

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

16226

16227

COUNSEL

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petitioner-appellant.EL

I

Abel Chaves Baeta was born in Portugal in 1959 and

If genuine issues of fact exist concerning the nationality claim, the statute prescribes a different procedure:

If the petitioner claims to be a national of the United States and the court of appeals find that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the

jurisdiction over the cases; and (3) the transfer is in the interests of justice." Castro-Cortez v. INS, 239 F.3d 1037, 1046 (9th Cir. 2001).

As to the first requirement, Baeta filed his habeas petition one day after the statutory appeal deadline, so transfer normally would be precluded. However, it is undisputed that Baeta gave the petition to the INS detention center authorities for mailing well within the appeal period. He is entitled to a constructive filing date as of that date. See Houston v. Lack, 487 U.S. 266, 270 (1988); Hostler v. Groves, 912 F.2d 1158, 1160 (9th Cir. 1990). Thus, his petition for review would have been timely if filed in the proper court.

As we have noted, the district court lacked jurisdiction over nationality issues under 8 U.S.C. § 1252(b)(5)(A). Thus, the second transfer requirement is satisfied.

The final requirement is that the transfer be "in the interest of justice." Because the purpose of the transfer statute "is to aid litigants who were confused about the proper forum for review," a petition that would be time-barred without a transfer satisfies the interest of justice test. Rodriguez-Roman v. INS, 98 F.3d 416, 423-24 (9th Cir. 1996). As we have noted, "[n]ormally transfer will be in the interest of justice because normally dismissal of an action that could be brought elsewhere is 'time-consuming and justice-defeating.'" Miller v. Hambrick, 905 F.2d 259, 262 (9th Cir. 1990) (quoting Goldlawr, Inc. v. Heiman, 369 U.S. 463, 467 (1962)). Due to the uncertain nature of jurisdiction in this area, the filing of the habeas petition is normally timely.

III

Baeta claims derivative citizenship by virtue of the citizen-

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