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**National Frameworks North America*****The Transfer and Registration of Minors in North America: Immigration, the United States and Relations with Mexico and Canada***

→ **Minors – Immigration – National Law – FIFA Regulations – National Regulations – Major League Soccer (MLS) – United States Soccer Federation (USSF) – Canadian Soccer Association (CSA) – Mexican Football Federation (FEMEXFUT) – Player transfer**

Liga MX clubs often tap into the United States market for young players. United States defender Ventura ALVARADO (picture) joined Club America's youth team in Mexico in a possible breach of FIFA's Article 19. Given the proximity of Mexico to both California and Texas, and the number of Latin-American youth players in the United States, this could be a growing problem for the Mexican clubs.



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Football, as the most widely played sport in the world where players leave their own countries seeking the ability to play across international borders, is clearly affected by domestic and international immigration policy. The election of a right leaning politician running on a platform of "building walls",

"securing borders" and making its country "great again" could have a significant impact on the international movement of players. If we consider that many children, who happen to play football, leave their homeland with their parents in search of better economic prospects or as refugees fleeing very dangerous circumstances, it comes as no surprise that the ascent of right leaning immigration policies could have a chilling effect on international transfers of minors to certain countries.

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As this is a live issue, this article will examine the protection of minors provisions of the FIFA Regulations on the Status and Transfer of Players (RSTP) as it manifests itself in the United States, and with particular respect to relations with its neighboring countries, Mexico and Canada. This region of the world presents particular considerations separate and apart from the European and South American markets.

The existence of the North American Free Trade Agreement (NAFTA) and domestic immigration policy between the three countries may affect the ability of parents to move from one country to the other for work. In addition the large flows of illegal immigration at the US and Mexican shared border can present a significant challenge for the registration of minors.

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### FIFA Regulations

Naturally the starting point with respect to the transfer of the registration of minor players across national federations is article 19 of the FIFA RSTP.

Of the three exceptions to the general prohibition of the international transfer of minors in Article 19 of the FIFA RSTP only two apply to the Americas as the other exception applies exclusively to the European Union and European Economic Area:

- ➔ The player's parents move to the country in which the new club is located for reasons not linked to football; or
- ➔ The player lives outside the country, but no further than 50km from a national border. In addition, the club with which the player wishes to be registered in the neighboring association is also within 50km of that border.

Both of these exceptions provide for opportunities for American, Mexican and Canadian children to be registered and play for a club in one of the other federations. Prior to analyzing these opportunities, it is necessary to examine the domestic regulations of the United States Soccer Federation, Mexican Football Federation and the Canadian Soccer Association.

### USSF Regulations<sup>1</sup>

Although there is some uncertainty as to whether the United States Soccer Federation (USSF) and *Major League Soccer (MLS)* recognize that all aspects of FIFA Regulations apply

to transfers of an international dimension for professional players over the age of 18 the USSF has explicitly accepted the requirements of Article 19 of the FIFA RSTP with respect to the international registration of minors.

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Minor players who come to the USA must request and receive an international clearance certificate.<sup>2</sup> As the regulations of the USSF recognize that it is “*obliged to respect the statutes, regulations, directives, and decisions of FIFA*”<sup>3</sup> the USSF has established the legal authority to rely on Article 19 of the RSTP.

The result is that as a minor can only be registered in the USSF via the international clearance system, the requirements of the FIFA Transfer Matching System (TMS) and RSTP must be satisfied for a foreign minor player to be registered in the United States. The specifics of Article 19 of the FIFA RSTP only apply, however, to players between the ages of 10 and 18 because players under the age of 10 are subject to a different clearance method and are not required to be registered via the FIFA TMS, as in other countries. The way in which the USSF administers the under 10 rule, however, presents some unique features, particularly in this current political climate.

Children who are born outside of the United States but emigrate there must demonstrate to the USSF that they are “*taking part in day-to-day life in the United States*” before their 10<sup>th</sup> birthday if they wish to be registered with the USSF or a League or State Association. The USSF will accept school report cards, doctor and immunization records dated and signed by a U.S. based doctor, a certificate of baptism and/or proof of a previous registration history with a different sports organization as proof that a child is participating in day-to-day life in the United States. Interestingly enough the USSF will not accept a passport or a visa entry page as such proof as it may not be dispositive that the child was actually in the United States taking part in quotidian American life.

The underlying policy reason, from a legislative perspective is quite clear. At its most basic level is it a humanitarian gesture to recognize that a child can benefit from playing football if they are already in the country regardless of their immigration status. What is notable, from a legal perspective, is that a Canadian or Mexican child under the age of 10 that is in the United States illegally can be registered with an American club, but may otherwise be required to leave the country should the United States Immigration and Naturalization Service (INS) discover their status and existence in the country, as the test to be registered is taking part in day-to-day life, and actual immigration status is irrelevant.

This perspective is consistent with what has come to be known in the United States as the “*sanctuary cities*”, phenomenon where some American cities have ordered local law enforcement agencies or other employees not to notify or cooperate with the INS when

<sup>1</sup> For a more detailed overview of the situation of Minors in Football in the U.S., see *Football Legal* # 7 (June 2017), p. 164

<sup>2</sup> USSF Policy Manual. Policy 601-6.  
<sup>3</sup> Bylaws of the USSF, Bylaw 103, section 1.

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they become aware that illegal immigrants are living within their jurisdiction. Advocates for such a policy claim that it eliminates a disincentive for illegal immigrants to seek out social services and benefits that could ameliorate their lives by removing the threat of deportation. This approach has been highly controversial where opponents of such a policy argue that illegal immigrants should receive or benefit from public services.

With respect to whether this process is consistent with Article 19 of the FIFA RSTP it is probable that the under 10 rule, particularly how it is applied in the United States where a passport is not necessary, can be justified on the basis that it fits within the exception that the player's parents move to the United States for reasons not linked to football as the child is quite young an unlikely to be following a professional path quite yet.

The USSF regime, as any other national association, continues to apply to a minor player who has never previously been registered with a club, is not a national of the country in which he wishes to be registered for the first time and has not lived continuously for at least the last five years in that country.<sup>4</sup> There is no deviation in the American system from FIFA requirements and, at least by virtue of the wording of the applicable regulations, the USSF acts in accordance with FIFA policy.

### The Canadian Situation

At the moment, the Canadian Soccer Association (CSA) does not have published regulations however its website does provide some clarification in the application of

the regulations. In this sense, the Canadian system of the registration of minors is also modeled on Article 19 of the FIFA RSTP as it is the default regulation.

As it stands there is very little immigration to Canada, if any, for the purposes of having minor children train as football players. This is due to the incidence that football is not a sport that has received much focus from a training and development standpoint. The result is that most of the immigration flows of minors for football purposes involving Canada are outward, to countries that have more advanced football development facilities. As Canada is a country that has historically increased its population base via immigration and there are many persons who hold dual citizenship and sometimes under 18 Canadian players relocate to the country of their ancestors for training purposes as they hold a foreign passport.

In any event the two exceptions above further to article 19.3 of the FIFA RSTP apply. Firstly, Americans and Canadians alike can play for a club within 50 kilometers of the border. Given that there are many border towns this is a definitely possibility and, however considering that Canada's largest cities are not within 50 kilometers of the border it may not be a particularly large issue.

The second exception, in which the child's parents are moving to Canada for reasons not related to football, deserves some analysis. Other than honouring its international obligations further to the United Nations Convention Relating to the Status of Refugees (1951) and allowing some immigration on the basis of "*compassionate grounds*" Canadian immigration policy is currently quite restrictive. This may impede the immigration of

potential foreign youth players who received training and development in a country with advanced football infrastructure.

There are only two ways to immigrate to Canada. The first is part of the "*family class*" where a potential immigrant can be sponsored by a family member who is a citizen. The second class is the "*economic class*" where potential candidates are screened via a point system measuring their suitability across several factors, including business experience, proficiency in English or French or whether they have sufficient financial assets to qualify within the "*investor class*."

In the end, Canada is a footballing minnow. Although the women's team is quite successful, the men's national team has only qualified for the finals of the FIFA World Cup once, in 1986, and currently sits in 109<sup>th</sup> position in the FIFA/Coca-Cola World Rankings. One would imagine that a country built on immigration would look to the transfer of minor players who are trained in footballing countries to improve the sporting situation. Not only does the application of Article 19 of the FIFA RSTP impede this from occurring but Canadian immigration policy may restrict who will be Canada's next generation of players. Perhaps the CSA should consider alternative methods to develop a future generation of players as the current structure, from both the football law and immigration law perspectives present challenges to open its borders to children who may have been developed and trained in a more football sophisticated country.

<sup>4</sup> FIFA RSTP, Art. 19.3

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### **The Registration of American Minors in Mexico**

The prohibition of the transfer of minor players in Article 19 of the FIFA RSTP presents some unique challenges within Mexico. In the past several years, Mexican clubs have been recruiting some of the United States' best under aged player for the purposes of developing them within their academies.

The incentive for the players is clear, to receive superior training at some of Mexico's top football clubs. Many of the children who are recruited were born in the United States to Mexican parents. Unless they have Mexican citizenship, in such a case, they are American citizens and the rules of Article 19 of the FIFA RSTP apply.

Given the proximity of Mexico to both California and Texas, and the number of Latin-American youth players in the United States, this could be a growing problem for the Mexican clubs. One particular club that appears to be well position to access a large American market is *Club Tijuana*. *Tijuana* sits right across the Mexican-American border and within 50 kilometers of San Diego, the 8<sup>th</sup> largest city in the United States.

It has been publicly reported by several news outlets, particularly *ESPN*, that FIFA has initiated an investigation into the registration of American minors by *Liga MX* clubs. At the moment, it publicly appears that there is no resolution between the Mexican Football Federation (MFF) and FIFA and it is unclear as to what is the status of that investigation.

### **Conclusion**

The timing to consider the implications of Article 19 of the FIFA RSTP in North America is fitting as the USSF, MFF and CSA have recently announced that they will submit a joint bid to FIFA to host the 2026 World Cup. There is no doubt that there are specific and unique migration flows between the three countries and that article 19 is imposing artificial restrictions on the movement of youth players that would otherwise be natural given the connections between the three countries.

**“ Article 19 is imposing artificial restrictions on the movement of youth players that would otherwise be natural ”**

It is notable that NAFTA that does not provide for the free movement of labour between the United States, Mexico and Canada as exists within the European Union. Despite this occurrence, considering the proximity of these countries, the author recommends that FIFA re-examine the application of Article 19 to North America and that perhaps a further exception is written into Article 19 mimicking the specific rules for players aged 16 to 18 in Europe.