U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: M[redacted]-C[redacted], J[redacted]

A [redacted]-624

Date of this notice: 10/5/2018

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:
Adkins-Blanch, Charles K.

Userteam: Docket

File: [redacted] 624 – Orlando, FL Date: OCT - 5 2018

In re: J[redacted] M[redacted]-C[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Richard C. Reinhart, Esquire

ON BEHALF OF DHS: Tamaira Rivera
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Guatemala, has appealed from the Immigration Judge's decision dated August 28, 2017, that denied 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 based upon the determination that the respondent could not establish the 10 years of continuous physical presence required for that relief due to his return visit to Guatemala from December 2005 to August 2006,. *See* §§ 240A(b)(1)(B) and 240A(d)(2) (providing that an alien's departure from the United States for any period of 90 days, or 180 days in aggregate, shall interrupt the accrual of continuous physical presence) of the Act. That determination depended in turn on the so-called "stop-time" rule of § 240A(d)(1) of the Act, which provides that an alien's accrual of continuous physical presence shall end with the service of a Notice to Appear (Form I-862) in removal proceedings. However, subsequent to the Immigration Judge's decision, the United States Supreme Court ruled in *Pereira v. Sessions*, No. 17-459, 2018 WL 3058276, at *7 (U.S. June 21, 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 § 240A(d)(1) of the Act, and so does not trigger application of the stop-time rule. Therefore, the respondent is not disqualified for cancellation of removal on the basis determined by the Immigration Judge. We will return the record to the Immigration Judge to determine whether the respondent is otherwise eligible for and deserving of that relief.

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion.

FOR THE BOARD