U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: P[redacted], J[redacted] A[redacted] **A [redacted]-610**
Riders:[redacted]

Date of this notice: 11/12/2019

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:
Gorman, Stephanie

Userteam: Docket

Files: [redacted]-610 – San Francisco, CA

Date: NOV 12 2019

In re: [redacted] A[redacted]-P[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENTS: Etan Newman, Esquire

ON BEHALF OF DHS: Susan Phan
Assistant Chief Counsel

The Department of Homeland Security (DHS) appeals from an Immigration Judge's August 6, 2018, decision terminating removal proceedings. The respondents have separately filed a motion to dismiss the DHS' appeal as moot, to which the DHS has not responded. Proceedings will be terminated based on respondents' unopposed motion.

The respondents sought termination pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). In *Pereira v. Sessions*, 138 S. Ct. at 2108, the Supreme Court 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] section 1229(a),' and does not trigger the stop-time rule" for purposes of cancellation of removal under sections 240A(a), (b) of the Immigration and Nationality Act. The respondents argued that under *Pereira v. Sessions*, jurisdiction did not vest with the Immigration Judge upon the filing of the Notice to Appear (NTA) because the NTA failed to designate the specific time and date of their removal proceedings. Thus, the respondents argued that removal proceedings should be terminated because they were improvidently begun. The Immigration Judge found that *Pereira v. Sessions* supported termination.

Subsequent to the Immigration Judge's decision, we issued our decision in *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). In that case, the alien also sought termination of his removal proceedings based on *Pereira v. Sessions*. We denied the motion to terminate and held that a NTA that does not specify the time and place of an alien's initial hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the requirements of section 239(a) of the Act, so long as a notice of hearing specifying this information is later sent to the alien. *See also Karangithi v. Whitaker*, 913 F. 3d 1158 (9th Cir. 2019); *Hernandez-Perez v. Whitaker*, 911 F.3d 305 (6th Cir. 2018). We emphasized that *Pereira* involved a distinct set of facts raising the narrow issue of how the "stop-time rule" is triggered.[1]

[1] Thus, in this case, the respondents' reliance on *Pereira v. Sessions* is misplaced because the Court's holding was specifically limited to the impact of the document on eligibility for cancellation of removal and did not address the question of jurisdiction.

The respondents' case is analogous to *Matter of Bermudez-Cota*. The respondents were personally served NTAs on December 9, 2015. Although the NTAs did not specify the time and date of the respondents' initial hearing, an examination of the record in this case reveals they were later sent notices of hearing indicating they should appear before the Immigration Judge on August 22, 2018.

Given that *Matter of Bermudez-Cota* is intervening precedent, issued subsequent to the Immigration Judge's decision in this case, the Board will vacate the Immigration Judge's August 6, 2018, decision, and sustain the DHS' appeal.

The respondents have separately filed a motion to dismiss the DHS' appeal as moot, and the DHS has not responded. *See* 8 C.F.R. § 1003.2(g)(3). We will construe respondents' motion as a motion to terminate. The respondents have submitted evidence showing that they were granted T-visas indicating that they are no longer removable from the United States as charged in the NTA. 8 C.F.R. § 214.11(d)(9) (prior orders of removal will be cancelled by operation of law as of the date of T-visa approval). Upon consideration of the motion and considering the lack of opposition, we will grant the respondents' motion; and, in doing so, terminate proceedings.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The respondents' motion to terminate proceedings is granted.

FOR THE BOARD