



Arbitration CAS 2009/A/1988 Belize Basketball Federation v. Fédération Internationale de Basketball (FIBA), award of 20 April 2010

Panel: Prof. Petros Mavroidis (Greece), President; Mr Michael Beloff QC (United Kingdom); Mr Jan Paulsson (France)

Basketball

Acquisition of nationality

Nature of the “certificate of affirmation of Belizean nationality”

Duty of the IF to preserve a level playing field in national team competitions

1. **The “certificate of affirmation of Belizean nationality” is of a *declaratory* and not of *constitutive* nature for the purposes of nationality.**
2. **The objectives of preserving a link between national team competitions and national teams, and avoiding a situation in which national teams are substantially or wholly composed of sporting mercenaries acquiring belatedly nationalities of convenience must be fully endorsed. However, in the absence of harmonization of nationality laws, exclusionary provisions which focus exclusively on nationality criteria (as distinct, for example, from period of time played in national competitions) will not be the best means of achieving these objectives.**

The Belize Basketball Federation (BBF, the “Appellant”) is the national governing body for the sport of basketball in Belize. It is a member of the Fédération Internationale de Basketball (FIBA).

The Fédération Internationale de Basketball (the “Respondent”) is the International Federation governing the sport of basketball. It has been established according to Articles 60 ff. of the Swiss Civil Code (CC). Its headquarters are in Cointrin (Geneva, Switzerland).

On 3 August 2009, BBF submitted to FIBA Americas, the governing body representing FIBA in the American continent, the list of players it intended to field in the championship organised by the COCABA, *i.e.* the Central American Basketball Federation, in Cancun, Mexico, along with a copy of an official Belize birth certificate for the parents of each player, a copy of the Belize passport page of each player, and the certificate of affirmation of Belizean nationality of each player.

On 5 August 2009, the Eligibility Department of FIBA questioned the nationality status of various players of the Belizean team.

On 6 August 2009, the Appellant forwarded to FIBA a letter (undated) of the Director of Immigration and Nationality, Mr. Gareth Murillo, which outlined the process of obtaining Belizean nationality with respect to the player Milton Palacio, born on 7 February 1978. In this letter, the Director stated the following:

- The player had received Belizean nationality on 11 June 1998;
- He did not have the right to acquire Belizean nationality by birth as he was born in the USA. Therefore, he had acquired Belizean nationality by descent, *i.e.* through his parents, who were Belizean nationals;
- According to the Belize Nationality Act, a person born outside Belize on or after Independence Day (21 September 1981) had the status of a citizen of Belize by descent if at the time of birth his/her father or mother was a citizen of Belize: these persons held all rights as Belizeans *from their birth* and the issuance of a Nationality certificate was of mere *declaratory* nature.

It appears from the file that the certificate of affirmation of Belizean nationality for Milton Palacio was established in 1998, *i.e.* when the Player was twenty years old.

On 7 August 2009, the FIBA Sport & Eligibility Manager informed the FIBA Americas Eligibility Officer that, after careful review of the clarifications provided by the Belize Immigration & Nationality Services, FIBA deemed Article H.2.3.3 of the 2009 FIBA Internal Regulations (the “Internal Regulations”) to be applicable to the player Milton Palacio and by analogy to eight other players, namely:

- Herbert Allen, born on 13 December 1986 (certificate of affirmation of Belizean nationality established in 2009, *i.e.* when the Player was 23 years old);
- Dakin Braddick, born on 26 April 1983 (certificate of affirmation of Belizean nationality established in 2009, *i.e.* when the Player was 26 years old);
- Charlie Burgess, born on 3 April 1984 (certificate of affirmation of Belizean nationality established in 2009, *i.e.* when the Player was 25 years old);
- Alex Carcamo, born on 28 August 1977 (certificate of affirmation of Belizean nationality established in 1998, *i.e.* when the Player was 21 years old);
- Marlon Garnett, born on 3 July 1975 (certificate of affirmation of Belizean nationality established in 1999, *i.e.* when the Player was 24 years old);
- Kenan Jourdon, born on 12 July 1974 (certificate of affirmation of Belizean nationality established in 2009, *i.e.* when the Player was 35 years old);
- Kyron Stokes, born on 1 January 1989 (certificate of affirmation of Belizean nationality established in 2009, *i.e.* when the Player was 20 years old); and
- Leon Watson, born on 19 August 1976.

According to Article H.2.3.3, “[a] national team participating in an international competition of FIBA may have only one player on its team who has acquired the legal nationality of that country by naturalisation or by any other means after having reached the age of sixteen (16)”.

By letter of the same day to the FIBA Secretary General, the legal counsel of the Government of Belize clarified some points regarding the law on Belizean nationality:

- *“(…) if a person is born outside Belize on or after Independence Day, i.e. September 21, 1981, he shall automatically become a citizen of Belize at the date of his birth if on that date his father or mother is a citizen of Belize. (Section 25 of the Belize Constitution)”;*
- *“As regards a person born outside Belize before Independence Day, September 21, 1981, Section 23 of the Constitution applies. This section provides that if a person was born outside Belize before Independence Day and on that date his father or mother or his grandfather or grandmother acquired the status of citizen of Belize by virtue of subsection (1) or (2) of Section 23 of the Constitution, that person also becomes a citizen of Belize on Independence Day, (...). He thus acquired the status of a citizen of Belize by descent”;*
- *“In the above cases, no Certificate of Nationality is required because a person acquires the status of a Belizean National by virtue of descent. Once the proof is given that his father or mother or grandfather or grandmother was a citizen of Belize that person would be immediately entitled to a Belizean passport without undergoing any further formalities”.*

After several exchanges of information between the Appellant and the Respondent, the Secretary General of the Respondent issued a decision regarding the national status of the nine abovementioned players on 10 August 2009:

- As Milton Palacio and Alex Carcamo had already played with the Belize national team in the 1998 CARICOM Championship and although it was questionable whether the eligibility decision taken at that time was consistent with the FIBA Internal Regulations, FIBA deemed it fair to maintain the eligibility status for those two players. Consequently, FIBA decided that Article H.2.3.3 would not apply to these two players, and, as a result, they could represent Belize in the upcoming tournament mentioned *supra* (COCABA Championships) without restriction;
- As for the seven other players, FIBA established that they had all acquired the nationality of Belize after having reached the age of sixteen and that, by way of consequence, Article H.2.3.3 of the Internal Regulations applied to all of them. Therefore, only one of those seven players was eligible to play for the Belize national team during the COCABA Championships.

On 12 August 2009, BBF filed an appeal against the decision of the FIBA Secretary General with the FIBA Appeal's Tribunal. According to BBF, all seven players were eligible to play without restriction in the national team of Belize. Indeed, if consistent with their reading of the Belize Constitution, Article H.2.3.3 of the Internal Regulations should not apply to them, since all of them had acquired Belizean nationality by descent before attaining the age of sixteen. The fact that no certificate of affirmation of Belizean nationality was issued for any of them until after they had attained the age of sixteen was irrelevant, since the issuance of such certificate was only of *declaratory* and not *constitutive* nature.

On 6 October 2009, the Appeals' Tribunal issued a decision (the "Appealed Decision") which dismissed the appeal as unfounded. In relevant parts, the Appealed Decision reads as follows:

"1. As to the admissibility of the appeal

(...) the Appellant (with the Respondent's consent) specified its request more particularly to the effect that its appeal was limited to six players [the "disputed players"]. Said six players were:

- Mr Herbert Allen*
- Mr Dakin Braddick*
- Mr Charlie Burgess*
- Mr Kenan Jourdan (sic)*
- Mr Kyron Stokes and*
- Mr Marlon Garnett.*

(...)

2. As to the merits of the appeal

Pursuant to Art. H.2.3.3 of the FIBA Internal Regulations a national team may have a maximum of only one player, who has acquired the legal nationality of the team by a) "naturalisation" or b) "by any other means" c) after having reached the age of 16.

(...)

cc) The Effects of Dual Nationality

What is questionable is what the effect is of the fact that all of the players also have U.S. citizenship in addition to Belize nationality. As regards this the Appellant has submitted that this is irrelevant for the question at issue. However, the Chairman is not convinced of this with the requisite certainty on the basis of the documents submitted to him.

Sec. 27 of the Belize Constitution states:

"A citizen of Belize by birth or descent who acquires the citizenship of any other country may, if the laws of the other country so permit and at his option, retain his citizenship of Belize".

It is not disputed that the U.S. citizenship allows the players to retain their citizenship of Belize in addition to their U.S. citizenship. However, Sec. 27 of the Belize Constitution further provides that in such a case the person concerned will not automatically force the citizenship of Belize on him if he acquires the citizenship of another country. Instead the person concerned retains the Belize citizenship only if he opts to. The Appellant has not made any submissions as to whether and how this option is to be exercised or when the players exercised the option.

In the present case the players opted to retain the Belize citizenship at the latest when they filed their application for the issue of a Belize passport or the "Certificate of Affirmation as a Citizen of Belize". However, this option was clearly exercised after the players had attained the age of 16. The question therefore arises as to what legal status the players had in the period between birth and filing the application in July 2009.

According to the Appellant's submissions the players had no cause to invoke their Belize nationality prior to July 2009 because they had many more possibilities open to them – both privately and professionally – on the basis of their U.S. citizenship than on the basis of Belizean citizenship. All this indicates that the players exercised their "option to retain [their] citizenship of Belize" provided for in Sec. 27 of the Belize Constitution solely with a view to playing in the Appellant's national team in the COCABA tournament in Cancun and therefore for the first time in July 2009. However, this gives rise to the question of whether the players in fact had citizenship of Belize before attaining the age of 16 for the purposes of Art. H.2.3.3 of the FIBA Internal Regulations or whether the option of retaining the citizenship of Belize provided in Sec. 27 of the Belize Constitution for the benefit of persons with multiple nationalities must be treated like a case where an (sic) player has "a right to lay claim to a citizenship".

If one proceeds on the basis of the purpose of Art. H.2.3.3 of the FIBA Internal Regulations the better reasons would seem to support the argument for subsuming the present case under alternative (b) of Art. H.2.3.3 of the FIBA Internal Regulations. The exercise of an option in order to retain a nationality does not differ fundamentally from the exercise of a right to acquire a nationality. It may well be that, unlike when acquiring a nationality, the legal effect of exercising an option to retain the nationality is triggered ex tunc. However, none of this alters the fact that after the players had attained the age of 16 some kind of act was necessary in order to finalize or establish the nationality. However, as stated above, according to Art. H.2.3.3 of the FIBA Internal Regulations, the relevant date is the date when the last act was undertaken. This opinion is also supported by information from the Immigration & Nationality Services, which states with regard to the players, "that from birth they hold all rights as Belizean; it is only formalized with the issuance of a Nationality certificate". To summarize therefore, on the basis of the evidence furnished the Appellant was not able to convince the Chairman with the requisite certainty that the acquisition of Belizean nationality was finalized in every respect before the players' respective 16th birthdays. For this reason the Appeal must be dismissed as unfounded".

On 5 November 2009, the Appellant filed a statement of appeal against the Appealed Decision with the Court of Arbitration for Sport (CAS), together with three exhibits. It submitted the following requests for relief:

- "(i) a review of facts and the legal reasoning applied by Prof. Dr. Haas in his interpretation of section 27 of the Belize Constitution which appears at paragraph "**cc) The Effects of Dual nationality**" of his decision;*
- (ii) A review of the following specific findings by Prof. Dr. Haas:*
 - (a) "In the present case the players opted to retain the Belize citizenship at the latest when they filed their application for the issue of a Belize passport or the "Certificate of Affirmation as a Citizen of Belize". However, this option was clearly exercised after the players had attained the age of 16. The question therefore arises as to what legal status the players had in the period between birth and filing the application in July 2009";*
 - (b) "All this indicates that the players exercised their "option to retain [their] citizenship of Belize" provided for in Sec. 27 of the Belize Constitution solely with a view to playing in the Appellant's national team in the COCABA tournament in Cancun and therefore for the first time in July 2009";*
 - (c) If one proceeds on the basis of the purpose of Art. H.2.3.3 of the FIBA Internal Regulations the better reasons would seem to support the argument for subsuming the present case under*

alternative (b) of Art. H.2.3.3 of the FIBA Internal Regulations. The exercise of an option in order to retain a nationality does not differ fundamentally from the exercise of a right to acquire a nationality. It may well be that, unlike when acquiring a nationality, the legal effect of exercising an option to retain the nationality is triggered ex tunc. However, none of this alters the fact that after the players had attained the age of 16 some kind of act was necessary in order to finalize or establish the nationality. However, as stated above, according to Art. H.2.3.3 of the FIBA Internal Regulations, the relevant date is the date when the last act was undertaken. This opinion is also supported by information from the Immigration & Nationality Services, which states with regard to the players, "that from birth they hold all rights as Belizean; it is only formalized with the issuance of a Nationality certificate". To summarize therefore, on the basis of the evidence furnished the Appellant was not able to convince the Chairman with the requisite certainty that the acquisition of Belizean nationality was finalized in every respect before the players' respective 16th birthdays. For this reason the Appeal must be dismissed as unfounded";

- (iii) *The issuance of a new decision which replaces the decision of Prof. Dr. Ulrich Haas and which finds and decides that the acquisition of Belizean nationality by the six Belizean players was finalized in every respect before they reached their respective 16th birthdays and consequently that Article H.2.3.3 of the FIBA Internal Regulations does not apply to them".*

On 14 November 2009, the Appellant filed its appeal brief with the CAS, together with ten exhibits. It claimed that Article H.2.3.3 of the Internal Regulations did not apply to the players in question and sought the following requests for relief:

- “55. (...) that the CAS quash the decision of the [FIBA Appeals' Tribunal] and issue a new decision which replaces the [FIBA Appeals' Tribunal] decision and which rules and decides that the six disputed players had acquired legal nationality of Belize before reaching their respective 16th birthday and consequently that Article H. 2.3.3 of the FIBA Internal Regulations did not and does not apply to the disputed players.
56. (...) that if it is successful in this appeal that the Respondent bears the Appellant's costs including legal fees and other reasonable expenses incurred in connection with both the appeals before the CAS and the [FIBA Appeals' Tribunal].
57. In the event that the Appellant is unsuccessful (...) that the CAS order that the Appellant bears the costs of its own counsel but that the Respondent bear the Appellant's portion of the CAS-related costs of the appeal owing to the straitened financial circumstances of the Appellant”.

On 14 December 2009, the Respondent filed its answer with the CAS, together with sixteen exhibits. It submitted the following request for relief:

- “- to reject the Appeal filed on 5 November 2009 by the Belize Basketball Federation against the decision of the FIBA Appeals' Tribunal dated 6 October 2009;
- to confirm that Article H.2.3.3 of the FIBA Internal Regulations applies to Messrs. Herbert Allen, Dakin Braddick, Charlie Burgess, Marlon Garnett, Keenan Jourdon, Kyron Stokes;
- to order the Appellant to pay the costs of the present arbitration;

- *to order the Appellant to pay the legal fees and expenses of FIBA, to be determined at a later stage of the present arbitration”.*

A hearing took place on 25 March 2010 at the CAS headquarters in Lausanne, Switzerland. All the members of the Panel were present. At the outset of the hearing, the parties declared that they had no objection with regard to the composition of the Panel.

During the hearing, the parties made oral submissions and answered to the questions of the Panel. BBF called Mr Gareth Murillo, Director of Immigration & Nationality for Belize, as an expert witness. The parties as well as the Panel had ample opportunity to question the expert witness about Belizean nationality law.

After the parties' final arguments, the Panel closed the hearing and announced that its award would be rendered in due course. Upon closure, the parties expressly stated that they did not have any objection in respect to their right to be heard and to be treated equally in these arbitration proceedings.

LAW

CAS Jurisdiction

1. The competence of the CAS to act as an appeals body is based on Article R47 of the Code of Sports-related Arbitration (the “Code”) which provides that:
“A party may appeal from the decision of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body”.
2. Article L.1.9 of the Internal Regulations, entitled “Further appeal” reads:
“A further appeal against the decision by the Appeals’ Tribunal can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within thirty (30) days following receipt of the reasons for the award. The Court of Arbitration for Sport shall act as an arbitration tribunal and there shall be no right to appeal to any other jurisdictional body”.
3. It follows that the CAS has jurisdiction to adjudicate the present dispute.
4. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

Applicable law

5. Article R58 of the Code provides the following:

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

6. In the present case, it is common ground that the applicable regulations at stake are the Internal Regulations. In particular, it is the application and interpretation of Article H.2.3.3 of the Internal Regulations that is at dispute. This provision reads as follows:

“A national team participating in an international competition of FIBA may have only one player on its team who has acquired the legal nationality of that country by naturalisation or by any other means after having reached the age of sixteen (16)”.

7. It is also common ground that Article H.2.3.3 contains a reference to the state law of the country whose national team is participating in an international competition of FIBA. In this particular case, the relevant state law is Belize law, as is the law that will determine the legal nationality of the players.

8. There is no dispute between the parties that the provisions of Belize law which are relevant to the instant case are under Part III of the Belize Constitution which deals with citizenship. They provide as follows:

“23.- (1) Every person born in Belize, immediately before Independence Day, shall become a citizen of Belize on Independence Day.

(2) Every person who, immediately before Independence Day, is a citizen of the United Kingdom and Colonies-

(a) having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised in Belize as a British subject before that Act came into force; or

(b) having while resident in Belize become such a citizen by virtue of his having been naturalised or registered under that Act,

shall become a citizen of Belize on Independence Day.

(3) Every person born outside Belize, before Independence Day, shall become a citizen of Belize on Independence Day if his father or mother becomes, or would but for his death or the renunciation of his citizenship have become, a citizen of Belize by virtue of subsection (1) or (2) of this section.

(4) Every person born outside Belize before Independence Day shall become a citizen of Belize on Independence Day if one of his grandparents becomes, or would but for his death or renunciation of his citizenship have become, a citizen of Belize by virtue of subsection (1) or (2) of this section.

(5) Every woman shall become a citizen of Belize on Independence Day if immediately before Independence Day, she is married to a person who becomes or, but for his death or the renunciation of

his citizenship, would have become a citizen of Belize by virtue of subsection (1), (2), (3) or (4) of this section.

(6) In this section, "the British Nationality Act 1948" includes any Act of the Parliament of the United Kingdom amending that Act.

(...)

25. *A person born outside Belize on or after Independence Day shall become a citizen of Belize at the date of his birth if, at that date, his father or mother is a citizen of Belize.*

(...)

27. *A citizen of Belize by birth or descent who acquires the citizenship of any other country may, if the laws of the other country so permit and at his option, retain his citizenship of Belize.*

(...)

29.- (1) *For the purposes of this Part, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.*

(2) Any reference in this Part to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before Independence Day and the birth occurred on or after Independence Day the national status that the father would have had if he had died on Independence Day shall be deemed to be his national status at the time of his death.

(3) No person shall be entitled under the provisions of this Part to be a citizen of Belize or be granted citizenship of Belize if such person shows any allegiance to or is a citizen of a country which does not recognise the independence, sovereignty or territorial integrity of Belize:

Provided that the Minister may in his discretion grant Belizean citizenship to persons falling under this subsection who would otherwise be entitled to such citizenship under the provisions of sections 23 and 25 of the Constitution.

(4) Where a person born outside Belize is entitled to be a citizen of Belize under the provisions of this Part, the right to Belizean citizenship shall not be deemed to accrue upon the conditions giving rise to such entitlement arising but the citizenship shall be sought for by the person entitled to or on his behalf and obtained by the grant by the Minister of proper certification affirming his citizenship.

(5) Where a person claiming citizenship by birth, descent or registration makes an application or request for the grant of citizenship the stay of such person in Belize shall not be considered illegal under the provisions of any law for so long and only for so long as such stay is necessary for the disposal of his application. His right of abode, or that of his wife or dependents if any under the age of eighteen years, shall not be affected pending the disposal of his application".

9. The Appellant has only referred to Belize law for the purpose of the application of Article H.2.3.3 of the Internal Regulations and did not refer to any other national law. The Panel is therefore of the opinion that the parties have not agreed on the application of any other national law. Swiss law shall apply only to the extent necessary and appropriate, as it is the law

of the country in which FIBA has elected domicile, and, as, by virtue of Article 2.2 of the General Statutes of FIBA, “*FIBA shall be subject to the laws of Switzerland*”. The Panel saw no reason to depart from the conclusion of the Appeals’ Tribunal to apply Swiss law with respect to the burden of proof and the associated issue concerning the standard of proof, *i.e.* that the Appellant had to establish its case beyond reasonable doubt.

Admissibility

10. According to Article 49 of the Code, “[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. (...)”.
11. The Appellant’s statement of appeal was filed within the deadline set in Article L.1.9 of the Internal Regulations. It further complies with all other requirements of article R48 of the Code. Accordingly, the appeal is admissible.

Merits

12. The main issue in the present case is for the Panel to determine whether Article H.2.3.3 of the Internal Regulations is applicable to the present dispute. To answer this question, the Panel will have to consider the relationship between the various relevant provisions of the Belize Constitution cited *supra*.
13. At the outset, the Panel shall list the relevant facts that are undisputed by the parties.

A. *Undisputed facts*

14. The six players, the subject matter of appeal are Herbert Allen, Dakin Braddick, Charlie Burgess, Marlon Garnett, Keenan Jourdon and Kyron Stokes. All the players are US nationals, except for Dakin Braddick who is Canadian national, by virtue of *ius soli* which confers nationality in both the USA and Canada, their respective places of birth.
15. All players are Belizean nationals by descent, their cases falling either under Section 23 §3 or Section 25 of the Belize Constitution:
 - The players Keenan Jourdon and Marlon Garnett were both born outside Belize *before* Independence Day, *i.e.* 21 September 1981. At least one of their two parents had Belizean nationality. Accordingly, Section 23 §3 of the Belize Constitution applies to them.
 - The players Herbert Allen, Dakin Braddick, Charlie Burgess and Kyron Stokes were all born outside Belize *after* Independence Day. At least one of their parents had Belizean nationality. Accordingly, Section 25 of the Belize Constitution applies to them.

B. *The acquisition of Belizean nationality by the players*

16. The Panel reverses the decision of the Appeals' Tribunal in so far as it held that the players did not at all material ties have Belizean nationality. Although the players do not have Belizean nationality *by birth* themselves, they all acquired Belizean nationality *at birth* or *on Independence Day by descent* pursuant to either Section 23 or 25 of the Belizean Constitution (depending upon whether or not their birth preceded Independence day), which are reproduced in whole *supra*.
17. Section 29 of the Belize Constitution does not contradict this conclusion: its title "Interpretation" identifies it as subordinate to the preceding provisions and without independent or substantive legal effect. Therefore it cannot be relied on to qualify the substantive rights conferred by Sections 23 and 25. The document that is finally issued to persons in the Players position, *i.e.* the "certificate of affirmation of Belizean nationality", is of a *declaratory* and not of *constitutive* nature for the purposes of nationality. The Panel found comfort in the fact that the expert witness confirmed during the hearing that in practice Section 29 of the Belize Constitution has been construed and applied only as a procedural provision and not one which qualifies or alters the substance of Sections 23 or 25 of the Belize Constitution. In the words of the expert witness, Section 29 §4 "*is applied as an administrative process. It gives the individuals concerned a document which proves that they are citizens of Belize*". Even if, read in isolation, that provision could be read as stating that citizenship is not conferred until such document is provided, such a reading cannot be sustained contextually.
18. Section 27 does not qualify this conclusion since it deals with a situation which is distinct from that of the present case: it is concerned with a case where a Belizean national subsequently acquires another nationality, not where he has such other nationality at the time of his birth coincident with his Belizean nationality. According to this provision, the Belizean national can retain his Belizean nationality if the laws of the other country so permit. The six players with which this appeal is concerned, however, were American and Canadian by birth and did not acquire these other nationalities after they had become Belizean nationals. Moreover, the use of the term "retain" underlines the conclusion that the provision applies to a case where the person obtaining a second nationality is already Belizean national. Hence, even if Section 27 applied to the Players at all (*quod non*), they were Belizean nationals already and the only remaining question would be whether they would continue to be so, which would depend upon two factors: the law of the other (than Belize) country and the individual preferences of the persons involved. In any event as stated above, the six players did not initiate the process envisaged by Section 27; their cases were covered by the provisions of Sections 23 and 25 and, through recourse to the process described in Section 29, they obtained the certificate of affirmation of their Belizean nationality.
19. Finally, the Panel cannot endorse the construction of Article H.2.3.3 of the Internal Regulations advanced by the Appeals' Tribunal. This provision reads in relevant part:
"... by naturalisation or by any other means".

The words “by any other means” must refer to a substantive basis (as is naturalisation) for obtaining a new nationality and not to a process, by which the acquisition of that new nationality is recorded, contrary to the finding of the Appeals’ Tribunal and the contention of the Respondent.

20. To sum up, the Panel concludes that: (i) pursuant Section 23 §3 of the Belize Constitution, the players Jourdon and Garnett acquired the nationality of Belize by descent on Independence Day, *i.e.* 21 September 1981, at the age of seven and six, respectively; (ii) pursuant to Section 25 of the Belize Constitution, the players Allen, Braddick, Burgess and Stokes all acquired the nationality of Belize by descent at birth. Therefore, the players were all Belizean nationals before the completion of their sixteenth birthday. Thus, Article H.2.3.3 of the Internal Regulations is inapplicable in the present dispute and, consequently, the decision of the Appeals’ Tribunal must be reversed.
21. In its submissions, the Respondent underlined that it had a duty to preserve a level playing field in national team competitions and that Article H.2.3.3 of the Internal regulations is necessary to promote this objective: absent this provision, the undesirable phenomenon of professional players acquiring the nationality of another country merely to facilitate to their participation in the national team of that country (and thus to increase their market value) would inevitably increase. As a result, national teams would increasingly be composed of players who had never participated in their national championships and there would be, not infrequently, a substantial discrepancy between the sporting quality of the national team and that of the national competitions. The Respondent was concerned to prevent abuse of nationality laws, whereby nowadays some states are prepared to facilitate naturalisation of foreign players in pursuit of sporting success.
22. The Panel is in no way unsympathetic to the concerns of the Respondent and fully endorses the objective of preserving a link between national team competitions and national teams, and the avoidance of a situation in which national teams are substantially or wholly composed of sporting mercenaries acquiring belatedly nationalities of convenience. It recognizes, however, that in the absence of harmonization of nationality laws, exclusionary provisions such as Article H.2.3.3 which focus exclusively on nationality criteria (as distinct, for example, from period of time played in national competitions) will not be the best means of achieving the Respondent’s objectives. In any event, it must be acknowledged that the cases of the players, the subject of this appeal, do not illustrate any abuse of the nationality laws of Belize. The six players have made entirely legitimate use of one of the nationalities that they legally possess (and acquired, self evidently, without any thought of future sporting careers) in order to be able to join the national team of Belize. They acted within the letter and the spirit of the Internal Regulations. If the Respondent does not wish players with no previous track record in the national competitions of one country to be eligible to play in the national teams of that country, irrespective of their nationality, it must devise other rules than the present.

C. Conclusion

23. For the foregoing reasons, the appeal is upheld.

The Court of Arbitration for Sport rules:

1. The appeal of the Belize Basketball Federation is upheld.
2. The decision of 6 October 2009 by the Appeals' Tribunal of FIBA is reversed.
3. Article H.2.3.3 of the FIBA Internal Regulations does not apply to the players Jourdon, Garnett, Allen, Braddick, Burgess and Stokes.

(...)

6. All other or further claims are dismissed.