U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Mora, Yunuen Berenice
Cross Border Lawyer
3444 Camino Del Rio N Suite 103
San Diego, CA 92108

DHS/ICE Office of Chief Counsel - SND
880 Front St., Room 2246
San Diego, CA 92101-8834

Name: GUZMAN-ARANDA, BERNARDO **A 047-347-949**

Date of this notice: 7/10/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.

Userteam: Docket

File: A047-347-949 – San Diego, CA

Date: JUL 10 2019

In re: Bernardo GUZMAN-ARANDA

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Yunuen B. Mora, Esquire

ON BEHALF OF DHS: Ted. Y. Yamada
Deputy Chief Counsel

APPLICATION: Reconsideration; termination; remand

This matter was last before the Board on September 23, 2014, when we dismissed the respondent's appeal from the Immigration Judge's decisions dated February 16, 2013, and June 20, 2013.[1] On July 25, 2018, the respondent filed a motion to reconsider for the purpose of termination of proceedings and in the alternative for a remand. The Department of Homeland Security filed an opposition to termination. The record will be reopened and remanded.

Motions to reconsider must be filed not later than 30 days after the date of the order from which reconsideration is sought. *See* section 240(c)(6)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(6)(B); 8 C.F.R. § 1003.2(b). Motions to reopen, with certain exceptions, must be filed not later than 90 days after the final administrative order of removal. *See* section 240(c)(7)(C)(i) of the Act; 8 C.F.R. § 1003.2(c)(2). The respondent acknowledges that his motion was not timely filed. He contends, however, that equitable tolling applies to the motion. Alternatively, he asserts that the Board should reconsider our last decision sua sponte in light of a change in the law.

The respondent states that his motion is based on the Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). *Pereira* held that a putative notice to appear that fails to designate the specific time or place of the noncitizen's removal proceedings is not a "notice to appear" under section 239(a) of the Act, 8 U.S.C. § 1229(a)(1) and so does not trigger the stop-time rule that applies to cancellation of removal applications. *Id.* at 2113-14. The respondent argues that his own Notice to Appear (NTA) did not specify the time and place for his hearing and was therefore not a valid NTA under section 239(a) of the Act, 8 U.S.C. § 1229(a) (which sets out the information to be included in a notice to appear and includes the time and place of the hearing).

The respondent further argues that jurisdiction vests with the Immigration Judge only when a valid charging document is filed with the Immigration Court. He reasons that because his NTA was lacking the time and place of his hearing, it was not valid, and the filing of the document with

[1] Previously, the United States Court of Appeals for the Ninth Circuit remanded the matter to the Board, and the Board remanded the case to the Immigration Judge.

the Immigration Court did not cause jurisdiction to vest with the Immigration Judge. For that reason, the respondent claims that the Immigration Judge and the Board have no jurisdiction over his case and proceedings should be terminated. The respondent alternatively argues that the NTA did not cut off his continuous residence for purposes of cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a).

The respondent's arguments concerning jurisdiction have been foreclosed by *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). That case held that a notice to appear that does not specify the time and place of an alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the requirements of section 239(a) of the Act, 8 U.S.C. § 1229(a), so long as a notice of hearing specifying this information is later sent to the alien. *See Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019) (agreeing with *Bermudez-Cota*). Here, a notice of hearing was served on the respondent several days after his Notice to Appear was issued (Exh. 1). Thus, termination of proceedings is not warranted.

The record will be remanded, however, to allow the respondent to pursue cancellation of removal. The Ninth Circuit, the controlling circuit in this matter, has held that a defective Notice to Appear omitting the time and place of the hearing cannot be cured by a subsequent notice of hearing for purposes of the stop-time rule as it applies to cancellation of removal applications. *See Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019). Prior to the Ninth Circuit's decision, the respondent was determined to be ineligible for cancellation of removal under section 240A(a) of the Act (IJ Dec. dated July 18, 2006). Specifically, he was determined to lack the required 7 years of continuous residence after being admitted in any status.[2] However, under the reasoning of *Lopez v. Barr*, the respondent's continuous residence in the United States was not cut off by service of his Notice to Appear or by his notice of hearing. Accordingly, we will reopen proceedings pursuant to 8 C.F.R. § 1003.2(a) and will remand the record for further proceedings.

ORDER: The respondent's motion to reconsider for the purpose of termination is denied.

FURTHER ORDER: The record is reopened pursuant to 8 C.F.R. § 1003.2(a) and is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

[2] The Immigration Judge observed that the respondent's conditional lawful resident status began on March 3, 2000 (IJ Decision dated July 18, 2006, at 5).