

DEC 03 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROMEO RAMIREZ-GARCIA,

Petitioner,

v.

ERIC H. HOLDER JR.,
ATTORNEY GENERAL,

Respondent.

No. 07-72911

Agency No. A12 519 653

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted November 2, 2009
San Francisco, California

Before: B. FLETCHER, CANBY, and GRABER, Circuit Judges.

Petitioner Romeo Ramirez-Garcia seeks review of a decision of the Board of Immigration Appeals affirming an immigration judge's order of deportation. The immigration judge denied Ramirez-Garcia's claim of derivative United States citizenship and his application for withholding of removal. The citizenship claim

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

is the only issue that Ramirez-Garcia has presented here. We have jurisdiction over the petition pursuant to 8 U.S.C. § 1252.

We need not address Ramirez-Garcia's challenge to the admissibility of his father's affidavit and related papers because we conclude that, whether or not the disputed material is admitted, the record presents a genuine issue of material fact with regard to Ramirez-Garcia's claim to be a national of the United States. *See* 8 U.S.C. § 1252(b)(5)(B). When the record shows "a genuine issue of material fact about the petitioner's nationality," the statute requires us to transfer this proceeding to the district court for "a new hearing on the nationality claim and a decision on that claim." *Id.*; *see Ayala-Villanueva v. Holder*, 572 F.3d 736, 738, 740 (9th Cir. 2009). We accordingly transfer this proceeding to the District Court for the District of Arizona for a de novo hearing on Ramirez-Garcia's nationality. We hold the petition for review in abeyance pending the district court's decision. *Ayala-Villanueva*, 572 F.3d at 740.

**MATTER TRANSFERRED TO DISTRICT COURT OF ARIZONA;
PETITION FOR REVIEW HELD IN ABEYANCE.**