



**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*

**Walls, Lori K  
Washington Immigration Defense Group  
615 Second Ave.  
Suite 350  
Seattle, WA 98104**

**DHS/ICE Office of Chief Counsel - SEA  
1000 Second Avenue, Suite 2900  
Seattle, WA 98104**

**Name: DJURIC, MILOMIR**

**A 071-758-106**

**Date of this notice: 7/1/2019**

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:  
Kendall Clark, Molly**

**Userteam: Docket**

**For more unpublished decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)**

*DC*

Falls Church, Virginia 22041

---

File: A071-758-106 – Seattle, WA

Date: **JUL 01 2019**

In re: Milomir DJURIC

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Lori K. Walls, Esquire

ON BEHALF OF DHS: Eric Bakken  
Senior Attorney

APPLICATION: Reopening; termination

The final administrative decision in this case was entered by the Board on September 10, 2010, when we dismissed the respondent's appeal. Thereafter, following a remand from the United States Court of Appeals for the Ninth Circuit, in a decision dated May 30, 2014, we again dismissed the respondent's appeal and denied his motion to reopen. On August 20, 2018, the respondent filed the present motion. He contends that in light of the United States Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), reopening is warranted as he is now eligible for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b).<sup>1</sup> The Department of Homeland Security (DHS) opposes the motion. The motion will be granted and record will be remanded to the Immigration Judge for further proceedings.

Pursuant to the recent decision of the United States Court of Appeals for the Ninth Circuit, the respondent's Notice to Appear, which was served on the respondent on or around December 11, 2006, was defective for purposes of the cancellation of removal "stop-time" rule because it did not include the date and time of the removal hearing, and the subsequent Notices of Hearing containing such information did not cure the defective notice. *See Lopez v. Barr*, 925 F.3d 396, 399-405 (9th Cir. 2019). Therefore, it appears that the respondent may now have acquired the requisite 10 years of continuous physical presence for cancellation of removal. We note that the respondent currently appears to have two qualifying relatives for cancellation purposes.

Notwithstanding the DHS's opposition, in light of the law in the Ninth Circuit we find remand warranted under the provisions of 8 C.F.R. § 1003.2(a), for further proceedings. On remand, the respondent will have the burden of proving that he satisfies all the requirements for the relief sought, including exceptional and extremely unusual hardship and good moral character, and that he is deserving of the relief as a matter of discretion. The parties may supplement the record with

<sup>1</sup> The respondent also moves to terminate proceedings based on *Pereira v. Sessions*. This request is denied pursuant to our decision in *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), and the decision of the Ninth Circuit in *Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019), agreeing with *Bermudez-Cota*.

additional evidence relevant to the issues presented. The respondent will also have the opportunity on remand to apply for other relief for which he may be eligible.

ORDER: The motion to reopen is granted and the record is remanded to the Immigration Judge for further proceedings not inconsistent with the foregoing opinion and the entry of a new decision.

  
FOR THE BOARD