

In the Matter of

[The Appellant]¹
(hereinafter: “the Appellant”)

vs.

FÉDÉRATION INTERNATIONALE DE VOLLEYBALL
(hereinafter: “the Respondent”)

DECISION
of the FIVB APPEALS PANEL in the Case [year]-02

This is an appeal brought by [the Appellant], represented by her legal guardians, [the Appellant’s parents, hereinafter “the Parents”] (hereafter “the Parents”), against the Fédération Internationale de Volleyball decision dated [date of the Decision] (hereinafter: “the Decision”) to declare that [the Appellant] did not discharge her burden to prove that her minor transfer to [the country to which the Appellant’s family relocated, hereinafter the “Country of Relocation”] was not volleyball-related and that her request for an exception under Article 6.3.8.1 let. a FIVB Sports Regulations 2018 was dismissed.

I. FACTUAL BACKGROUND

- 1 The following is an overview of the relevant facts of this case, listed in a summary manner for the sake of brevity. However, the FIVB Appeals Panel notes that it has considered every submission in the file thoroughly even if it has not been specifically addressed herein.
- 2 The Appellant is an aspiring professional volleyball player born on [the Appellant’s date of birth], in [the Appellant’s country of birth, hereinafter “Country of Birth”]. The Appellant holds a passport [of his Country of Birth], which is also the country of her Federation of Origin.

¹ In the interest of the protection of privacy, this is a redacted version of the decision. Any reductions are marked with bold brackets

3 In a letter dated **[date]**, the Parents stated that their family’s relocation from **[Country of Birth]** to **[Country of Relocation]** was for professional reasons. They explained that **[the Appellant’s mother]** is the partial owner of a company with the intent of extending its activities to **[Country of Relocation]**.

4 On **[date]**, an international transfer process in the Volleyball Information System was initiated and, as such, the Appellant submitted a request for an exception under the transfer of minors provision, Article 6.3.8.1.a of the FIVB Sports Regulations 2018 to transfer from **[Country of Birth]** to a **[Country of Relocation]** club called **[name of the receiving club]** (“the Receiving Club”) (hereafter referred to as “the Transfer”).

5 The Receiving Club competes in the **[Country of Relocation]** volleyball league called **[the league in Country of Relocation, hereinafter the “League”]**”.

6 On 28 September 2018, the (Transfer Coordinator of **[a Continental Volleyball Federation, hereafter “Continental Federation”]** sent an email regarding the Transfer to the Appellant, the Receiving Club, the **[Country of Birth]** Volleyball Association and the Volleyball Federation of **[Country of Relocation]**, which stated in its relevant part:

“You will therefore need to provide the following documents for the ITC to be reviewed and approved by the FIVB President:

1 - Federation of Origin approval letter and also confirming if the player has ever been part of the national team.

2 - Letter from the parents explaining the motivation of the move abroad

3 - School certificate

4 - Request from the receiving federation (letter)

5 – Scanned copy of passport”

7 On **[date]**, the **[Continental Federation]** Transfer Coordinator sent an email to the *Fédération Internationale de Volleyball* (hereafter “the FIVB”) related to the Transfer which included the following attachments:

- approval letter from the Appellant’s Federation of Origin;
- copy of the Appellant’s passport;
- two school certificates;
- a letter from the Parents explaining the reasons for the move abroad.

II. THE DECISION UNDER DISPUTE

8 On [date of the Decision], the FIVB issued the Decision which reads, in its relevant part, as follows:

“In the case at hand, the FIVB notes, among other, the following:

- *[The Appellant] is a professional volley-ball player playing in the U19 and senior National Team of the [Country of Birth] Volleyball Association;*
- *The club [the receiving club] is a second division team in a Category V National Federation; and*
- *The parents allege to have relocated to [Country of Relocation] for work purposes but have not offered proof in that regard.*

In light of the above and based on the information provided by [the Appellant], the FIVB concludes that [the Appellant] did not discharge her burden to prove that her transfer to [Country of Relocation] is not volleyball-related.

Consequently, the FIVB decides as follows:

1. *The request for an exception under Article 6.3.8.1 let. a FIVB Sports Regulations 2017 is dismissed; [sic]*
2. *[Continental Federation] is to notify the present decision to all interested parties to the procedure.*

An appeal may be filed against this decision exclusively before the FIVB Appeals Panel, in accordance with the FIVB Disciplinary Regulations (available using: <http://www.fivb.org/EN/FIVB/Legal.asp>).

The FIVB wishes to stress that [the Appellant] will be able to transfer internationally as of [date].”

III. APPEAL BY [THE APPELLANT] AGAINST THE DECISION

a) Proceedings Before the Appeals Panel

9 On [date], the Appellant – who was a minor at that date and, thus, represented by her Parents – filed the present appeal against the Decision. This appeal is recorded under the following case number: Case AP [year]-02.

- 10 On [date], the FIVB Appeals Panel Secretariat acknowledged receipt of the appeal by the Appellant, provided a deadline of [date] to pay the full administrative fee for the proceedings, requested the Appellant to submit certified translations in English of her supporting documents, informed the Appellant that the FIVB Appeals Panel would consist of the FIVB Appeals Panel Chairperson, Ms. Damaris Young, and two additional members, stated that the proceedings would be conducted in English and provided the Appellant with the relevant information regarding the FIVB Disciplinary Regulations 2018.
- 11 On [date], the FIVB Appeals Panel Secretariat acknowledged receipt of the payment of the full administration fee by the Appellant and fixed a deadline of [date] for the FIVB to file its Answer in the present proceedings.
- 12 On [date], the Respondent filed a request to extend the deadline to file its Answer until [date].
- 13 On [date], the request for extension was granted by the FIVB Appeals Panel Chairperson.
- 14 On [date], the Respondent filed a second request to extend the deadline to file its Answer until [date].
- 15 On the same day, the request for extension was granted by the FIVB Appeals Panel Chairperson.
- 16 On [date], the Respondent filed its Answer.
- 17 On [date], the FIVB Appeals Panel Secretariat acknowledged receipt of the Respondent's Answer.
- 18 On [date], the FIVB Appeals Panel Secretariat informed the Parties of the composition of the FIVB Appeals Panel. The FIVB Appeals Panel was to sit in the following composition:
 - Ms. Damaris Young (PAN), Chairperson;
 - Mr. Jorge Granja Cobos (ECU), Member; and
 - Mr. Thomas Berend (LUX), Member.

The FIVB Appeals Panel Secretariat further informed the Parties that the FIVB Appeals Panel would proceed with the review of their respective written submission(s) and was to deliberate on the case AP [year]-02 in due time.

19 On [date], the FIVB Appeals Panel requested the following additional information from the Appellant by no later than [date]:

- A certificate of inscription or similar document issued by the Government Real Estate Cadaster in [a place in the Country of Relocation] in which it is certified that [the Parents] are the registered owners of the real estate as per the Real Estate Purchase Contract submitted as evidence in the present proceedings.
- A certification or similar document issued by the respective [Country of Relocation] governmental authority confirming [the Appellant's mother's company] business activities, the date in which its operations started in [Country of Relocation], its license of business operation in [Country of Relocation] and/or any other information that can serve as proof of its operation in [Country of Relocation].
- Any other documentation that the Appellant may consider necessary to further prove the purpose of her family's relocation to [Country of Relocation].

20 On [date], the FIVB Appeals Panel Secretariat noted the Appellant failed to provide the requested information within the additional deadline and provided her with a final opportunity to do so by no later than [date].

21 On [date], the FIVB Appeals Panel Secretariat noted that the Appellant failed to submit the requested information despite multiple opportunities to do so. The FIVB Appeals Panel Secretariat further informed the Parties that the FIVB Appeals Panel would deliberate on the case AP [year]-02 based on the Parties' written submissions.

b) Positions of the Parties

22 The position of [the Appellant] (represented by her Parents throughout the proceedings) can be summarised as follows:

- The Decision is a result of the Parents' lack of experience in minor transfer matters and the absence of some documents that proved necessary despite the Parents providing all the documentation requested by the [Continental Federation].
- The Decision states that “[t]he parents allege to have relocated to [Country of Relocation] for work purposes but have not offered proof in that regard”. However, no explicit request was ever made to submit evidence of the fact that the relocation was caused by professional reasons.
- The Parents submitted information and documentation in view of obtaining the approval of the Transfer request, i.e.:
 - A certificate, dated [date], related to [the Appellant’s mother] company called [the Appellant’s mother’s company], a company expanding onto the [Country of Relocation] market.
 - A copy of an employment contract, dated [date], between [the Appellant’s mother] and a company called [another company in the same place in the Country of Relocation as the Appellant’s mother’s company was located] whereby [the Appellant’s mother] agreed to provide services as a [language of a third country] and [language of a fourth country] translator.
 - A school certificate, dated [date], stating that the Appellant was schooled in [the same place in the Country of Relocation as the Appellant’s mother’s company was located].
 - A school certificate, dated [date], stating that [the son of the Appellant’s father], was schooled in [another place in the Country of Relocation as the Appellant’s mother’s company was located]
 - A real estate purchase contract dated [date] showing that [the Appellant’s mother], among others, purchased real estate in [another place in the Country of Relocation, where neither the Appellant’s mother’s company was located, nor the Appellant’s father’s son was schooled].
 - A real estate purchase contract dated [date] stating that [the Appellant’s father], among others, purchased real estate in [the same place in the Country of Relocation as the place where the Appellant’s father’s son was schooled].

- In light of the information and documentation submitted, the relocation of the [the Appellant's] family to [Country of Relocation] has no connection to volleyball.

23 The Request for Relief of the Appellant was to approve the Transfer request.

24 The position of the Respondent can be summarised as follows:

- The applicable law in the present case are the FIVB rules and regulations, specifically, the FIVB Sports Regulations. Swiss law shall apply subsidiarily.
- The Appeal should be rejected for two reasons:
 - The FIVB correctly found that the Appellant did not meet her burden of proof with regards to the condition that the Transfer has no links to volleyball in accordance with Article 6.3.8.1.a of the FIVB Sports Regulations.
 - The documentation submitted by the Appellant in these proceedings does not establish that the Transfer has no links to volleyball as required by the abovementioned provision.
- Pursuant to Article 6.3.8.1.a of the FIVB Sports Regulations, the party making the request clearly bears the burden to prove that the requested minor transfer has no links to volleyball. In the present case, the Appellant failed to submit evidence of the fact that her family's relocation was due to her mother's employment. Thus, the FIVB correctly dismissed the Appellant's request for an exception under the abovementioned provision.
- The certificate related to the company called [the Appellant's mother's company] was issued by the [Country of Birth] authorities and merely confirms the existence of the structure of the company but is insufficient evidence with regards to the description of the activities of the business.
- The employment contract submitted by the Appellant is dated [date], i.e. after the Decision was issued by the FIVB. This shows that this contract was entered into for the sole purpose of satisfying the requirements of Article 6.3.8.1.a of the FIVB Sports Regulations. Additionally, the employment of [the Appellant's mother] as a full-time translator contradicts the abovementioned statement whereby the company [the Appellant's mother's company] intends to extend its

activities into [Country of Relocation]. This document only raises further doubts about the reasons of the family's relocation.

- The Appellant failed to provide any evidence related to the reasons why her father also moved to [Country of Relocation].
- Purchasing real estate and enrolling the Appellant and her brother in a [Country of Relocation] school could also be the result of a relocation to support the Appellant's volleyball career. This is further supported by the undisputed fact that the Appellant played volleyball on a professional level in [Country of Birth] and now wants to pursue her career on a professional level in [Country of Relocation].
- In light of the above, the Appellant has still not established that the relocation was due to her Parents' change of workplace and, therefore, an exception under Article 6.3.8.1.a of the FIVB Sports Regulations cannot be granted.
- Regardless, the Appellant's initial Transfer request did not include any evidence of the work-related reasons of the family's relocation.

25 The Request for Relief of the Respondent was as follows:

"I. dismiss the Appellant's appeal in its entirety;

II. confirm the [date of the Decision] decision of the FIVB;

III. order the Appellant to pay the entire costs of the proceedings;

IV. order the Appellant to pay a contribution to the Respondent's legal fees".

IV. ADMISSIBILITY OF THE APPEAL BY [THE APPELLANT]

26 The FIVB Appeals Panel notes that two sets of FIVB Disciplinary Regulations may apply to the admissibility of the appeal by the Appellant, namely:

- The FIVB Disciplinary Regulations 2018, which were approved by the FIVB Board of Administration on 4 May 2018 and entered into force on 1 June 2018; and
- The FIVB Disciplinary Regulations 2019, which were approved by the FIVB Board of Administration on 24 May 2019 and entered into force on 31 May 2019.

- 27 The FIVB Appeals Panel notes that the appeal was filed with the FIVB Appeals Panel Secretariat on 29 October 2018 when the FIVB Disciplinary Regulations 2018 were in force. Consequently, the FIVB Appeals Panel finds that the admissibility of the appeal by the Appellant shall be examined based on the criteria set forth in the FIVB Disciplinary Regulations 2018².
- 28 Additionally, the FIVB Appeals Panel finds that the FIVB Disciplinary Regulations 2018 will also guide the FIVB Appeals Panel with regards to any other procedural issue related to the present proceedings (e.g. allocation of costs).

a) FIVB Appeals Panel Competence: Pre-requisites

- 29 The FIVB Appeals Panel notes that certain admissibility requirements must be fulfilled for the FIVB Appeals Panel to consider an appeal. With regards to the foregoing, the Appellant must:
- i. file the appeal within fourteen (14) days of notification of the decision (Article 31.1 of the FIVB Disciplinary Regulations 2018). In the present case, the Appellant filed an appeal with the FIVB Appeals Panel on [date], namely fourteen (14) days after receipt of the Decision notified on [date of the Decision]; and
 - ii. pay an administrative fee of CHF 2'000 (Article 31.2 of the FIVB Disciplinary Regulations 2018). The Appellant paid the administrative fee within the deadline set by the FIVB Appeals Panel Secretariat. The FIVB Appeals Panel Secretariat confirmed receipt of the full administrative fee on [date].
- 30 In light of the above, the FIVB Appeals Panel is satisfied that the Appellant complied with both requirements.

b) FIVB Appeals Panel Competence: General Principles

² For the sake of completeness and transparency, the FIVB Appeals Panel reiterates that there have been no changes to the admissibility requirements with regards to appeals against decisions by FIVB bodies or Confederations bodies between the FIVB Disciplinary Regulations 2018 and the FIVB Disciplinary Regulations 2019.

- 31 The FIVB Appeals Panel is competent to hear appeals filed by an affected party against decisions of FIVB bodies or Confederation bodies (Article 30.1 of the FIVB Disciplinary Regulations 2018). In the present case, it is undisputed that:
- i. the Appellant is an affected party within the meaning of Article 30.1 of the FIVB Disciplinary Regulations 2018: the FIVB held that the Appellant did not discharge her burden to prove that her international transfer from [Country of Birth] to [Country of Relocation] was not volleyball related; and
 - ii. the Decision was issued by an FIVB body within the meaning of Article 30.1 of the FIVB Disciplinary Regulations 2018: the Respondent is the FIVB and the FIVB Secretariat is acting under the authority of the FIVB President, who is considered a “Governing Institution” of the FIVB (Article 2.1.2.1 of the FIVB Constitution 2019 in conjunction with Article 8.1 of the FIVB General Regulations 2019).
- 32 Additionally, the FIVB Appeals Panel notes that not all decisions by FIVB bodies or Confederations bodies may be appealed.
- 33 The FIVB Appeals Panel is satisfied that the restriction set forth in Articles 28.6 and 30.2 of the FIVB Disciplinary Regulations 2018 does not apply in the present case because the appeal does not concern a fine in an amount of less than CHF 5'000 or a referee's decision.
- 34 In light of the above, the FIVB Appeals Panel is satisfied that the FIVB Appeals Panel is competent to hear the appeal filed by the Appellant against the Decision.

c) Capacity to Take Legal Action of the Appellant

- 35 The FIVB Appeals Panel notes that one of the parties to the present dispute was a minor at the beginning of the proceedings.
- 36 The FIVB Disciplinary Regulations 2018 do not include any procedural provisions addressing the question of capacity to take legal action. However, the FIVB Appeals Panel notes that Article 1.2 of the FIVB Disciplinary Regulations 2019 explicitly states that Swiss law shall be the law applicable to the merits. This provision, while not present in the FIVB Disciplinary Regulations 2018, merely codified an existing principle

that decisions of the FIVB, which is a Swiss not-for-profit association, are governed by Swiss law. Therefore, the FIVB Appeals Panel finds that Swiss law is likewise applicable.

37 Article 59 para. 2 lit. c of the Swiss Civil Procedure Code defines capacity to take legal action as one of the requirements of the admissibility of an action.

38 According to Article 67, para. 1 of the Swiss Civil Procedure Code “[a]ny person who has the capacity to act has the capacity to take legal action”. Pursuant to Article 17 of the Swiss Civil Code “[a] person does not have the capacity to act if he or she is incapable of judgement or is under age or is subject to a general deputyship.”

39 Additionally, Article 67, para. 2 of the Swiss Civil Procedure Code provides that “[a] person without capacity to act may act through his legal representative”. “By operation of law, the parents are vested with the power to represent the child in all dealings with third parties to the extent they have parental responsibility for the child” (Article 304 para. 1 of the Swiss Civil Code).

40 The FIVB Appeals Panel notes that the Appellant was a minor, i.e. under age according to Swiss law on the date of the filing of the present appeal. However, the Appellant was represented by her Parents, her legal representatives according to Article 304 para. 1 of the Swiss Civil Code, throughout the proceedings. Consequently, the FIVB Appeals Panel finds that the Appellant had the capacity to take legal action through her Parents at the time of the filing of the appeal, and the appeal was admissible.

41 Additionally, the FIVB Appeals Panel notes that the Appellant turned 18 years old on [date]. Consequently, the Appellant now has the capacity to take legal action.

V. THE APPEAL PANEL DECISION

42 The FIVB Appeals Panel shall a) decide on the law applicable to the present dispute before examining the merits of the decision. As it relates to the merits, the FIVB Appeals Panel must then determine whether b) the Appellant fell under the exceptional cases defined in Article 6.3.8.1.a of the FIVB Sports Regulations at the time that the Decision was issued.

a) The Law Applicable to the Appeal

- 43 The Appellant did not make any arguments with regards to applicable law.
- 44 The Respondent argues that the FIVB rules and regulations, particularly the FIVB Sports Regulations, and, subsidiarily, Swiss law is applicable.
- 45 The FIVB Appeals Panel highlights that the Decision was issued based on the FIVB Sports Regulations 2018, in force at the time. Therefore, and taking into account also that neither party objected to it, the FIVB Sports Regulations 2018 shall apply.
- 46 Additionally, the FIVB Appeals Panel also finds that the approach argued by the Respondent, i.e. subsidiary applicability of Swiss law, would ensure that there is a consistency in the applicable law throughout the entire appeals procedure defined in the FIVB Sports Regulations, i.e. an appeal before the Court of Arbitration for Sport. It is clear from Article R58 of the Code of Sports-related Arbitration that Swiss law would be applied. The Court of Arbitration for Sport's jurisprudence from a previous appeal of an FIVB Appeals Panel case applied this provision and found that Swiss law applied subsidiarily (see CAS 2015 A 4095 para. 58). Based on the above, the FIVB Appeals Panel finds that in the present case the FIVB regulations, particularly, the FIVB Sports Regulations 2018, apply, with Swiss law applying subsidiarily.

b) Did the Appellant Qualify for an Exceptional Case Under Article 6.3.8.1.a of the FIVB Sports Regulations 2018 at the Time of the Decision?

- 47 As a preliminary remark, the FIVB Appeals Panel notes that the Appellant submitted her Transfer request, i.e. a request for the authorisation of an exceptional international transfer of a minor, [date]for the period from [date]to [date]. Consequently, the relevant season for which the Transfer was requested has already ended. Additionally, the FIVB Appeals Panel notes that the Appellant was able to transfer internationally without restriction as of [date]according to Article 6.3.8.1.a of the FIVB Sports Regulations 2018.

48 Consequently, the FIVB Appeals Panel finds that the specific dispute related to the Appellant, who is now eligible to transfer internationally, will not directly impact the Appellant. However, given the fact that most minor players who seek to transfer internationally are often close to turning 18 and, thus, there is often limited time to allow for the full internal appeal process to conclude, the FIVB Appeals Panel finds it relevant to provide the guidance outlined below related to the interpretation of Article 6.3.8.1.a of the FIVB Sports Regulations 2018 for future cases,.

49 The FIVB Appeals Panel notes that the crux of this case is 1) what is meant by “*exceptional cases*” and “*the transfer has no links to volleyball*” under the FIVB Sports Regulations and 2) whether the Appellant discharged her burden to prove that her Transfer was not volleyball related.

50 The relevant provision applicable to this case is Article 6.3.8.1.a of the FIVB Sports Regulations 2018 which provides the following:

“6.3.8 *Special provisions for young players:*

6.3.8.1 *Transfer of minors*

a. International transfer of players is not allowed before the 1st of January of the calendar year during which they turn eighteen (18). In exceptional cases, the FIVB may authorise the transfer if the interested parties establish that the transfer has no links to volleyball (e.g. family relocation due to parents’ change of workplace).”

i. What is meant by “*exceptional cases*” and “*the transfer has no links to volleyball*” under the FIVB Sports Regulations 2018?

51 The FIVB Appeals Panel first emphasises that Article 6.3.8.1.a of the FIVB Sports Regulations 2018 is worded in a manner in which international transfers of minors are generally prohibited with only a very strict limited exception. The purpose of this provision is to protect minor players from international trafficking. In particular, the FIVB, as the body responsible for governing the sport of volleyball, has a duty to ensure that clubs do not lure players to a foreign country, away from the protection of their parents in some cases, with the promise of developing into a professional player

only to then reject the minor as a player leaving him or her in a foreign country without any resources or support. In order to protect these minor players, the FIVB has taken a strong stance against these transfers by stating that they are generally prohibited. It is with this framework in mind that the FIVB Appeals Panel must now examine how the exception to this rule should be applied.

- 52 The FIVB Appeals Panel observes that whether an exception should be granted under the FIVB Sports Regulations requires a case by case analysis by the FIVB, which has discretion to decide whether or not a case falls in that category given the purpose highlighted above for the provision as a whole. Consequently, the FIVB Sports Regulations allow for the FIVB to investigate each case until it is satisfied that an exception can justifiably be granted. This threshold of satisfaction is determined solely by the FIVB and interpreted in light of its duty to protect minor players.
- 53 Additionally, the FIVB Appeals Panel highlights that the abovementioned provision is also worded in a very strict manner with regards to the requirement of “*no links to volleyball*”.
- 54 The FIVB Appeals Panel finds that a literal interpretation of this provision can only result in the finding that an exception to the general prohibition on international transfers of minors should only be granted if there is no correlation at all between the transfer and volleyball. In other words, the relocation of the player cannot be linked to the minor’s volleyball career at all. If there is a link to the minor’s volleyball career, then the request should be rejected. The FIVB Appeals Panel also notes that the relevant provision even provides a non-exhaustive example, “e.g. family relocation due to parents’ change of workplace”. Consequently, Article 6.3.8.1.a of the FIVB Sports Regulations 2018 clearly states that family relocation due to the parents’ employment is an example of one of multiple possibilities of exceptional cases with no links to volleyball under this provision.
- 55 Additionally, the FIVB Appeals Panel observes that the burden proof of the absence of correlation between the transfer and the minor’s volleyball career falls upon the interested parties as provided in the wording of Article 6.3.8.1.a of the FIVB Sports Regulations 2018 (“*if the interested parties establish [...]*”). This is in line with the jurisprudence of the Court of Arbitration for Sport jurisprudence, “*any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the*

onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue” (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff; CAS 2014/A/3546, para. 7.3). In other words, the player, the club(s) and the national federations involved in the transfer are required to provide all the information and evidence necessary to establish the facts supporting their request for an exemption. This allocation of the burden of proof also means that the interested parties carry the risk of the consequences of not discharging their burden of proof, i.e. the dismissal of their request in the case of minor transfers.

56 In this context, the FIVB Appeals Panel observes that the interested parties are assisted in this process, made aware of the applicable provision and requested to provide *ad minima* the following information (cf. the [Continental Federation]’s email dated [date]):

“1 - Federation of Origin approval letter and also confirming if the player has ever been part of the national team.

2 - Letter from the parents explaining the motivation of the move abroad

3 - School certificate

4 - Request from the receiving federation (letter)

5 – Scanned copy of passport”

57 In conclusion, the FIVB Appeals Panel finds that under Article 6.3.8.1.a of the FIVB Sports Regulations 2018, international transfers of minor players are, as a rule, prohibited. However, exemptions are possible where the parties involved demonstrate that the transfer is in no way correlated to volleyball. The interested parties run the risk of having their request dismissed if they fail to discharge their burden of proof. The FIVB is solely competent to authorise exceptions. As such, the FIVB may investigate further to ensure it can justify granting an exception as part of its duty to protect minor players.

ii. Did the Appellant discharge her burden to prove that her Transfer was not volleyball related as per Article 6.3.8.1.a of the FIVB Sports Regulations 2018?

58 The FIVB Appeals Panel notes that the Appellant argues that her request was dismissed due to her lack of experience in international transfer matters. The Respondent argues that the Appellant failed to provide any relevant documentation in order to substantiate the reasoning behind her request to grant an exception.

59 The FIVB Appeals Panel notes that on [date], the [Continental Federation] requested the documentation listed below from the Appellant while making her aware of the content of Article 6.3.8.1.a of the FIVB Sports Regulations 2018, as part of the Transfer process:

“1 - Federation of Origin approval letter and also confirming if the player has ever been part of the national team.

2 - Letter from the parents explaining the motivation of the move abroad

3 - School certificate

4 - Request from the receiving federation (letter)

5 – Scanned copy of passport”

60 On [date], the [Continental Federation] sent an email to the FIVB for the purpose of the approval of the Transfer. The FIVB Appeals Panel notes that the [Continental Federation]’s email appears to have the following enclosures: Federation of Origin approval letter; two school certificates; and a letter from the parents explaining the motivation of the move abroad (cf. Respondent’s Exhibit R4).

61 The FIVB Appeals Panel notes that the letter from the Federation of Origin and the school certificates submitted by the Appellant with her appeal do not provide any information or evidence regarding the reasons for the Appellant’s relocation and the Transfer. However, the letter from the Appellant’s Federation of Origin states that the Appellant is a member of the [Country of Birth] youth and senior national team. Thus, the FIVB Appeals Panel emphasizes that the Appellant’s Federation of Origin highlighted her experience in volleyball and the fact that she was a member of the senior national team in its letter related to her international transfer.

- 62 The letter from the Parents dated [date] and submitted by the Respondent (Exhibit R2) states that the reasons for the relocation of the Appellant's family relate to her mother's profession. The letter also adds that the Appellant is a youth volleyball player and has, thus, joined the team of the Receiving Club. The Appellant initially did not offer any evidence supporting the allegations in her Parents' letter. On the contrary, the Parents' letter appears to provide two reasons for the transfer request: 1) the mother's relocation and 2) the Appellant's status as a youth volleyball player.
- 63 In her appeal, the Appellant argues that there was no explicit request to deliver any evidence of the reasons for the Transfer. However, Article 6.3.8.1.a of the FIVB Sports Regulations 2018 clearly places the burden of proof on the parties requesting the exception, including the Appellant. Additionally, the Appellant was made aware of the content of this provision by the [Continental Federation]. As mentioned previously, the FIVB may investigate further to ensure it can justify authorising exceptional cases given the abovementioned purpose of the minor transfer provisions. However, this does not remove the burden of proof, and the risk of failing to discharge it, from the relevant parties. Consequently, the FIVB Appeals Panel agrees with the Respondent in that the Appellant did not discharge her burden of proof with regards to her Transfer request.
- 64 Based on the above, the FIVB Appeals Panel observes, as a preliminary finding, that the Decision did not err in finding that the Appellant did not discharge her burden to prove that the Transfer had no links to volleyball.
- 65 However, the FIVB Appeals Panel observes that, in her appeal, the Appellant submitted a company registration certificate, a copy of her mother's employment contract dated [date], copies of real estate purchase contracts dated [date] and [date] and a certificate of social insurance registration dated [date].
- 66 With regards to the company [the Appellant's mother's company], the FIVB Appeals Panel observes that the Appellant claims that her mother's company is expanding its business into [Country of Relocation], which led to the family's relocation to [Country of Relocation]. However, the FIVB Appeals Panel agrees with the Respondent when it states that the certificate provided does not sufficiently support this allegation. The FIVB Appeals Panel observes that the certificate provided merely confirms that the abovementioned company was registered in [city in the Country of Birth] in [date] and

that [the Appellant's mother] was appointed as a director of the company. As such, the FIVB Appeals Panel finds that there exists no proof corroborating the fact that the company has business ties with a [third country] company, nor that the company has any plans to expand into [Country of Relocation]. When given the opportunity to provide this evidence by the FIVB Appeals Panel, the Appellant failed to respond.

67 With regards to the employment contract submitted, the FIVB Appeals Panel partially agrees with the Respondent that the date of the contract, [date], does not support the fact that the family's relocation was for work purposes. The FIVB Appeals Panel highlights that the contract states that "*[t]he Employee takes over her working duties [date]*". However, this full-time employment as a translator contradicts and conflicts with – as rightly argued by the Respondent – the claim that [the Appellant's mother] moved to [Country of Relocation] with the sole aim of expanding her company. Additionally, the FIVB Appeals Panel observes that the Appellant never claimed that the Transfer was due to her mother's hiring as a translator in [Country of Relocation].

68 With regards to the real estate purchase contracts and the certificate of social insurance registration, the FIVB Appeals Panel notes that, similarly to the school certificates, these do not evidence the Appellant's allegations that the Transfer was due to her mother's profession in [Country of Relocation]. The FIVB Appeals Panel agrees with the Respondent in that this could be a consequence of relocating to [Country of Relocation] in order to facilitate the Appellant's professional volleyball career. Additionally, the Appellant claims that her grandmother moved to [Country of Relocation] where she established her permanent residence and purchased the abovementioned real estate. The FIVB Appeals Panel requested further information from Appellant in this regard which she failed to provide despite multiple opportunities to do so. Additionally, the FIVB Appeals Panel notes that this does not support her original allegation that the relocation was for work purposes.

69 In light of the above, the FIVB Appeals Panel confirms its preliminary finding and considers that the additional evidence submitted by the Appellant with the appeal does not support her allegations that the Transfer is related to her mother's profession in [Country of Relocation] and thus has no links to volleyball.

VI. SUMMARY

70 The FIVB Appeals Panel finds that the Appellant failed to prove that her Transfer had no links to volleyball as required by Article 6.3.8.1.a of the FIVB Sports Regulations 2018 and, thus, the Decision is upheld.

VII. COSTS

71 The FIVB Appeals Panel notes that Article 31.2 *in fine* of the FIVB Disciplinary Regulations 2018 provides that the administrative fee can be reimbursed if a party prevails. In the present case, the Appellant did not prevail on its appeal. Consequently, the FIVB Appeals Panel finds that it cannot reimburse the administrative fee paid by the Appellant.

72 However, the Appellant paid CHF 488 on [date] and CHF 1'986 on [date]), i.e. a total of CHF 2'474. Consequently, the FIVB Appeals Panel finds that the amount in excess of the applicable handling fee of CHF 2'000 (Article 31.2 of the FIVB Disciplinary Regulations 2018), i.e. CHF 474 shall be reimbursed to the Appellant.

73 The FIVB notes that there is no provision in the FIVB Disciplinary Regulations 2018 with regards to legal costs which allows for the FIVB Appeals Panel to attribute said costs to a specific party. Consequently, the FIVB Appeals Panel finds that the Appellant and the Respondent shall bear their own costs.

VIII. FIVB APPEALS PANEL DECISION

For the reasons set forth above, the FIVB Appeals Panel decides as follows:

1. **The appeal filed by [the Appellant]is dismissed;**
2. **The FIVB decision dated [date of the Decision]is confirmed;**
3. **No reimbursement of the administrative fee shall be granted;**
4. **The Appellant shall be reimbursed the amount of CHF 474 paid in excess of the administrative fee.**
5. **Each party shall bear their own legal costs and**
6. **Any other requests for relief are dismissed.**

Lausanne, [date]

Ms. Damaris Young
Chairperson

Mr. Jorge Granja Cobos
Member

Mr. Thomas Berend
Member

NOTICE OF APPEALS

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with

- Article 32 of the FIVB Disciplinary Regulations 2018 which provides as follows:

“A further appeal against the decision by the Appeals Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following receipt of the decision”.

- The CAS Code of Sport-related Arbitration, which is available under www.tas-cas.org

The address and contact details of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
e-mail: info@tas-cas.org

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.