



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: Z [REDACTED]-B [REDACTED], C [REDACTED]... A [REDACTED]-789

Date of this notice: 5/18/2020

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:
Gemoets, Marcos

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-789 – Philadelphia, PA

Date: MAY 18 2020

In re: C [REDACTED] Z [REDACTED]-B [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark R. Pokrandt, Esquire

APPLICATION: Cancellation of removal under section 240A(b) of the Act; termination

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's April 24, 2018, decision denying his application for cancellation of removal for certain nonpermanent residents under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security (DHS) has not responded to the appeal. The appeal will be dismissed in part and sustained in part and the record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

As an initial matter, we are not persuaded by the respondent's argument that proceedings should be terminated based on the holding in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (Respondent's Br. at 13-22). The respondent's argument is foreclosed by *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), and *Nkomo v. Att'y Gen. of the U.S.*, 930 F.3d 129, 132-34 (3d Cir. 2019). *Pereira v. Sessions* involved a distinct set of facts, and addressed the "narrow" issue of whether an NTA that does not specify the time and place at which proceedings will be held, as required by section 239(a)(1)(G)(i) of the Act, 8 U.S.C. § 1229(a)(1)(G)(i), triggers the "stop-time" rule for purposes of cancellation of removal.

While the NTA issued to the respondent did not identify the date and time for his initial removal hearing, it nonetheless vested the Immigration Judge with jurisdiction over the proceedings, because the record reflects that the respondent was served the required notices for his removal hearing (Exh. 1). See *Matter of Bermudez-Cota*, 27 I&N Dec. at 445-47; *Nkomo v. Att'y Gen. of the U.S.*, 930 F.3d at 132-34. We will deny the respondent's request to terminate his proceedings.

The DHS filed a motion to pretermitt the respondent's application for cancellation of removal based on his March 5, 2001, conviction for endangering the welfare of a child under section 4304(a) of the Pennsylvania Consolidated Statutes (IJ at 1-2; Exhs. 3, 7). The Immigration Judge granted the DHS's motion, concluding that the respondent is statutorily ineligible for cancellation of removal as an alien convicted of a "crime of child abuse" under section 237(a)(2)(E)(i) of the Act, 8 U.S.C. § 1227(a)(2)(E)(i) (IJ at 6-7). Subsequently, the United States Court of Appeals for the Third Circuit, in which jurisdiction this case arises, issued *Zhi Fei Liao v. Att'y Gen.*, 910 F.3d

714, 722-23 (3d Cir. 2018), which involved the same statute in question here, section 4304(a) of the Pennsylvania Consolidated Statutes. In that case the Court held that under the categorical approach, Pennsylvania's child endangerment statute does not fit within the generic definition of "child abuse" under section 237(a)(2)(E)(i) of the Act. *Zhi Fei Liao v. Att'y Gen.*, 910 F.3d at 723. Specifically, the Court held that endangering the welfare of a child under Pennsylvania law is not a crime of child abuse because the statute only requires proof of circumstances that "could threaten" the child's welfare, rather than a high risk of harm. *Id.* at 722-23. *Zhi Fei Liao v. Att'y Gen.*, controls here, and thus we will sustain the respondent's appeal with regard to his eligibility for cancellation of removal.

The record will be remanded for further consideration of the respondent's eligibility for cancellation of removal and any other issues the Immigration Judge deems appropriate. We express no opinion on the ultimate disposition of these proceedings. Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed with regard to the respondent's request for termination.

FURTHER ORDER: The appeal is sustained with regard to the respondent's application for cancellation of removal.

FURTHER ORDER: The record is remanded for further proceedings consistent with this order.



FOR THE BOARD