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FISHING FOR ALL-STARS IN A TIME OF GLOBAL FREE AGENCY: UNDERSTANDING FIFA ELIGIBILITY RULES AND THE IMPACT ON THE U.S. MEN'S NATIONAL TEAM

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I. INTRODUCTION

Football, or as some call it, soccer, is the world's most popular sport with the largest fan following on the planet.¹ It has the most extensive professional leagues on the globe, while its international tournament, the Fédération Internationale de Football Association (FIFA) World Cup, holds the title of the world's most lucrative sporting event.² Yet current FIFA eligibility rules, and proposals to further relax these already lenient rules, could jeopardize football's reign as king of the sporting world.³ These flexible FIFA rules enabled the emergence of "passport players,"⁴ international free agents who are enticed with offers of citizenship to play on a country's national team. But some countries, such as the United States, have strict immigration rules that put them a step behind in casting these international free agents as members of their national team; therefore, the inconsistency evident in the immigration rules of individual countries is threatening innate competition of global football in light of the lenient FIFA regulations.⁵ FIFA needs to make

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1. Amrit Doley, *Most Popular Team Sports: Soccer & Cricket, Basketball & Baseball???*, BLEACHER REP. (May 7, 2009), <http://bleacherreport.com/articles/169462-most-popular-team-sports-soccer-cricket-basketball-baseball>. Due to the international aspect of this Comment and the sport, soccer will be referred to as "football" to remain consistent with the international federation of the sport.

2. *Id.*

3. *FIFA Asked to Relax Naturalisation Rules*, TVNZ (May 5, 2011), <http://tvnz.co.nz/football-news/fifa-asked-relax-naturalisation-rules-4156438>.

4. Steve Davis, *Debating 'Passport Players' on the U.S. National Team*, SB NATION (Mar. 22, 2011), <http://www.sbnation.com/2011/3/22/2065562/debating-passport-players-u-s-national-team-timothy-chandler-david-yellidell>.

5. David Seminara, *Why Is the U.S. National Soccer Team So 'American?'*, CTR. FOR IMMIGR.

changes, but until that occurs, the U.S. government should consider the plight of many potential U.S. Men's National Team players and should develop an avenue for expedited naturalization for footballers who have sufficient ties to the United States.⁶

For example, consider the conundrum faced by Buziba, a political refugee to the United States.⁷ Though he is currently twenty-two years old, he was forced to flee his birth country several years ago when his father was murdered as a result of extreme civil unrest under a despotic government. After seeking refuge in the United States, Buziba began to build his life and joined a Major League Soccer (MLS) team after being approached by a coach who learned of his prowess on the football pitch. Though he enjoys success in his MLS role, Buziba has always dreamed of World Cup glory. The only problem is that he cannot become a member of the U.S. Men's National Team unless he is a citizen of the United States. Therefore, the story progresses and on Buziba's twenty-fourth birthday he files for naturalization in the United States and comes one step closer to his goal. Naturalization is not a smooth process, and he must wait a minimum of four more years before he will be granted citizenship. Though he wishes to play for the United States, Buziba has been approached by representatives of his native country and by the country of his grandmother's birth due to his MLS success; the latter country has promised to fast-track his citizenship so that he will be naturalized without wading through red tape. For either of these countries, Buziba will be eligible to play for its national team in the next World Cup, whereas he will be at least twenty-eight years old before he can ever don a U.S. jersey.

Buziba has three choices: he can wait for his citizenship in the United States, return to the country he was forced to flee, or move to a place where his only connection to the country is the fact that his grandmother was born on its soil. The latter two choices will enable Buziba to enter the international realm of football and to begin his chase for World Cup glory; however, waiting for U.S. citizenship will mean he will lose out on his prime years of football competitiveness and risk being passed over for a chance to play on the U.S. National Team by the selection of younger players. He stands in the

STUD. (Sept. 23, 2009), <http://www.cis.org/seminara/soccer>.

6. See Jeff Carlisle, *Najar, Mwanga and Tchani on U.S. Radar*, ESPN (Jan. 6, 2011), http://espn.go.com/sports/soccer/news/_/columnist/carlisle_jeff/id/5936218/danny-mwanga-tony-tchani-andy-najar-us-radar. The discussion of this Comment is limited to foreign-born players who are not dual-citizenship holders; furthermore, global scouting for dual-citizenship holders is outside of the scope of this Comment.

7. The hypothetical is based upon a conglomeration of the real-life experiences of players such as Yura Movsisyan, Sebastien Le Toux, Danny Mwanga, and Tony Tchani as well as current FIFA regulations. See *id.*; see also FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES art. 7 (2012) [hereinafter FIFA STATUTES].

midst of a catch twenty-two. Though Buziba's predicament is merely hypothetical, the current flexibility of FIFA rules and rigidity of U.S. immigration law make situations like this hypothetical a reality for a number of players.

This Comment considers the effects of the disparity between FIFA eligibility rules and U.S. immigration law, and proposes possible changes that will allow football to continue its reign as king of the sporting world. The analysis begins in Part II with the history of FIFA regulations and the current composition of the relevant rules. To offer a background of current struggles by potential U.S. Men's National Team players, Part III supplies an overview of U.S. immigration law and potential waivers of naturalization requirements. Part IV then provides an in-depth look into the ordeal some players must endure to gain the opportunity to represent the United States in international football to highlight the disparity between the FIFA rules and the U.S. requirements. Part V considers the effect such disparity has on the equal playing field of the international game by noting the comparison between the stringent U.S. rules and the relative ease with which some countries award citizenship. This Comment culminates in Part VI with recommended actions that the United States and FIFA could take to ease hardships on players and preserve football as the world's favorite sport.

II. THE PROGRESSION OF FIFA ELIGIBILITY REGULATIONS

The international organization of football, FIFA, has been operating for over one hundred years. During this time, the world has seen many changes. The business of sports has also changed drastically; some of these shifts in the sporting world can be seen by examining the development of FIFA and the World Cup.

A. *The Early Days of FIFA and the World Cup*

In today's society, FIFA is a dominant worldwide organization with 209 member nations.⁸ But this was not always the case. FIFA was created under Swiss law in 1904 as the international governing organization of football in order to develop an international structure for the sport.⁹ At its founding meeting, the newly-created organization decided that it alone had the authority

8. *The Organisation: FIFA Associations*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/associations.html> (last visited Nov. 12, 2012).

9. Christina Lembo, Comment, *FIFA Transfer Regulations and UEFA Player Eligibility Rules: Major Changes in European Football and the Negative Effect on Minors*, 25 EMORY INT'L L. REV. 539, 541 (2011).

to organize an international championship.¹⁰ Even with this initial declaration, it was not until the 1920s that the idea of a stand-alone international tournament began to garner the necessary support; this support emerged in the form of the mighty British associations' refusal to participate in the 1924 Olympic football tournament due to qualms over players' amateur status.¹¹ The existence of highly developed professional leagues in the United Kingdom gave this refusal significant weight.¹² Therefore, six years later, the inaugural World Cup was held in Uruguay with only thirteen competing nations.¹³ Though South America was heavily represented by the appearance of seven countries, only four European teams traveled to Uruguay, and Africa lacked any representation.¹⁴ When Uruguayan defenseman Jose Nasazzi led his team to victory over Argentina in the championship game and "became the first man to hold aloft football's most prestigious prize[, t]he FIFA World Cup was up and running."¹⁵

The next two World Cups, held in Italy and France respectively, were the first to showcase famous footballers playing for more than one national team.¹⁶ South Americans who had already played for their native country in the 1930 World Cup but who also had Italian ancestry joined the Italian squad and guided Italy to victory in both of these World Cups.¹⁷ Furthermore, the 1940s and 1950s brought the world one of the greatest footballers of all time, Alfredo Di Stefano, who actually played for three separate national teams.¹⁸ Di Stefano's situation was not unusual as several players of the time appeared on two or three different national sides in an earlier type of international free agency.¹⁹

FIFA put a stop to this international free agency in 1962 at the thirty-third FIFA Congress by creating legislation that contained these relevant provisions: (1) a player must be a naturalized citizen according to the particular country's laws to be eligible to represent the country; (2) if a player has been included in

10. *Hosts Uruguay Beat Arch-Rivals to First World Crown*, FIFA.COM, <http://www.fifa.com/worldcup/archive/edition=1/overview.html> (last visited Nov. 12, 2012).

11. *Id.*

12. *See id.*

13. *Id.*

14. *1930 FIFA World Cup Uruguay*, FIFA.COM, <http://www.fifa.com/worldcup/archive/edition=1/teams/index.html> (last visited Nov. 12, 2012).

15. *Hosts Uruguay Beat Arch-Rivals to First World Crown*, *supra* note 10.

16. *England National Football Team Player Eligibility*, ENG. FOOTBALL ONLINE (Mar. 5, 2011), <http://www.EnglandFootballOnline.com/TeamBack/Eligibility.html>.

17. *Id.*

18. *Id.*

19. *Id.*

a national team, he is ineligible to represent another nation; and (3) the only exceptions to these rules concern players whose nationality is affected by independence being given to a region or by part of a country being ceded to another.²⁰ It is important to note that the second provision did not apply to friendlies and that this distinction remains intact today.²¹

B. Recent Changes and the Current Rule

Little change occurred to the FIFA rules for over forty years until they were revamped by emergency legislation in 2004, due in part to the globalized nature of the sport, “which has allowed Brazil to sell arguably its greatest export—talented footballers—to every corner of the world,” and to Qatar’s unethical recruitment conduct.²² Not long before the 2004 World Cup, Qatar offered Brazilian striker Ailton \$1 million to join the Qatar national team even though he had never been to the country; this was not the only instance where Qatar tried to use its vast wealth to lure players from other countries to change their allegiance.²³ FIFA’s response was quick and direct as it banned such conduct and implemented a rule that required a player to have some connection to a country before the player would be eligible to participate on the nation’s national team.²⁴ The emergency committee ruled that “players must have a ‘clear connection to that country’ if they wish[] to wear the colours of a nation other than the one of their birth.”²⁵

The regulations of 2004 remain generally intact today, bar a few amendments such as a relaxation of the age limit at which a player can request a change of federations²⁶ and an increase in the residency requirement for new

20. *Id.*

21. *See id.* Friendlies are competitive matches between the senior teams of two nations that are used as practice, preparation for upcoming matches, and as a type of exhibition game. The matches have no effect on tournament qualifying and are significant in their ability to “blood new players on the international stage or for the national team managers to test new tactics and formations.” *See Sports Home, GAMBLING GURU*, <http://soccer-friendlies.com> (last visited Nov. 12, 2012).

22. James Montague, *The Football ‘Invaders from Brazil’*, CNN.COM/WORLD SPORT (Jan. 19, 2009), <http://edition.cnn.com/2009/SPORT/football/01/19/football.nation/index.html#soundoff>.

23. *Id.* Qatar has a reputation for paying for international talent to bolster its national team; representatives from Qatar have even openly stated their intention to take advantage of lax rules in certain international sports. *See Associated Press, Qatar Lures Athletes with Citizenship, Cash*, NBC SPORTS, <http://nbcsports.msnbc.com/id/16113525> (last updated Dec. 8, 2006); *Uproar Caused by Qatar’s Plans to ‘Buy’ a New National Team for 2015*, HANDBALL LIVE (Jan. 10, 2012), <http://handball-live.net/uproar-caused-by-qatars-plans-to-buy-a-new-national-team-for-2015>.

24. Montague, *supra* note 22.

25. *FIFA Rules on Eligibility*, BBC SPORT (Mar. 18, 2004), <http://news.bbc.co.uk/sport2/hi/football/africa/3523266.stm>.

26. Brent Latham, *FIFA Amends International Eligibility Rule*, YANKS ABROAD (June 5,

citizens from two years to five.²⁷ As they stand, the current eligibility rules begin with the principle that “[a]ny person holding a permanent nationality that is not dependent on residence in a certain country is eligible to play for the representative teams of the Association of that country.”²⁸ Article 5 of the FIFA Regulations also states that any player who has already participated in an official match for one country is not eligible to represent another country unless he meets a condition listed in Article 8.²⁹ For dual-citizenship holders, a player may represent one of those countries only if he fulfills one of the following conditions:

- (a) He was born on the territory of the relevant Association;
- (b) His biological mother or biological father was born on the territory of the relevant Association;
- (c) His grandmother or grandfather was born on the territory of the relevant Association;
- (d) He has lived continuously on the territory of the relevant Association for at least two years.³⁰

The Article 7 provisions are similar for a player who plans to assume a new nationality with the exception of (d), which reads, “He has lived continuously for at least five years after reaching the age of 18 on the territory of the relevant Association.”³¹

Article 8 is the final regulation that applies to a player’s eligibility to represent a nation; this rule allows a player to request permission to change his association one time as long as he has not played in an official match for the senior team of a country.³² Article 8 also stipulates that a player may request permission to change his association at any time if he “permanently loses the nationality of that country without his consent or against his will due to a decision by a government authority.”³³

During its annual Congress in 2011, FIFA was asked to once again relax the 2004 regulations.³⁴ Though many feel that the current regulations are

2009), <http://yanks-abroad.com/get.php?mode=content&id=4781>.

27. *FIFA Rejects UAE Bid to Reduce Eligibility Rules to Three Years*, THE NATIONAL (June 2, 2011), <http://www.thenational.ae/sport/uae-sport/fifa-rejects-uae-bid-to-reduce-eligibility-rules-to-three-years> [hereinafter *FIFA Rejects UAE Bid*].

28. FIFA STATUTES art. 5, para. 1 (2012).

29. *Id.* art. 5, para. 2.

30. *Id.* art. 6, para. 1.

31. *Id.* art. 7.

32. *Id.* art. 8, para. 1.

33. *Id.* art. 8, para. 2.

34. *FIFA Asked to Relax Naturalisation Rules*, *supra* note 3.

already too relaxed in their allowance of passport players, the United Arab Emirates made a proposal to change the five-year requirement in Article 7 to three years for players over the age of eighteen.³⁵ The proposal was soundly defeated with a 153–42 vote of FIFA members in favor of keeping the current five-year requirement.³⁶ Though the proposal may have been shot down this time, support from African and Asian countries may result in a different outcome in the coming years.³⁷

III. THE HURDLE TO BECOMING NATURALIZED

Though FIFA rules determine player eligibility, Article 5 of the FIFA Statutes leaves the question of player naturalization up to the laws of individual countries.³⁸ A player must hold permanent nationality of a country without being dependent upon any residency requirements before he will be eligible to play for that country's national team, but FIFA currently does not address or control how that country grants citizenship.³⁹ Therefore, it is necessary to consider U.S. immigration law and its impact on potential U.S. National Team players.

To begin the journey to naturalization, a player must first be legally allowed into the United States.⁴⁰ Developing players do this by applying for an employment-based immigrant visa and hoping to receive 1 of the 140,000 employment-based visas awarded in the year they apply.⁴¹ Footballers who have already shown extraordinary ability on the pitch may be able to apply for a first preference EB-1 visa if they can show that they can “substantially benefit prospectively the United States.”⁴² Furthermore, players may be granted asylum in the United States if they can prove that they are unable or unwilling to return home and are unable to seek help in their home country due to persecution or the fear of persecution.⁴³

The processes noted above can take anywhere from a few months to

35. *Id.*

36. *FIFA Rejects UAE Bid*, *supra* note 27.

37. *Id.*

38. FIFA STATUTES art. 5; *England National Football Team Player Eligibility*, *supra* note 16.

39. *See England National Football Team Player Eligibility*, *supra* note 16.

40. *See* Kevin K. McCormick, Note, *Extraordinary Ability and the English Premiere League: The Immigration, Adjudication, and Place of Alien Athletes in American and English Society*, 39 VAL. U. L. REV. 541, 558–59 (2004).

41. *Id.* at 558.

42. 8 U.S.C. § 1153(b)(1)(A)(iii) (2006); *see also* McCormick, *supra* note 40, at 559.

43. 8 U.S.C. §§ 1101(a)(42), 1158(a)(1).

several years.⁴⁴ Though this may seem like a long time, the real waiting begins after a player files for citizenship under the naturalization laws.⁴⁵ U.S. immigration law says:

No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years . . . , (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.⁴⁶

The statute goes on to stipulate that the player cannot leave the country for more than six months at a time or he will risk losing his status as a continuous resident and having to restart his five-year waiting period.⁴⁷ It is important to note that “no person under the age of 18 may file an application for naturalization”⁴⁸ and that the five-year residency requirement is shortened to four years for players who came to the United States as asylum-seekers.⁴⁹ An exception also exists for players who marry a U.S. citizen; instead of the requisite five-year waiting period, they can be granted citizenship in three years.⁵⁰ Furthermore, even if a player meets all of the above conditions, he is “required to have a basic knowledge of English and of U.S. history and

44. Carlisle, *supra* note 6.

45. 8 U.S.C. § 1427(a).

46. *Id.*

47. *Id.* § 1427(b).

48. See generally Anna Marie Gallagher, *Naturalization: Eligibility Requirements and Application Process for Seeking Citizenship Through Naturalization*, 08-08 IMMIGR. BRIEFINGS 1 (2008) (citing 8 U.S.C. § 1445(b)). A child born outside of the United States can automatically become a citizen if at least one of his parents is a U.S. citizen, he is under eighteen years old, and he is currently residing in the United States under the legal custody of the citizen parent. 8 U.S.C. § 1431. If any one of these three elements is missing, the child is not naturalized under this statute. *Id.* This rule is significant because some football players begin their international career at an early age; for example, Wayne Rooney played in his first game for England when he was just seventeen years old. *Biography*, THEFA.COM, <http://www.thefa.com/England/All-Teams/Players/R/Wayne-Rooney> (last visited Nov. 12, 2012).

49. Carlisle, *supra* note 6.

50. Simon Borg, *Fast-Tracking Citizenship for Players Just a Myth*, MLS (Dec. 7, 2010), <http://www.mlssoccer.com/news/article/fast-tracking-citizenship-players-just-myth>.

government” before he will be naturalized and granted citizenship.⁵¹

Due to the disparity between U.S. immigration law and FIFA regulations, one would think that highly talented football players could receive waivers to speed up their naturalization process and get them in jerseys for the red, white, and blue as soon as they become eligible under the FIFA rules. This is not the case.⁵² Concerning the issue, a U.S. Soccer spokesperson said, “There is no expedited processing for citizenship applications aside from exceptions for military personnel There is no fast track.”⁵³ Though Congress, with the President’s approval, does have the power to immediately grant citizenship, this is a very rare occurrence that is usually not reserved for “mere athletes with dreams of glory.”⁵⁴ Little support exists to change the current situation, as some assert that many politicians do not understand why footballers should be given preference over other individuals such as scientists and doctors.⁵⁵

IV. THE PLAYERS’ CONUNDRUM: TO WAIT OR NOT TO WAIT? THAT IS THE QUESTION

When deciding one’s future in the realm of international football, all non-citizens who are hoping for an opportunity to play on the U.S. Men’s National Team must seriously consider the ramifications of U.S. immigration law.⁵⁶ Due to the disparity between the time it takes an individual to become naturalized and the time FIFA mandates for eligibility, players must decide whether to throw in their lot with the United States and risk missing out on prime football years or to leave and join the national team of another country.⁵⁷ It is important to reflect upon the real-life situations of some of these players to fully understand their plight.

For example, consider Danny Mwanga. His mother fled to the United States when he was seven years old after his father, who was an advisor to the overthrown Congolese dictator Mobutu Sese Seko, disappeared and was likely murdered.⁵⁸ He moved in with his grandmother and took refuge in football until he was able to apply for asylum and immigrate to the United States in

51. Gallagher, *supra* note 48. This basic knowledge is tested in the form of a proficiency exam.

52. Borg, *supra* note 50.

53. *Id.*

54. Carlisle, *supra* note 6.

55. *Id.*

56. *See supra* Part III.

57. *See Carlisle, supra* note 6.

58. Brian Straus, *Danny Mwanga: Young Striker’s Journey from Congo to MLS to . . . World Cup?*, AOL NEWS (Aug. 27, 2010), <http://www.aolnews.com/2010/08/27/danny-mwanga-young-strikers-journey-from-congo-to-mls-to-w>.

2006.⁵⁹ Mwanga's journey continually improved from there as he attended Oregon State University and was named the Pac-10 Freshman of the Year.⁶⁰ He was the league's most valuable player his sophomore year and was subsequently drafted by an MLS team.⁶¹ Since then, Mwanga has been on the U.S. National Team's radar, and his engaging and humble personality scores him fans on and off the field.⁶² There is, however, a catch to this story: Mwanga does not yet have U.S. citizenship, and his native country, the Congo, is vying for his representation on its national team.⁶³ Football fans can only wait with bated breath as they anticipate whether Mwanga will select "the country of his birth or the country of his salvation."⁶⁴

This wait is especially poignant after a fellow MLS player, Steve Zakuani, chose to forego the wait and join the Congolese team in 2010, tweeting "tough decision but long wait for US citizenship nailed it!"⁶⁵ Mwanga's lack of citizenship may be the deciding factor in his decision as the wait for citizenship means he will not be eligible for the U.S. Men's National Team until 2014, whereas he could begin playing for the Congo immediately.⁶⁶ For a man who would like to play in Europe in one of the world's best leagues, the call of international publicity may win out over the country where he got his start.⁶⁷

Unfortunately, more players seem to give in to the temptation of immediate international careers over playing the waiting game for the United States.⁶⁸ For example, Andy Najar, the 2010 MLS Rookie of the Year, decided to play for his native country of Honduras instead of waiting several years to obtain U.S. citizenship; he had already been living in the United States for five years when he made the decision.⁶⁹ In that same vein, MLS player Yura Movsisyan chose the Armenian team over the long wait to

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. Scott Kessler, *Steve Zakuani Chooses to Play for the Congo, Is Danny Mwanga Next?*, BROTHERLY GAME (Nov. 14, 2010), <http://www.brotherlygame.com/2010/11/14/1812728/steve-zakuani-chooses-to-play-for-the-congo-is-danny-mwanga-next>.

64. Straus, *supra* note 58.

65. Kessler, *supra* note 63.

66. *Id.*

67. *Id.*

68. See Carlisle, *supra* note 6.

69. Steven Streff, *Andy Najar Announces Decision to Play for Honduras*, GOAL.COM (Apr. 5, 2011), <http://www.goal.com/en-us/news/1110/major-league-soccer/2011/04/05/2427861/andy-najar-announces-decision-to-play-for-honduras>.

become a U.S. citizen.⁷⁰ Movsisyan grew up in the United States after fleeing his native country of Azerbaijan as a youth.⁷¹ When asked about his decision, he said, “I thought that [starting to play international games] would help me . . . become a better footballer if I started now rather than start when I was 26, 27. That’s why I wanted to start playing for Armenia at the beginning of [the] Euro 2012 qualifiers.”⁷² Movsisyan also noted that it takes a long time to become naturalized in the United States and that his application for citizenship would have taken a substantial time to be fully processed.⁷³

Another player who recently opted for an immediate international career over waiting for U.S. citizenship is Rodney Wallace.⁷⁴ Wallace was born in Costa Rica but immigrated to and lived in the United States for almost a dozen years.⁷⁵ Though he had not yet achieved citizenship status, he was an MLS standout and considered playing for the U.S. Men’s National Team.⁷⁶ The temptation to play immediately proved too much for Wallace when he chose the Costa Rican national team over the country where he lived most of his life and where he began his football career.⁷⁷ If Wallace would have been given the option to play on the U.S. Men’s National Team, it is possible that he may have accepted the position instead of choosing Costa Rica and leading his team to a 1–0 victory over the U.S. team in a 2011 friendly.⁷⁸

Additionally, when considering a player’s conundrum about playing for a country immediately or waiting for the chance to play on the U.S. National Team, one must acknowledge the short shelf life of a professional footballer. For example, David Beckham’s England career began coming to an end when he was left off of the England roster at the age of thirty-one.⁷⁹ Though he had represented England for ten years and held the role of captain in fifty-eight international games, Beckham was getting too old to be competitive on the

70. Carlisle, *supra* note 6.

71. *Id.*

72. *Id.*

73. *Id.*

74. Ives Galarcep, *Wallace, Frei and Kandji Consider Their U.S. Option*, ESPN FC (May 24, 2009), <http://soccernet.espn.go.com/columns/story?id=649031&sec=us&root=us&cc=5901>.

75. *Id.*

76. *Id.*

77. See Associated Press, *Costa Rica Beats USA Soccer, 1–0, as Rodney Wallace Scores Goal in Exhibition*, HUFF POST SPORTS (Sept. 3, 2011), http://www.huffingtonpost.com/2011/09/03/costa-rica-beats-usa-1-0-rodney-wallace_n_947802.html.

78. *Id.*

79. *McClaren Ends Beckham England Era*, BBC SPORT (Aug. 11, 2006), <http://news.bbc.co.uk/sport2/hi/football/internationals/4782613.stm>.

international scale.⁸⁰ Therefore, for players like Sebastien Le Toux who will be in their thirties before becoming a citizen and being eligible for the U.S. team, the wait for citizenship makes it unlikely that they will ever don the U.S. uniform.⁸¹

V. THE EFFECT ON COMPETITION OF THE DISPARITY BETWEEN U.S.
IMMIGRATION LAW AND FIFA ELIGIBILITY REGULATIONS

The rise in popularity of football in the United States has caused a debate about passport players on the U.S. Men's National Team.⁸² Advocates of the inclusion of these international players argue that the United States should do what is necessary to improve and to become World Cup champions.⁸³ On the other hand, opposition of this policy believe including passport players is merely a "stop-gap measure[] that somehow obscure[s] the holes in [the U.S.] development system."⁸⁴ These individuals assert that the global search for players diminishes the incentive of internal programs to progress and causes lifelong citizens to compete for the national team against individuals who have no awareness of U.S. culture and history.⁸⁵

Yet both sides of the debate tend to focus on the search for dual-citizenship holders and often ignore the existence of non-U.S. citizens who grew into football stars in American parks and backyards. Many of these players spent their childhoods or teenage years in the United States, and many others have made America their home even if they have not yet declared full-fledged citizenship.⁸⁶ But unlike their inclusion in MLS, in other professional leagues such as Major League Baseball and the National Basketball Association, and even in the U.S. Olympic squad, these players who have become invested in the United States cannot wear the red, white, and blue of the United States in international football matches because they are not naturalized citizens.

Therefore, some of these footballers, such as Danny Mwanga, may choose to play for the national team of another country and may likely play a significant part in the next United States international defeat.⁸⁷ This scenario

80. *See id.*

81. *See Carlisle, supra* note 6.

82. Davis, *supra* note 4.

83. *Id.*

84. *Id.*

85. *See id.*

86. *See supra* Part IV.

87. Galarcep, *supra* note 74 (discussing Rodney Wallace before he chose to play for Costa Rica and scored the goal that beat the United States, and noting that the United States needs to put forth

occurs because many other nations around the world grant naturalization as quickly as possible so that players can join the squad as soon as they meet the other FIFA eligibility requirements.⁸⁸ For example, Indonesia was criticized as having a “sporadic naturalization program” after implementing a plan to discover foreign-born players with Indonesian ancestry and naturalize them immediately.⁸⁹ This policy of sporadic naturalization was developed after Italy and Japan gained success with the help of naturalized players.⁹⁰ Furthermore, countries such as Germany and France embrace the idea of ancestral ties by including naturalized and foreign-born players on their teams.⁹¹ Germany’s 2010 World Cup team has even been described as “multi-ethnic” due to the presence of several foreign-born athletes on the squad.⁹²

Contrarily, only two players on the 2010 U.S. Men’s National Team were born outside of the United States; both of these players immigrated to the United States with their families as children.⁹³ This lack of foreign-born talent on the U.S. National Team could stunt the success of the team relative to other nations that do not have naturalization requirements that are stricter than the FIFA statutes. Many believe that the current FIFA rules are “now so flexible that anyone who has not played senior soccer for another country is open for selection.”⁹⁴ Results of this flexibility are diminishing competition between national squads and increased concentration of player talent.⁹⁵

The current climate of international football suggests that the U.S. Men’s National Team may suffer in terms of success. As discussed above, many nations around the world allow for the inclusion of foreign-born players without the rigmarole of procedures detailed in U.S. immigration law.⁹⁶ Though some of these countries require residency and assimilation, others

efforts to keep talented players who may choose to play for other countries).

88. See *supra* Part II.

89. Pangeran Siahaan, *Stopping PSSI’s Sporadic Naturalization Program Is the Right Thing to Do*, JAKARTA GLOBE (Aug. 22, 2011), <http://www.thejakartaglobe.com/thepitch/stopping-pssi-sporadic-naturalization-program-is-the-right-thing-to-do/460703>.

90. *Id.*

91. Rob Hughes, *Fresh Starts, but Same Demands; Global Soccer*, INT’L HERALD TRIB. (London), Aug. 11, 2010, at 10.

92. Jason Davis, *The Makeup of an “American” National Team*, MF USA (July 8, 2010), <http://www.matchfitusa.com/2010/07/makeup-of-american-national-team.html>.

93. *Id.*

94. Hughes, *supra* note 91.

95. Trudo Dejonghe & Wim Van Opstal, *Competitive Balance Between National Leagues in European Football After the Bosman Case*, 6 RIVISTA DI DIRITTO ED ECONOMIA DELLO SPORT [J.L. & ECON. SPORT] 41, 51 (2010) (It.).

96. Siahaan, *supra* note 89.

have few qualms about awarding citizenship to foreign-born players.⁹⁷ This fishing for talent may allow other nations to surpass the United States in international football due to the mere existence of a larger pond with more international all-stars. Other countries will have the ability to benefit from the talent of naturalized players while stringent immigration restrictions will cause many non-citizens to bypass a chance to play on the U.S. Men's National Team.⁹⁸ Therefore, the disparity between immigration laws in the United States and FIFA eligibility rules has the great potential to decrease the competitiveness of the U.S. National Team by placing the squad on an unfair playing ground; a team comprised fully of lifelong citizens will likely find less success and participate in less uncertain games when playing against nations that have embraced the idea of international all-star squads. However, if players are naturalized who have a substantial connection to and investment in the United States, the U.S. team will be able to better compete against these international all-star squads and the purpose behind the U.S. immigration law will not be compromised.⁹⁹

VI. RECOMMENDED ACTIONS TO EASE PLAYER HARDSHIP AND FOSTER COMPETITION

Both the United States and FIFA could take action to address the issues detailed above. FIFA has the ability to create more stringent eligibility rules that will better protect the international game, whereas the United States has the power to alleviate the stress that is associated with a player's predicament as discussed in Part IV. Though the better solution would be for FIFA to amend its regulations, the United States is not without options in the absence of FIFA action.

A. FIFA's Ability to Create Uniformity

Due to its position as football's international governing body, FIFA has the power to strengthen the lax rules currently in place. As it stands, the

97. *See id.*

98. Andrea Nill Sanchez, *Anti-Immigrant Group Says US Soccer Team's Ethnic Make-Up Signals Lack of Assimilation*, THINKPROGRESS (Sept. 24, 2009), <http://thinkprogress.org/security/2009/09/24/175661/us-soccer-immigration/?mobile=nc>.

99. Unlike in football where the MLS is a relatively new league, the U.S. Men's National Basketball Team is highly successful due to the extremely strong professional and collegiate basketball programs in the United States. USA Basketball Chairman Jerry Colangelo recently said that "the pipeline is full of talented young players that aspire to represent their country." *See USA Basketball Men's Teams Enjoying Unprecedented Success*, USA BASKETBALL (Sept. 15, 2010), http://www.usabasketball.com/mens/national/usa_no_1_2010_09_15.html.

leniency with which players can join national teams poses a risk to the continuity of the sport. In regard to the current regulations, standing FIFA president Sepp Blatter recently stated that the flexibility poses “a danger, a real, real danger” that entire squads will soon be filled completely with foreign-born talent.¹⁰⁰ Especially as the nations of the world become more globalized and smaller countries become even more willing to use their wealth as a bargaining tool to attract better players, passport players and moonlight naturalizations will increase.¹⁰¹

With the emergence of an international race for talent, “the bottom-line pressure of winning creates an incentive to engage in a worldwide ‘shopping spree’ for talent as a means to reduce the risk of loss.”¹⁰² Emerging countries such as Qatar and Bahrain no longer want to sit back and watch other countries win; they now have a strong desire to earn international acclaim through sporting success.¹⁰³ This desire to win on the global stage is supported by flexible rules that allow countries a vast amount of jurisdiction in deciding who should be eligible for participation.¹⁰⁴

FIFA can diminish the power of countries to buy players by creating uniform rules that are not as lenient as the current regulations. As the current rules stand, foreign-born players must be naturalized citizens and must meet at least one regulatory provision such as having a grandparent born on the country’s soil. This particular provision of gaining eligibility due to a grandparent’s birthplace should be deleted from the FIFA statutes. A deletion of this sort would not undercut ancestral ties; it would simply close the loophole that allows players to immediately play for countries due to the mere fact that a grandmother or grandfather was born in that nation sixty to eighty years ago. Footballers would still be enabled to represent the country of their parents’ birth because that is a more direct tie, but the inability to instantaneously claim a grandparent’s country would help to strengthen the rules.

Furthermore, FIFA needs to enact controls pertaining to the five-year residency requirement for foreign-born athletes who do not have close ancestral ties. This issue recently arose in the form of a Namibian dispute over the inclusion of a potentially ineligible player on the Burkina Faso squad.¹⁰⁵

100. Montague, *supra* note 22.

101. *Id.*

102. Ayelet Shachar, *Picking Winners: Olympic Citizenship and the Global Race for Talent*, 120 *YALE L.J.* 2088, 2123 (2011).

103. *Id.*

104. Hughes, *supra* note 91.

105. Associated Press, *CAS to Rule on Namibia’s Cup of Nations Dispute*, FOX SOCCER,

Namibia believed a key Burkina Faso player to be in violation of the FIFA eligibility statutes due to his receipt of a passport the day before a match between the two countries, but the Court of Arbitration for Sport rejected the appeal by finding that the player moved to Burkina Faso in 1994.¹⁰⁶ To prevent future disputes of this type, FIFA needs to create standards to measure an athlete's residency in a particular nation. Countries such as Namibia should not be "dismayed" to learn that a player was in fact eligible.¹⁰⁷ Rather, controls should be developed by FIFA so that nations must be held accountable and cannot directly or indirectly cheat the residency requirements. Therefore, by implementing controls over residency requirements and by deleting the provision that allows players eligibility based on a grandparent's nation of birth, FIFA can subtly strengthen the rules and close some of the loopholes that decrease the uniformity of the regulations.

B. The United States' Capability to Expedite Naturalization

As stated in the preceding paragraphs of this Comment, Congress has the ability, with the President's approval, to enact special legislation that awards citizenship to certain individuals.¹⁰⁸ In fact, three foreign-born ice dancers were given expedited citizenship as a result of special Congressional legislation in 2005 so that they could compete in the 2006 Turin Winter Olympics.¹⁰⁹ One of these ice dancers, Tanith Belbin, emigrated from her native Canada and brought the silver medal home to the United States.¹¹⁰ Belbin's citizenship track was expedited after immigration changes in 2002, and due to her "extraordinary ability," she became naturalized after three years instead of the traditional five.¹¹¹

Tanith Belbin is not the only foreign-born athlete to compete on the U.S. Olympic team as around fifty athletes since 1992 have gained U.S. citizenship

<http://msn.foxsports.com/foxsoccer/soccer/story/CAS-to-rule-on-Namibias-Cup-of-Nations-dispute-12479870> (last updated Dec. 13, 2011).

106. Brahim Ouedraogo, *Namibia Appeal Rejected by CAS*, SI.COM (Jan. 10, 2012), <http://sportsillustrated.cnn.com/2012/soccer/wires/01/10/2080.ap.soc.namibia.appeal.4th.ld.writethru.0554/index.html>.

107. *Id.*

108. Carlisle, *supra* note 6.

109. *Foreign Athletes Immigrate to Compete on US Olympic Team*, VISALAW.COM, <http://www.visalaw.com/FAS08fall/10fall08.html> (last visited Nov. 12, 2012).

110. *Id.*

111. Associated Press, *Tanith Belbin Increases Chances of U.S. Citizenship in Time for Turin*, THE SEATTLE TIMES (Dec. 23, 2005), http://seattletimes.nwsourc.com/html/sports/2002700082_pep23.html.

and changed their allegiance to join the U.S. Olympic team.¹¹² Unlike the 2010 Men's World Cup team, which included only two foreign-born athletes—both of whom spent the majority of their childhoods in the United States—¹¹³ thirty-three U.S. Olympians in the 2008 Beijing Olympics¹¹⁴ and more than forty Team USA athletes in the 2012 London Olympics were not born on U.S. soil.¹¹⁵ Though the eligibility requirements outlined in the Olympic Charter are already more lenient than the FIFA regulations,¹¹⁶ some proponents of special legislation for Olympic athletes believe that the United States “ought to design [an] immigration policy that seeks out exceptional people.”¹¹⁷ The current policy is viewed as flawed and inequitable; therefore, public policy could suggest that exceptional athletes, including footballers, should be given the chance for expedited citizenship so that they can compete for the United States on the world stage.¹¹⁸

Policy arguments also suggest that immigration law should not “exclude people who could potentially be the best at what they do.”¹¹⁹ Though this particular argument may be more flexible than the public would desire, the concept could be whittled down to allowing exceptional athletes to don the red, white, and blue uniforms of the United States if they already have significant ties to the country. Because the FIFA statutes not only include ancestral or residency requirements but also mandate that players be naturalized citizens of the country, an exception should be made to the quagmire of naturalization requirements in appropriate situations. Players such as Danny Mwanga who have made their lives in the United States and have invested themselves in the country should have the opportunity to represent the country they call home. The difference in international football

112. Duff Wilson & Andrew W. Lehen, *Swapping Passports in Pursuit of Olympic Medals*, N.Y. TIMES, June 15, 2008, at SP1; David Crary, *Foreign-Born Athletes Take Olympic Stage for US*, USA TODAY (July 18, 2008), http://www.usatoday.com/sports/olympics/beijing/2008-07-18-immigrants_N.htm.

113. Davis, *supra* note 92.

114. Crary, *supra* note 112.

115. Rosa Ramirez, *More than 40 U.S. Olympians Are Foreign-Born*, NAT'L J. (July 27, 2012), <http://www.nationaljournal.com/thenextamerica/culture/more-than-40-u-s-olympians-are-foreign-born-20120727>.

116. See OLYMPIC CHARTER R. 41, bye-law 2 (2011). The Olympic Charter requires that athletes be naturalized in the country for which they will be competing but does not include the residency requirements contained in the FIFA statutes. Furthermore, athletes have the ability to represent another country as long as three years have elapsed since they last represented their former country. *Id.*

117. Crary, *supra* note 112 (quoting Ira Mehlman of the Federation for American Immigration Reform).

118. *Id.*

119. *Id.* (quoting demographer Randy Capps of the Urban Institute).

to the professions of almost every other citizen in the country supports this argument; while the majority of individuals can practice their trade with a green card or visa, athletes such as Yura Movsisyan must often seek out another national team if they desire to begin their international career even though they have spent considerable time in the United States.

Due to this quandary, Congress should expedite naturalization procedures for select individuals who deserve a spot on the U.S. Men's National Team just as they have done for Olympic athletes such as Belbin. Whereas the Olympics is the premier venue for sport and showcases the world's best athletes, the World Cup is the most renowned football tournament on the globe and it highlights the world's greatest footballers. As such, footballers should be treated the same as Olympians by U.S. immigration law. Imagine the public outcry that would have occurred if the U.S. Olympic Committee had passed over seventeen-year-old Missy Franklin for the swimming team because she was unable to obtain U.S. citizenship before the London 2012 Games. Though Franklin was born in California and is certainly a U.S. citizen, she is the daughter of Canadian parents and has dual-citizenship with Canada.¹²⁰ Had Franklin been born in Canada instead of California and had Congress not intervened to award her expedited citizenship, this hypothetical could have led to the people of the United States sadly watching their televisions as an incredible athlete raised on American soil won gold medals for Canada. However, a similar situation has actually occurred several times in recent years with footballers such as Steve Zakuani, Rodney Wallace, and Andy Najar, yet Congress failed to act. One can only wonder if their cases may have turned out differently had they been Olympians instead of candidates for the U.S. Men's National Team.

Therefore, if a player already meets the FIFA eligibility requirements and possesses the requisite skill to be given a spot on the national team, he should have the opportunity to represent the United States in the international realm through the expedited naturalization procedures sometimes used for Olympic athletes. He should not have to consider returning to a country of persecution or moving away from his home to follow his goal; rather, he should be given the opportunity to pursue the American dream and lead the United States to World Cup gold.

VII. CONCLUSION

The current disparity between FIFA eligibility rules and U.S. immigration

120. Vidya Kauri, *Despite Being America's Next Big Swimming Hope, Missy Franklin Still Loves Her Canadian Background*, NAT'L POST (July 30, 2012), <http://sports.nationalpost.com/2012/07/30/missy-franklin-canada>.

law affects not only the equal playing field of international football, but it significantly impacts the lives of players who dream of representing the United States in the next World Cup. Whereas some foreign-born players will decide to endure the naturalization process and take the risk of their prime football days passing them by without any international experience, others like Rodney Wallace will choose to represent other countries. As was the case with Rodney Wallace, some of these players will then score the goal that ends with a United States defeat. Therefore, to maintain competitive balance and ease the plight of foreign-born players, FIFA should create uniform rules so that no country has an advantage over the other due to lax immigration laws. However, if both FIFA and the world reject the idea of uniformity and decide to embrace the task of fishing for international free agents, the United States must conform and bait its hook by expediting naturalization or risk fading into football obscurity.