FOR PUBLICATION

UNITED STATES COURT OF APPEALS

9, 1999. The BIA held that Hughes was removable under 8 U.S.C. § 1227(a)(2)(A)(iii) because he was an alien who had been convicted of an aggravated felony. On appeal, he argues that he is a "national of the United States" or a "citizen" and thus is not an alien subject to removal proceedings. We dis-

of 1960. In October of 1960, Petitioner was admitted into the United States as an immigrant. His parents did not have him naturalized, and Petitioner does not contend (nor does the record reflect) that he ever initiated naturalization proceedings on his own.

In 1985, when he was 28 years old, Petitioner was convicted in California state court of felonies stemming from his repeated sexual abuse of a minor. He was sentenced to 24 years' imprisonment but was paroled in 1997 after having served 12 years of his sentence.

Shortly after his release from prison, in December of 1997, Petitioner was placed in removal proceedings. On February 10, 1998, an immigration judge (IJ) ordered Petitioner's removal. Petitioner, who had appeared pro se, waived the right to appeal, and the removal order became final.

In July of 1998, Petitioner, through a lawyer, filed a motion to reopen. The IJ denied the motion because it was untimely and because Petitioner pgrss di new, his vmigt hidsentence.

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must decide the claim. 8 U.S.C. § 1252(b)(5)(A).**1** We review de novo the legal questions involved in a claim that a person is a national of the United States. Scales, 232 F.3d at 1162.

DISCUSSION

A. "National of the United States"

Title 8 U.S.C. § 1101(a)(3) defines an alien as "any person not a citizen or national of the United States. " In turn, 8 U.S.C. § 1101(a)(22) defines a "national of the United States" as "(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." Only aliens are removable. 8 U.S.C. § 1227 (identifying classes of removable aliens). Thus, if Petitioner is either a "citizen . . . of the United States" or a "national of the United States," he is not removable.

Petitioner argues that he is a "national of the United States."**2** He reasons that the length of his residency in the United States, his lack of allegiance to Poland, his allegiance to the United States, and the fact that Poland does not consider him a citizen support his contention.

All circuits that have considered the question recognize that the category of noncitizen "national of the United States" is a constricted one, and they reject the argument that one can become a national through lengthy residency alone. United States v. Sotelo, 109 F.3d 1446, 1448 (9th Cir. 1997); Carreon-Hernandez v. Levi, 543 F.2d 637, 638 (8th Cir.

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1 If we conclude that there is a genuine issue of material fact, we must transfer the case to the district court for a hearing. 8 U.S.C. § 1252(b)(5)(B). Neither party argues that there are disputed issues of material fact, and we find none in the record.

2 As we discuss below, we also asked the parties to address the question whether a new statute operates to grant retroactive citizenship to Petitioner.

1976); Oliver v. INS

thereby <u>officially</u> declare her allegiance to the United States. <u>Id.</u> at 427-28. The court further reasoned that, historically, the term "national" applied to an inhabitant of Unites States territories and that the primary way to become a "national" was through birth. <u>Id.</u>

533357, at *3 (5th Cir. June 5, 2001) (holding that no Chevron deference is owed to the INS's interpretation of the INA in the course of the court's inquiry as to its own jurisdiction).

Here, the question is whether Congress has granted any dis-

The petitioner may have such nationality claim

8 U.S.C. § 1252(b)(5) (emphasis added); see also 8 U.S.C.

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Under Title II, if an alien who permanently resided in the United States before the age of 16, and whose natural or adoptive parents were both United States citizens, reasonably believed at the time of the unlawful voting or false claim that he or she was a citizen, then the alien cannot be (1) found to be of "not good moral character," 8 U.S.C.§ 1101(f) (as amended by § 201(a) of the CCA); (2) considered inadmissible, 8 U.S.C. § 1182(a)(6)(C)(ii) & (a)(10)(D) (as amended by § 20l(b) of the CCA); (3) considered deportable, 8 U.S.C. § 1227(a)(3)(D) & (a)(6) (as amended by § 201(c) of the CCA); or (4) subjected to criminal sanctions, 18 U.S.C. §§ 611 and 1015 (as amended by § 201(d) of the CCA), as a consequence of the unlawful voting or false claim.

In Title I, Congress repeatedly used the words "child" and "children" to describe those being granted automatic citizenship. By contrast, in Title II, Congress used the word "alien" to describe an adult who was receiving addiS.C. o.C. o. Epro toetions.Title I, Cwhich appiensto dchildren", "grantesautomatic Tj   T* -0.09864 Tc 0.086 4 Tw (cotizens,ip.

We think that Congress' intention is clear from the text and context of the statute. See Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438 (1999) (explaining that, when interpreting a statute, in the absence of ambiguity there is no need to resort to other aids to construction); see also INS v. Pangilinan, 486 U.S. 875, 883-84 (1988) (stating that citizenship0.07Oisions must be strictly construed); United States v. Ginsberg, 243 U.S. 472, 474 (1917) (stating that the courts' duty is to enforce statutes granting political rights to aliens"rigidly"). Nonetheless, we also have examined the legislative history of the CCA and find nothing to detract from our conclusion. For

CONCLUSION

Because Petitioner was not born in a territory of the

question of nationality. Certainly, we have not been cited to any cases to that effect.[2]

In fine, without denigrating the answer given by the majority, I would, instead, vacate the BIA's decision and remand the case for reconsideration in light of the CCA.

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2 I do not find it significant that in one instance we did not give the Secretary of State any particular deference as to people within the United States. See Scales v. INS, 237 F.3d 1159, 1165-66 (9th Cir. 2000). In that case, the statute conferred no authority regarding the subject upon the Secretary, and, in any event, the Secretary had not issued regulations to which we did owe deference. Id. We did not question the Secretary's authority in the proper arena.