December 19, 1933

Mrs. Mariana S. Montano,
Florence, Arizona

Dear Mrs. Montano:

This is in response to your request, under date of November 22nd, and a request by your County Attorney, under date of December 7th, for an opinion of the Attorney General upon the following hypothetical questions:

Assuming that a woman who is a natural born citizen of the United States was married to a citizen of Mexico in the year 1874; that she resided in the United States at all times, both before and after her marriage; that her alien husband died in the year 1915; that she has not remarried. Is such a woman a citizen of the United States for the purpose of obtaining an old age pension under our recently enacted Old Agen Pension Act?

The first federal statute dealing with this question was enacted March 2, 1907 (Comp. St. Section 3060), Section 3 of which reads as follows:

> "Any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein."

Practically speaking, this statute is a codification of the common law. (See Petition of Dryedale, 20 Fed. 2nd 997)

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The above quoted provision was repealed by Section 7 of the Act of Congress, September 2, 1922 (42 Stat. 1022), but said repealing statute expressly provides that, "such repeal shall not * * * terminate citizenship resumed under such section."

Thus, it is clear that after the act of 1922, the woman in the instance case was still a citizen of the United States.

In Title 8, Section 9, U. S. C. A., enacted by Congress in the year 1925, this question was again dealt with in the following language:

> "The repeal of section 3 of Act March 2, 1907, chapter 2534, Thirty-fourth Statutes, page 1228, which provided that "any American woman who marries a foreigner shall take the nationality of her husband," and that "at the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein," shall not restore citizenship lost thereunder, nor terminate citizenship resumed thereunder; and any woman who had resumed thereunder citizenship lost by marriage shall, from September 22, 1922, have for all purposes the citizenship status as immediately preceding her marriage."

In view of the foregoing statutory provisions I am of the opinion that the woman mentioned in the above hypothetical question is now a citizen of the United States for all purposes. However, this opinion might not be applicable to a situation wherein a woman has been married to an

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alien who was not eligible to become a citizen. In other words, this opinion is intended to apply only to the present case and similar cases wherein the alien husband was eligible to become a citizen, as the alien husband in this case undoubtedly was.

Yours very truly,

Attorney General

FMB/GD

Assistant Attorney General

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