



**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 20530

**Joseph Mbacho, Esquire  
Attorney At Law  
2129 Winterhaven Drive, P.O. Box 875  
Winterhaven, CA 92283**

**DHS/ICE Office of Chief Counsel - EAZ  
P.O. Box 25158  
Phoenix, AZ 85002**

**Name: MORENO-VIRREY, IVAN FRANC...    A 042-847-549**

**Date of this notice: 1/23/2014**

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:  
Guendelsberger, John

lucasd  
Userteam: Docket

For more unpublished BIA decisions, visit [www.irac.net/unpublished](http://www.irac.net/unpublished)

527



**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 20530

**MORENO-VIRREY, IVAN FRANCISCO  
A042-847-549  
ICE, 1705 E. HANNA RD.  
ELOY, AZ 85131**

**DHS/ICE Office of Chief Counsel - EAZ  
P.O. Box 25158  
Phoenix, AZ 85002**

**Name: MORENO-VIRREY, IVAN FRANC...    A 042-847-549**

**Date of this notice: 1/23/2014**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Guendelsberger, John

lucasd  
User team: Docket

Falls Church, Virginia 20530

---

File: A042 847 549 – Eloy, AZ

Date:

JAN 23 2014

In re: IVAN FRANCISCO MORENO-VIRREY

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Joseph Mbacho, Esquire

ON BEHALF OF DHS: Julie Nelson  
Assistant Chief Counsel

APPLICATION: Termination of proceedings

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's decision dated August 15, 2013, denying his claim for derivative citizenship. The record will be remanded.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). This Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

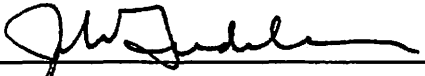
At the hearing, and again on appeal, the respondent claims derivative citizenship through his mother, who naturalized on October 19, 1990. The record shows that the United States Citizenship and Immigration Services (USCIS) denied the respondent's Form N-600, Application for Certificate of Citizenship, on July 31, 2013. The Immigration Judge's August 15, 2013, decision found that the respondent was removable as charged, citing the USCIS decision and indicating that the court was not in the position to review or readjudicate that decision (Tr. at 75).

The respondent contends on appeal that the Immigration Judge should have made an independent determination regarding his derivative citizenship claim. We agree. In this case, the respondent is not alleging that he is eligible for naturalization. Rather, he denies alienage and asserts derivative citizenship through his mother, a naturalized United States citizen, under section 321 of the Act, 8 U.S.C. § 1432. The burden to establish alienage in removal proceedings is upon the Government. When there is a claim of citizenship, however, one born abroad is presumed to be an alien and must go forward with the evidence to establish his claim to citizenship. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) (eligibility for automatic citizenship under section 320 of the Act); *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327 (BIA 1969) (derivative citizenship under former section 241(a)(1) of the Act).

Accordingly, we will remand the record for an analysis of the respondent's citizenship claim.

Cite as: Ivan Francisco Moreno-Virrey, A042 847 549 (BIA Jan. 23, 2014)

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

  
\_\_\_\_\_  
/ FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
ELOY, ARIZONA

File: A042-847-549

August 15, 2013

In the Matter of

	IVAN FRANCISCO <u>M</u> ORENO <u>Q</u> -VIRREY	)	
		)	IN REMOVAL PROCEEDINGS
	RESPONDENT	)	
		)	

CHARGES:           Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act -  
                          convicted of the essential elements of a violation of law relating to a  
                          controlled substance;

                          Section 212(a)(2)(C) of the Immigration and Nationality Act - an  
                          Immigration officer knows or has reason to believe that the alien is  
                          an illicit trafficker in a controlled substance.

APPLICATIONS:   None.

ON BEHALF OF RESPONDENT:   JOSEPH A. MBACHO, Esquire

ON BEHALF OF DHS:           JULIE NELSON  
  Assistant Chief Counsel

**ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE**

The respondent is a male, native and citizen Mexico. The United States Department of Homeland Security brought these removal proceedings against the respondent under the Immigration and Nationality Act. Proceedings were commenced with the filing of the Notice to Appear dated July 5, 2012. See Exhibit 1.

During the course of several Master Calendar hearings, respondent's counsel informed the Court that the respondent had filed an N-600, Application for Certificate of Citizenship, with CIS, in which he was asserting that he was a citizen of the United States. See Exhibit 4. The proceedings were continued for several hearings to await the adjudication of the N-600 application. On July 31, 2013, CIS issued a decision as to the N-600, in which it denied the respondent's application. See Exhibit 13. With CIS's denial of respondent's N-600 application, the Court found it proper for these removal proceedings to proceed. Respondent's counsel then pled to the charges of inadmissibility, and the allegations as contained in the Notice to Appear. Respondent's counsel continued his denial of factual allegation 1, asserting that respondent is a citizen or national of the United States. He, however, admitted factual allegations 2 through 5, as contained in the Notice to Appear, and conceded to both charges of inadmissibility as referenced above.

Based upon the Court's review of Exhibit No. 13, which is CIS's denial of respondent's N-600 application, the Court sustained factual allegation number 1. Independent of respondent's admissions and concessions to the charges of inadmissibility, the Government had submitted documentary evidence to establish the allegations and charges as contained in the record, marked and admitted as Exhibit 5 and Exhibit 6. Based upon the Court's review of the documentary evidence as submitted by the Government, the specific drug listed, the Court sustained all factual allegations as contained in the Notice to Appear and found that the respondent was removable as charged as referenced above. The respondent designated Mexico as the country of removal, indicating no fear of return.

The respondent was previously granted cancellation of removal for certain nonpermanent residents by this Court on April 7, 2009, and thus was ineligible for that

relief a second time. There did not appear to be any other form of relief for which the respondent was eligible, or was seeking. As the respondent was designated as an arriving alien, he is statutorily ineligible for voluntary departure. Accordingly, the following orders are entered.

**ORDER**

IT IS HEREBY ORDERED that both charges of inadmissibility as referenced above are sustained.

**ORDER**

IT IS FURTHER ORDERED that the respondent be removed from the United States to Mexico.

**Please see the next page for electronic**

**signature**

LINDA I. SPENCER-WALTERS  
Immigration Judge

//s//

Immigration Judge LINDA I. SPENCER-WALTERS

spencer1 on October 1, 2013 at 10:32 PM GMT