experience and his future possibilities at the Club; (vi) the Player and the Mother have only moved to Hungary after receiving positive feedback from the Club that the Player could join the Club for training; (vii) the Player and the Mother moved to Hungary without the Father and the Sister; and (viii) in August 2020, the Player started training again with the Club.
54. FIFA will not comment on the seriousness of the Mother's Parent's health situation. FIFA only considers that the evidence provided by the Appellant does not prove that this was the only reason for the Player's move to Hungary with his mother in July 2020.
55. In respect to the evidence presented, in particular the medical examinations, the clinical condition of the Mother's father does not seem to require assistance and the remaining examinations dates back to 2014, 2017 and 2018.
56. The evidence shows that the Mother was not urgently needed in Hungary to assist her parents due to their health conditions, which they have had for several years. Had it been so, the Mother should have moved to Hungary at the latest in 2018.

57. It appears that the Player's move with the Mother, without the Father and the Sister, indicates that the effective reason was related to the Player's desire to train and join to a European club. The fact that the Mother continues working for the Father's company reinforces the understanding that nothing special justifies their move to Hungary. The Player himself recognises that the move was not prompted by any work-related necessity.
58. Additionally, the possibility to continue studying at the "[...] Preparatory Academy" and being familiar with the language are not reasons to move.
59. The Player claims that he lost an important sporting opportunity by leaving the Barça Academy. However, he failed to mention that he left an academy to join a European Club, which – according to the Mother – had always been his goal. It is also important to bear in mind that – when we do a quick comparison between the two football realities (USA and Hungary) – the Club could offer the Player a better career upgrade, since the Club recently own the Hungary top tier division.
60. It is important to understand the meaning and rationale of Article 19 RSTP. This provision protects one of the most fundamental values of society as a whole: the well-being of minors. The risks that an unregulated transfer market of minors can pose on it led FIFA to adopt the provision in question and – importantly – a strict interpretation of its exceptions.
61. In the present case, the circumstances indicate that the Appealed Decision was correct. The "football factor" played a decisive role in the decision of the Player and the Mother to move to Hungary.
62. CAS jurisprudence on the topic has clarified that football does not necessarily have to be the main reason, but it is sufficient to exist amongst other circumstances in order to exclude the application of the exception.
63. Therefore, the Player has not demonstrated that the requirements under the exception of Article 19(2)(a) RSTP are met.

## **V. JURISDICTION OF THE CAS**

64. Article R47 of the CAS Code provides as follows:  
*"An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".*
65. The jurisdiction of CAS is based on Article 58(1) of the FIFA Statutes and is not disputed by the Parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the Parties.
66. It follows that the CAS has jurisdiction to hear this dispute.

## **VI. APPLICABLE LAW**

67. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

68. In addition, Article 57(2) of the FIFA Statutes stipulates the following:

*“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

69. The Sole Arbitrator establishes that the FIFA Regulations, namely the RSTP constitute the applicable law to this matter, and Swiss law shall be applied subsidiarily should the need arise to fill a possible gap in the FIFA regulations.

## **VII. ADMISSIBILITY**

70. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

71. Article 58 of the FIFA Statutes read as follows:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.*

72. The FIFA Decision was notified to the Appellant on 20 October 2020 and the Statement of Appeal was filed on 9 November 2020, *i.e.* within the 21-day deadline fixed under Article 58 of the FIFA Statutes. The Sole Arbitrator notes that the admissibility of the Appeal is not contested by the Parties.

73. It follows that the Appeal is admissible.

## VIII. MERITS

74. The present appeal concerns as to whether the Player could be registered at the Club by the HFF as per the exception contained in Article 19.2 (a) of the RSTP, *i.e.* “*the player’s parents move to the country in which the new club is located for reasons not linked to football*”.
75. As an exception to the general ban to international transfers of minors, the Player can be registered by the HFF if his move to Hungary occurred with his parents and for reasons unrelated to football.
76. The key aspect of this case is whether the Player, with American and Hungarian nationalities, who had been residing with his Parents in USA until July 2020, may be exceptionally registered as a minor with the Club, under the exception of Article 19.2 (a) RSTP, following his Mother move to Hungary in July 2020.
77. FIFA rejected the Player’s transfer because his move to Hungary is related to football reasons and the requirement of the invoked exception is not met. The Player is contesting this understanding and supports his Mother that his move to Hungary is caused by reasons not related to football.
78. Therefore, the Sole Arbitrator is requested to assess the facts and the evidence produced by the Appellant and establish whether the exception under 19.2(a) RSTP applies.

### A. The rationale of the Article 19 RSTP

79. Before assessing the evidence and the factual circumstances of the present appeal, it is worth briefly to comment the background of Article 19 RSTP and its purposes to ban the international transfers of minors.
80. As explained by Dr Despina Mavromati & Jake Cohen Esq.<sup>1</sup> “[a]lmost 20 years ago, FIFA introduced a regulatory framework for the protection of minors in its [RSTP]. The effective protection of minor players, which is one of the main pillars of the FIFA transfer system, called for strict rules and an equally strict and consistent application. These rules were modified and strengthened in 2005, 2009, 2015 and 2020”.
81. Article 19 RSTP is entitled “*Protection of minors*”. Article 19.1 RSTP states that, in principle, international transfer of players is only permitted if the player is over the age of 18. The Sole Arbitrator recalls that this rule applies to amateur and professional players.
82. Exceptions to allow international transfers of players under the age of 18 are only permitted if within the exceptions allowed in Article 19.2 RSTP. The exceptions have been admitted to provide certain flexibility – to both clubs and players – but exclusively within the aim to protect minor players. Basically, the exceptions have been established to accommodate

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<sup>1</sup> “*The regulatory Framework of FIFA regarding the international transfer of minor players*”, CAS Bulletin 2020/2 (www.tas-cas.org).

certain reasonable circumstances that would not affect the minors, among others, in socio-economic, educational, cultural, family and psychological terms.

83. As pointed out by FIFA in its Answer:

*“Before the coming into force of the 2001 edition RSTP, the trafficking of young players to clubs, mainly in Europe, by agents and other persons without scruples led to many children, whose talent could not meet the expectations of the respective (European) professional clubs, being virtually abandoned on the streets in countries, the language and culture of which was entirely unknown to them. Moreover, many of these children were left without means to return to their home countries.*

*In view of the above-described situation that had led to the abuse and mistreatment of many youngsters, in 2001, FIFA adopted strict rules on international transfers of young players in particular, Article 12 RSTP 2001 was the outcome of intensive discussions held by FIFA and UEFA with the various bodies of the European Union, chiefly the European Commission, with the football confederations and associations, with the leagues and the clubs, and with the international players’ union (FIFPro). The protection of minors, in fact, constitutes one of the principles included in the agreement that was concluded between FIFA, UEFA and the European Commission in March 2001 and one of the essential pillars of the RSTP 2001 as well as of the currently valid edition. (...)*

*(...) FIFA understands that big clubs wish to invest to create a culture of training and developing young talents, and also acknowledges that there have been various occasions in which the international move of a minor player has not led to negative results. Nevertheless, experience suggests that these are indeed exceptional situations and the move “normal” pattern is that moving internationally before the age of 18 will not yield positive results for the player. Consequently, the FIFA rules regarding the protection of minors have been conceived to protect the great majority of young players, most of whom are not sufficiently talent to achieve success in a professional career abroad. FIFA has to consider the life prospects of all young players, including those who never make it into higher professional ranks, and not only an elite few. (...)*”

## **B. Relevant CAS jurisprudence on the matter – how to interpret Article 19 RSTP**

84. The Sole Arbitrator finds important to highlight the relevant CAS jurisprudence on the matter, by underlining the position of previous CAS panels on relevant similar issues. Although previous CAS decisions/jurisprudence are not binding precedents, their reference always helps to better understand the reason for the followed guidelines, and, in this way, give a greater degree of predictability to the interpretation and application of the rules.

85. Article 19 RSTP is a very important provision that sets the key principles designated to protect the interest of minor players. As stated in CAS 2013/A/3140, the established exceptions need to be applied “*in strict, rigorous and consistent manner*” (para. 8.24).

86. Article 19 RSTP can only be interpreted restrictively in view of the protective purpose of the rule. As reinforced by CAS 2011/A/2354 (para. 26) the panels “*(...) need to apply the*

*protection of minors strictly. Opening up the door to exceptions beyond those carefully drafted and included in the present text would unavoidably lead to cases of circumstances of the rationale for this provision”.*

87. The Sole Arbitrator also concurs with CAS 2015/A/4312 (para. 79) and CAS 2007/A/1403 (para. 81), which states that Article 19 RSTP *“and its exceptions are clear, and there is nothing else for the Panel but to apply them since, as established in reiterated jurisprudence, this arbitral tribunal does not have the task to legislate, but to apply rules”*. The exceptions established in Article 19.2 RSTP *“(…) are carefully drafted, and correspond to situations where the framers of the statutes felt that minors would be adequately protected (…)”* (CAS 2014/A/3793, para. 9.4).
88. Moreover, CAS 2017/A/5244 (para. 67) underlines that *“(…) there is absolutely no scope within the framework of the present appeal proceedings to narrow the application of Article 19 para. 1 of the Regulations by allowing new exceptions, other than those already legislated and exhaustively listed in paragraph 2 of said provision”*. This understanding is also supported by CAS 2016/A/4805 (para. 177), which states that *“[t]he general prohibition contained in article 19(1) FIFA RSTP is based on the fact that, while international transfers might in very specific cases, be favourable to a young player’s sporting career, they are very likely to be contrary to their best interest as minors. The interest of protecting the adequate and healthy developments of a minor as a whole must prevail over purely sporting interests”*.
89. In continuation, the Sole Arbitrator would like to complement the references with CAS jurisprudence by highlighting two different views in relation to the strict interpretation of the exception foreseen in Article 19.2(a) RSTP. While in the CAS case 2013/A/3140 (para. 8.25), the panel considered that whenever the player’s parents took football into consideration, even if this was only part of the reasons for the move, the exception is not applicable; in the CAS case 2015/A/4312 (para. 81) the panel expressed a more flexible opinion by stating that if *“(…) the move of the family was motivated by a mixed of several reasons, and where each one of the other proven reasons is legitimate per se, the application of the exception will be assessed and decided based on the weight of the “football factor” within the whole range of reasons and the overall circumstances of the matter, such as; what were the other reasons? Whether all the family moved? To what extent the specific location to which the family decided to move was chosen with due consideration of the football activity of the minor, etc.”*.
90. The first case referred to in the previous paragraph is clearly in line with a stricter position regarding the application of the envisaged exceptions, since it advocates a stricter interpretation. In this opinion, the panel understood that *“(…) it is not required that the parents’ main objective in their decision to move is their child’s football activity – it is rather sufficient that the move of the player’s parents occurred due to reasons that are not independent from the football activity of the minor or are somehow linked to the football activity of the minor”* (CAS 2011/A/2494, para. 63).
91. The second case referred to in para. 89, the jurisprudential line supports a more flexible position regarding the interpretation and application of the exception, as the player’s registration should only be refused if the “football factor” is the prevailing element in the decision to change countries. The latter is the one the Sole Arbitrator adopts, as it understands that it is the most reasonable and balanced interpretation of the standards in

question. Life teaches us that the change of country is never, or very rarely, based on a single cause. Life teaches us that that all cases should be analysed according to the circumstances of the specific case and for this reason each situation shall be decided on a case by case basis. Only in this way the arbitrator will be able to give protection to the values and principles underlying the protection of minors. This flexibility in the interpretation and application of the rules in no way contradicts the strictness and care that the arbitrator must have in applying the envisaged exceptions. This was also the reasoning followed in CAS 2012/A/2839. In the Sole Arbitrator's view this approach does not contradict the strict interpretation principle.

**C. The assessment of the exception of Article 19.1(a) RSTP in the case at hand**

92. The request for registration of the Player was justified under the terms of Article 19.2 (a) RSTP, which states that:

*“The player’s parents move to the country in which the new club is located for reasons not linked to football”.*

93. The requirements are, if a minor: (i) moves with his parents to the country in which the club wishes to register the minor player; and such move is (ii) for reasons not linked to football.
94. The Sole Arbitrator shares and follows the views expressed in CAS 2011/A/2494 (para. 63) and reinforced by CAS 2013/A/3140 (para. 8.25) that states *“Article 19.2 (a) RSTP aims to protect the young players who follows is family moving abroad for personal reasons, and not the parents who follow their child in the view to integrate a club situated abroad. The test is thus, to assess the true intention and motivation of the player’s parents. In that respect, it is not sufficient to establish that the parents do not seek, as primary or main objective, to achieve the footballing activities of their child abroad: for Article 19 para. 2 (a) of the RSTP to apply, the move of the family must not be linked to football”.*
95. The assessment of this exception is not an easy task (CAS 2017/A/5244, para 51), because it implies and requires the investigation of subjective intentions. Subjective intentions that need to be proved by the Player. The burden of proof lies with the Player, who needs to prove that there were no links to football underpinning the family’s decision to move to the new country. The standard for proving the exception shall be “comfortable satisfaction” and not “beyond a reasonable doubt”, as defended but not justified, in the CAS 2017/A/5244 (cf. para. 54<sup>2</sup>). In the Sole Arbitrator’s views there is no justification to require a higher standard of proof than the one established for doping and corruption matters.

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<sup>2</sup> “(...) In the same vein, it has been ruled that if one of the spectrum of valid reasons for the parent’s move is somehow related to football, then the panel shall assess the weight of the football-related reason, namely the “football factor” and its impact on the final decision to move (in this respect CAS 2015/A/4312, CAS 2013/A/3140). As to the standard of proof to be employed, the Sole Arbitrator endorses again a strict approach in favour of high standard of proof and the respective exception may be granted only if its conditions are established “beyond reasonable doubt”.



96. The Player argues that the main reason to move to Hungary was to assist the Mother's Parents, who are already old and need family support. The other main reason invoked is related to the need to run away from serious and difficult public health situation in the USA, due to the effects of the pandemic. The fact that the Player and the Mother have Hungarian nationality, speak Hungarian, have a connection to Hungary and a comfortable financial situation were also decisive factors in their relocation. Finally, it is pointed out as relevant elements in the move to Hungary, the fact that the Mother has a home in this country (in Siófok) and the Player was already familiar with the culture and the country.
97. The Father and Sister's stay in the USA is justified by the Sister's need to continue her studies at the University of Chicago (where she lives) and in the Father's case, by the need to support her 95-year-old mother who lives in an assisted living in Bellevue / Seattle and to continue the company's business in the USA.
98. FIFA understood that the reason for the move to Hungary, if it is not directly related to the Player's intentions and desire to integrate, train and practice football in a European Club, is undoubtedly related to this motivation, element which in itself justifies the refusal to register on the basis of the invoked exception. FIFA supports this position having in mind (i) the contents of the Mother's declaration, (ii) the sequence of the events and the Player's past experience with the Club, (iii) the fact that only the Player and the Mother moved to Hungary (neither the Father, nor the Sister). and that (iv) the Mother's Parent's health situation was not invoked before PSC as one of the reasons. FIFA highlights also that the clinic conditions of the grandparents do not seem to require assistance and the presented certificates are dated back to 2018.
99. The Sole Arbitrator had the opportunity to assess *de novo* the evidence and the facts of the case. The clarifications provided by the Parents during the hearing have also been carefully considered, but at the end the decision needs to be supported by the evidence produced. In addition to the documentary evidence brought by the Appellant to the file and the clarifications provided by the Parents during the hearing, it is regrettable that there were no witnesses, namely close relatives of the Appellant in Hungary, who could support the Appellant's position in an undisputed way.
100. The Sole Arbitrator considers that, based on the evidence provided, the Mother's move to Hungary was significantly linked to the football activity of her son – the Player. This assessment is facilitated by the exchange of communications between the Mother and the Club which, as pointed out by FIFA, reveals the intention behind the Player's move to Hungary. In particular, the Mother explains in her declaration presented before PSC that "(...) *would like to give [the Player] the opportunity to continue to improve his talent in soccer*".
101. Reviewing the Mother's statements on the reasons for her relocation to Hungary, there is a clear feeling that the main reason for the Player's move to Hungary is not related to the Mother's Parent's health condition but to reasons linked to football. Even considering that the Mother did not understand what FIFA was asking, one cannot ignore the emphasis given to the Player's interest in playing in Hungary.

102. The Sole Arbitrator does not put in question the Mother's argument about the health situation of her parents. Although, this argument has only been raised before CAS, the Sole Arbitrator is of the view that the evidence presented is not sufficient to convince and sustain the invoked exception for the registration of the Player. In these proceedings, there is insufficient evidence that shows that the Mother's Parents are dependent on the Mother's intense support/care and that the Covid-19 pandemic has demanded more support from the Mother.
103. The Sole Arbitrator agrees with FIFA that the chronological sequence of the events preceding the move and other ancillary circumstances shall be taken into account in order to retrieve what might have been the intention – or the intentions – behind the decision to move in the first place.
104. In fact, the sequence of events rather suggests that the Mother's move to Hungary was not independent from the Player's football activities. The Sole Arbitrator would like to recall the Player's passion for football activities and his past experience with the Club. During the summer of 2017, in result of the intervention of the Mother's cousin C., the Player secured a training opportunity with the Club. The same happened in the following summer of 2018 when the Player was invited by the Club to train. In August 2019, the Player moved to Arizona (without the family) to join the Barça Academy soccer program of Arizona and, just before the move of the Player to Hungary, it is noted an exchange of correspondence between the Mother and Mr Golden about the Player's sporting training with the Club. All these events occurred few days before the move of the Player and the Mother to Hungary.
105. The Sole Arbitrator has also noted that the Player is following his studies in USA on a remote basis. This circumstance suggests that the Player's intention to stay in Hungary is most probably temporary and limited to the current restrictions imposed by Covid-19 pandemic. The accumulation and the compatibility of the football activities with the remote studies in USA may also raise some concerns due to the considerable time zone difference.
106. For the reasons set out above, the statements made by the Mother do not convince the Sole Arbitrator that the desire to integrate the Player into the Club is a secondary element that results from the natural process of the Mother's move to Hungary. On the contrary, the care to set up details of the integration of the Player in the Club gives the feeling that the Mother's move to Hungary is also with the aim to accompany and support her son in the Player's integration process to the Club.
107. The Sole Arbitrator considers that the Player's submission that his move to Hungary was completely unrelated to football is not sustainable. The Sole Arbitrator was firmly convinced that if football activity was not the only reason for the Player's move to Hungary, it was certainly the main reason that presided over this intention.
108. The Sole Arbitrator notes that no evidence was provided by the Player to sustain his allegations and the mere statements produced have not been sufficient weight to convince

– based on the required standard of proof – the occurrence of the facts related to the exception. The Player – as it was his duty – failed to prove that the football factor has not played a decisive role in the decision of the Player and the Mother to move to Hungary.

109. Finally, the Sole Arbitrator wishes to highlight the following considerations regarding this case:
- a. This decision does not, and should not, question the reasons for the move of the Player and Mother to Hungary.
  - b. This decision is exclusively settled, taking into account the findings of the Sole Arbitrator that the football activity of the Player was the most relevant factor for his moving to Hungary and the need to strictly apply the prohibition of international transfer of minors, for the reasons explained above.
  - c. In a purely objective analysis, the situation in particular does not appear to pose or bring any risk to the Player/minor. His connection to Hungary (for being also a national of this country, having family members close to him) and the family's comfortable financial situation are facts that do not call into question the main values and principles defended in the norm of the prohibition of international transfers of minors. For these reasons, the Sole Arbitrator understands the Player's and Parent's frustration about FIFA regulations in not allowing the registration of a minor in situations like the one at stake.
  - d. The Sole Arbitrator has to apply the rules in the way they are enacted and understands that a minor should not guide his education according to his passion for football, but make this desire compatible with the opportunities that exist in his social, educational, cultural and economic environment. The Player is, in any event, not prevented from playing football, as he has been doing since he was 8 years old. The Player is only prevented to be registered at the Club and entering in the European football transfer market, a situation that could distract the Player from the essential focus of a minor, *i.e.* his studies and education.
  - e. Moreover, the Player is not restricted to re-submit another registration application, either (i) based on a solid and convincing evidence proving the invoked main reasons related to the move to Hungary with his Mother; (ii) or based on other eventual applicable exceptions under Article 19.2 RSTP as soon as he is 16 years old.

## **IX. CONCLUSION**

110. Having outlined the general aim of Article 19 RSTP as well as the relevant well-established CAS jurisprudence on the matter, in the Sole Arbitrator's views the Player did not meet the burden to prove that in his case the move to Hungary was not for reasons not linked to football.

111. The Sole Arbitrator concludes that the Player cannot benefit from the exception set forth in Article 19.2(a) RSTP and PSC was correct to reject the application submitted before HFF for the registration of the Player with the Club. Therefore, the appeal must be rejected and the Appealed Decision confirmed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by N. against the decision issued by the Single Judge of the Players' Status Subcommittee of FIFA on 9 September 2020 is dismissed.
2. The decision issued by the Single Judge of the Players' Status Subcommittee of FIFA on 9 September 2020 is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.