U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: LOPEZ-MATEO, ALFONSO

A 213-082-356

Date of this notice: 6/24/2019

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:
Guendelsberger, John
Grant, Edward R.
Kendall Clark, Molly

Userteam: Docket

File: A213-082-356 – Los Angeles, CA Date: JUN 24 2019

In re: Alfonso LOPEZ-MATEO a.k.a. Alfonso Lopez Contreras

IN REMOVAL PROCEEDINGS

INTERLOCUTORY APPEAL

ON BEHALF OF RESPONDENT: Yesika M. Figueroa, Esquire

The respondent, a native and citizen of Mexico, has filed an interlocutory appeal from the Immigration Judge's September 24, 2018, decision, denying the respondent's motion to reconsider a decision dated August 20, 2018. As a general rule, the Board does not entertain interlocutory appeals. *See Matter of M-D-*, 24 I&N Dec. 138, 139 (BIA 2007). In this case, however, we deem it appropriate to exercise jurisdiction over this interlocutory appeal. The appeal will be sustained in part and the record will be remanded to the Immigration Court for further proceedings consistent with this decision.

The respondent entered the United States on or about January 22, 2008 (Exh. 1; Respondent's Attachment to Form EOIR-26, Notice of Appeal). On June 5, 2017, he was personally served with a Notice to Appear (NTA) that did not specify the time and place of his removal proceedings (Exh. 1), and on June 12, 2017, was served with a notice of hearing.

On August 13, 2018, the respondent filed a motion to terminate his removal proceedings pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). Specifically, the respondent argued that his removal proceedings should have been terminated because his NTA is legally defective and is insufficient to commence removal proceedings, inasmuch as it does not contain the date and time of his removal proceedings. In the alternative, the respondent argued he is statutorily eligible for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), because the NTA did not trigger the stop-time rule interrupting his requisite period of continuous physical presence (Respondent's Statutory Motion to Terminate in Light of *Pereira v. Sessions* at 5-6).

On August 20, 2018, the Immigration Judge denied the respondent's motion to terminate concluding that *Pereira v. Sessions* does not require or compel termination of proceedings. The Immigration Judge, however, did not address the respondent's alternative request regarding his application for cancellation of removal. Subsequent to the August 20, 2018, decision, the respondent filed a motion to reconsider with the Immigration Court indicating that the Immigration Judge did not address his request to find him statutorily eligible for cancellation of removal (Respondent's Motion to Reconsider at 3).[1]

[1] The respondent's motion to reconsider did not challenge the Immigration Judge's decision to deny the respondent's request to terminate removal proceedings; furthermore, the respondent acknowledges the court's jurisdiction over his removal proceedings (Respondent's Attachment to Form EOIR-26; Respondent's Motion to Reconsider at 3). Therefore, that issue is not before us.

On September 24, 2018, relying on our decision in *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), the Immigration Judge denied the respondent's motion to reconsider focusing on the jurisdictional aspect of the respondent's request but did not address his arguments concerning his eligibility for cancellation of removal.

We recently held that where a NTA does not specify the time and place of an alien's removal proceedings, the subsequent service of a notice of hearing containing that information "perfects" the deficient NTA, satisfies the notice requirements of section 239(a)(1) of the Act, and triggers the stop-time rule under section 240A(d)(1)(A) of the Act. *Matter of Mendoza-Hernandez & Capula-Cortes*, 27 I&N Dec. 520, 529 (BIA 2019). The Ninth Circuit Court of Appeals, however, has since overruled that decision, holding that a NTA that is defective under *Pereira v. Sessions* cannot be cured by a subsequent notice of hearing. *Lopez v. Barr*, No. 15-72406, 2019 WL 2202952 *8 (9th Cir. May 22, 2019).

Therefore, the respondent appears to have the requisite 10 years of continuous physical presence for cancellation of removal because neither the service of the June 5, 2017, NTA nor the service of the June 12, 2017, notice of hearing triggered the stop-time rule. Therefore, we will remand the record to the Immigration Court for further proceedings. On remand, the respondent should have the opportunity to apply for cancellation of removal and the parties may submit additional evidence and arguments pertinent to this application for relief. By remanding this matter, we express no opinion on the outcome of this case.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained in part.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.

FOR THE BOARD