





---

Minerva Batista's naturalization application, dated February 25, 1997, also lists her marital status as "married."

Batista also submitted a copy and a translation of a Dominican

Batista subsequently reentered the United States. The INS apprehended and detained him on October 15, 1998, in Philadelphia, Pennsylvania, and served him with a notice of intent to reinstate the 1997 removal order.<sup>2</sup> Batista declined to make a statement contesting the reinstatement. On October 16, 1998, the INS reinstated the 1997 removal order pursuant to 8 U.S.C. § 1231(a)(5).<sup>3</sup>

On April 8, 1999, Batista applied for citizenship to the INS District Director in Philadelphia, claiming that he had derived citizenship through his father under 8 U.S.C. § 1432(a). The statute provides, inter

been c ord Tw (thm) Tj -15 -27 TD 0.3 Tc 0d the into  
been( .4ftatesunfter[s]uch nidetham)lieoTjtemen sla-97w.5 e

---

<sup>2</sup> The government indicted Batista on charges of illegal entry, but later dropped them.

<sup>3</sup> This provision states: "If the Attorney General finds that an alien has reentered the United States illegally after having been removed . . . the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed . . . and the alien shall be removed under the prior order at any time after the reentry." 8 U.S.C. § 1231(a)(5).

parent . . . or thereafter begins to reside permanently in the  
United

that his father took legal custody of him before he reached the age of eighteen, as required by § 1432(a).

Batista did not appeal the denial of his citizenship claim to the Administrative Appeals Unit of the INS. On May 13, 1999, he was removed from the United States for the second time.

Batista

took sole legal custody of him after his parents' divorce. In support of his citizenship claim, Batista submitted to us two documents





(4) Scope and standard for review

---

judgment, and concluded: "We may reasonably assume that, in using the language from Rule 56 as the standard for granting de novo district court hearings on citizenship claims, Congress intended

of a trial court presented with a Rule 56 motion for summary judgment. The Supreme Court has stated that "a court of appeals cannot refuse to allow a de novo review of a citizenship claim if the evidence presented in support of the claim would be sufficient to entitle a litigant to trial were such evidence presented in opposition to a motion for summary judgment." Agosto, 436 U.S. at 756. Given this unusual function and the statutory language, we deem it appropriate under § 1252(b)(5) to look for a genuine issue of material fact as to citizenship in the

---

<sup>5</sup> We treat the "Divorce Sentence" document as a purported

---

accompanying seals. The double-sided copy of the divorce document

---







and



---

**III.**

For the reasons stated above, we transfer this proceeding to the district court for a hearing and decision on the nationality claim consistent with this opinion and pursuant to 8 U.S.C. § 1252(b)(5)(B).

**So ordered.**