

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROGER ALEXANDER,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-72933

Agency No. A200-607-375

MEMORANDUM*

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

Argued and Submitted November 15, 2016
San Francisco, California

Before: MELLOY,** CLIFTON, and WATFORD, Circuit Judges.

Petitioner Roger Alexander appeals from the final order of removal issued by the Board of Immigration Appeals. We conclude there are genuine issues of material fact regarding the petitioner's nationality requiring transfer of the matter to the district court under 8 U.S.C. § 1252(b)(5)(B). To establish the petitioner's

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

** The Honorable Michael J. Melloy, United States Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

alienage, the government relied solely upon the agents' testimony that the petitioner purportedly admitted that he was born in Mexico during two separate interviews with the agents. However, the petitioner denied that he admitted that he was born in Mexico, adding that he did not know where he was born. This conflicting testimony creates a genuine issue of material fact about petitioner's nationality that requires transfer of the proceeding to the district court. 8 U.S.C. § 1252(b)(5)(B); *see Mondaca-Vega v. Lynch*, 808 F.3d 413, 418 (9th Cir. 2015). Following transfer, the district court may consider additional evidence and argument that bears on the issue of the petitioner's nationality.

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