U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: A[redacted]- V[redacted], J[redacted] H[redacted] **A [redacted]-493**

Date of this notice: 9/17/2018

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:
Geller, Joan B

Userteam: Docket

File: [redacted]493 – Denver, CO Date: SEP 17 2018

In re: J[redacted] H[redacted] A[redacted]-V[redacted]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Lisa A. Guerra, Esquire

ON BEHALF OF DHS: Christine Longo
Assistant Chief Counsel

APPLICATION: Cancellation of removal; administrative closure; remand

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's decision dated September 26, 2017, that denied his motion for administrative closure and incorporated an earlier decision pretermitting his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The record will be remanded.

The Immigration Judge pretermitted and denied the respondent's application for cancellation of removal after finding that the respondent could not establish the 10 years of continuous physical presence required for that relief. The Immigration Judge based that determination on the service of the Notice to Appear (Form I-862) in these proceedings that terminated the respondent's accrual of continuous physical presence under the "stop-time" rule of section 240A(d)(1) of the Act. *See* section 240A(b)(1)(B) of the Act. However, subsequent to the Immigration Judge's decision, the United States Supreme Court ruled in *Pereira v. Sessions*, 138 S.Ct. 2105 (2018), that a Notice to Appear that fails to designate the specific time or place of an alien's removal proceedings, as in this case, is not a "Notice to Appear" under section 240A(d)(1) of the Act, and so does not trigger application of the stop-time rule. The respondent, therefore, is not disqualified from cancellation of removal on the basis determined by the Immigration Judge.[1] We will return the record to the Immigration Judge to determine whether the respondent is otherwise eligible for and deserving of that relief.

[1] The Department of Homeland Security's argument on appeal that the respondent received adequate notice of his hearing is misplaced. The basis for the Court's ruling in *Pereira v. Sessions* was not lack of notice, but that a document that does not specify the time, date, and place for the hearing does not meet the definition of a "Notice to Appear" for purposes of section 240A(d)(1) of the Act.

Inasmuch as the record will be remanded on the foregoing basis, we do not reach the respondent's arguments concerning whether the Immigration Judge should have granted his motion for administrative closure.[2]

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

[2] However, subsequent to the Immigration Judge's decision in this matter, the Attorney General ruled that the Board and Immigration Judges do not possess the authority to administratively close proceedings, except in a narrow range of circumstances not present here. *See Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) (over-ruling the Board's decision in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012) (holding that the Board and Immigration Judges possess the general authority to administratively close proceedings)). Therefore, inasmuch as the Immigration Judge did not possess the authority to administratively close the proceedings, the issue of whether he correctly denied the respondent's motion in the exercise of discretion is now moot.