

### **Case Summary: Immigration Law Advisor**

U.S. Department of Justice, Executive Office for Immigration Review

[https://edit.justice.gov/sites/default/files/pages/attachments/2015/06/02/vol9no5\\_final.pdf](https://edit.justice.gov/sites/default/files/pages/attachments/2015/06/02/vol9no5_final.pdf)

#### **Ninth Circuit: *Garcia v. Lynch*, No. 11-73406, 2015 WL 2385402 (9th Cir. May 20, 2015):**

The Ninth Circuit granted a petition for review of the Board's denial of a motion to reconsider its prior dismissal of an appeal. An Immigration Judge had concluded that the petitioner (who was not represented by counsel) had been convicted of an aggravated felony. The Immigration Judge advised the respondent that he was ineligible to adjust his status and ordered his removal. Based on this advice, the petitioner waived his right to appeal to the Board. The petitioner nevertheless filed a pro se notice of appeal, which was dismissed because the petitioner had waived his right to file it. The petitioner thereafter retained counsel and filed a motion to reconsider, claiming that his waiver of appeal was not a knowing one. The Board denied the motion. The Ninth Circuit held that the petitioner's conviction was not for an aggravated felony and therefore concluded that the Immigration Judge was incorrect when he advised the petitioner that he was ineligible for relief from removal. The court held that the petitioner's waiver of appeal was thus not "considered and intelligent" and that the Board should have granted his motion for reconsideration.