



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**Diez, Jaime M
Jones & Crane
PO BOX 3070
Brownsville, TX 78523**

**DHS/ICE Office of Chief Counsel - HLG
1717 Zoy Street
Harlingen, TX 78552**

Name: HINOJOSA-TREJO, CARLOS JA... A 090-393-900

Date of this notice: 3/11/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Malphrus, Garry D.
Mullane, Hugh G.
Morris, Daniel

Each user
User team: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

ug

Falls Church, Virginia 22041

File: A090-393-900 – Harlingen, TX

Date:

MAR 11 2019

In re: Carlos Javier HINOJOSA-TREJO

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jaime M. Diez, Esquire

ON BEHALF OF DHS: Carolyn Abdenour
Assistant Chief Counsel

APPLICATION: Termination of proceedings; remand

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated August 24, 2017, ordering him removed from the United States. The Department of Homeland Security has filed a motion for summary affirmance. The record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The record shows that the respondent admitted to being a native and citizen of Mexico (Tr. at 3). However, he asserts, in a motion filed during the pendency of the appeal, that he has now submitted sufficient evidence to establish that he acquired United States citizenship at birth, and that proceedings should be terminated. Specifically, he claims to have acquired United States citizenship at birth through his father, who he claims had acquired citizenship at birth through his father, i.e., the respondent's grandfather.

Evidence of foreign birth gives rise to a rebuttable presumption of alienage, and the respondent must come forward with evidence to substantiate his citizenship claim. *Matter of Hines*, 24 I&N Dec. 544, 546 (BIA 2008). The Immigration Judge gave the respondent a full opportunity to present evidence regarding his citizenship claim, and concluded "there's been nothing further presented to the Court with respect to any speculative claim of citizenship" (Tr. at 61). The Immigration Judge did not make detailed findings of fact.

The motion the respondent filed on appeal is accompanied by copies of numerous documents. Several documents are relatively recent, and primarily relate to his father's claim for United States citizenship.¹ Other documents relate to the successful citizenship claim made by the respondent's

¹ These documents include an affidavit from the respondent's claimed father, Jose Julian Hinojosa Maldonado, a letter discussing Jose Hinojosa's 2015 application for a U.S. passport, an application for a U.S. passport, a copy of Jose Hinojosa's Mexican birth certificate, and a copy of his U.S. permanent resident card, with an expiration date of October 29, 2020.

father's sister, Esther Hinojosa Maldonado, born in 1947, and his father's brother, Tirso Hinojosa, born in 1939. Still other documents, some of them dating back many decades, detail certain legal aspects of the respondent's grandfather's citizenship, marriage and residence status, as those impact the respondent's father's claim to citizenship. The respondent argues that these documents, in conjunction with testimony at a remanded hearing, would establish that he is the biological child of a United States citizen father (born in Mexico, but who acquired citizenship at birth) who was physically present in the United States for at least 10 years prior to the respondent's birth in Mexico in 1973, and that five of those years were after his father was 14 years of age (Respondent's Br. at 22),

We acknowledge the DHS's argument that the Immigration Judge had jurisdiction because the respondent conceded alienage and removability (DHS Br. at 2). However, given that the respondent cannot waive citizenship (except through a very specific procedure), and due to our limited ability to make findings of fact, we conclude that a remand is warranted so that the Immigration Judge may undertake additional fact-finding. *See* 8 C.F.R. § 1003.1(d)(3)(iv). Upon remand, the parties should be allowed to make any relevant argument, or submit any additional relevant evidence, at the discretion of the Immigration Judge. In remanding this case, we express no opinion on the ultimate outcome of these proceedings. The following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD