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

Oosterhof, Melissa Marie
Oosterhof Law Office, PLLC, Melissa M. Oosterhof
1910 PACIFIC AVENUE
STE. 9300
DALLAS, TX 75201

DHS/ICE Office of Chief Counsel - DAL
125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324

Name: A[redacted]-V[redacted], E[redacted]... **A [redacted]-271**

Date of this notice: 4/16/2019

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:
Cole, Patricia A.

Hurr. dyl
Userteam: Docket

File: A[redacted]-271 – Dallas, TX

Date: APR 16 2019

In re: E[redacted] A[redacted] A[redacted]-V[redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Melissa M. Oosterhof, Esquire

APPLICATION: Reconsideration; reopening

The respondent is a native and citizen of Honduras. On August 8, 2018, she filed a motion to reconsider and terminate in light of *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), with an alternative motion to reopen sua sponte.[1] The motion to reconsider will be denied. The motion to reopen will be granted. The record will be remanded.

This case was last before the Board on April 23, 2018. At that time the respondent was a derivative beneficiary of her mother's asylum application. We dismissed the mother's appeal because the mother did not sufficiently establish that she was or would be persecuted on account of her membership in a cognizable particular social group. As a result, we affirmed the Immigration Judge's decision ordering the respondent removed to Honduras.

We will deny the motion to reconsider. First, the respondent's motion is untimely because it was filed more than 30 days after our prior decision in this case. *See* 8 C.F.R. § 1003.2(b)(2) (motions for reconsideration must be filed within 30 days after the mailing of the Board decision). Second, the motion does not articulate any legal or factual error in our prior decision to dismiss the respondent's mother's appeal. *See* 8 C.F.R. § 1003.2(b)(1).

The respondent argues that the filing deadline should be equitably tolled due to *Pereira v. Sessions*, the issuance of which the respondent asserts constitutes an extraordinary circumstance (Motion at 6-8). In that case 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 Immigration and Nationality Act],' and does not trigger the stop-time rule" for purposes of cancellation of removal under section 240A(b) of Act, 8 U.S.C. § 1229b(b). *Pereira v. Sessions*, 138 S. Ct. at 2108. The respondent argues that under *Pereira v. Sessions*, jurisdiction over her proceedings never vested with the Immigration Judge, despite the filing of the notice to appear in Immigration Court, because that notice did not designate the specific time and date of her initial removal hearing (Motion at 4-5). Thus, she argues, these proceedings should be terminated. The respondent also argues that she diligently filed the instant motion within a reasonable time after *Pereira v. Sessions* was decided (Respondent's Motion at 7-8).

[1] The respondent initially filed her motion to reconsider and reopen on July 23, 2018, but the Board rejected the filing for lack of a motion filing fee or fee waiver request form.

The respondent's arguments are foreclosed by *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). In that case, we held that a notice to appear that does not specify the time and place of an alien's initial hearing vests an Immigration Judge with jurisdiction over removal proceedings so long as a notice of hearing specifying this information is later sent to the alien. We emphasized that *Pereira v. Sessions* involved a distinct set of facts raising the narrow issue of when (or whether) the "stop time rule" is triggered. Because the respondent in *Matter of Bermudez-Cota* received proper notice of the time and place of his removal proceedings when he received the notice of hearing, we held that the notice's omission of the time and place of his initial removal hearing was not a jurisdictional defect.

The respondent, like the alien in *Matter of Bermudez-Cota*, was sent a notice of hearing informing her that she should appear before the Immigration Judge, and there is no indication in the record that she did not appear as scheduled. She also is not seeking cancellation of removal under section 240A of the Act. Under the circumstances, we conclude that jurisdiction properly vested with the Immigration Judge. Thus, termination is unwarranted, and there is no basis for reconsideration.[2]

The respondent alternatively requests that we reopen proceedings sua sponte because she is eligible to self-adjust based on her Special Immigrant Juvenile Status ("SIJS") (Motion at 8-9). In support of the motion to reopen she has submitted evidence that she filed a Form I-360 (Petition for Amerasian, Widow(er) or Special Immigrant), which remains pending. She also provided an order from the District Court, 303rd Judicial District, finding that the respondent was abandoned by her father, that reunification with the father is not possible, and it is not in the respondent's best interest to return her to Honduras. *See* section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J) (Motion, Attached Exh. D, E).

We will exercise our exercise our limited discretion to reopen proceedings. *See Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). The respondent's motion to reopen sua sponte is accompanied by evidence that is material and was previously unavailable, and that demonstrates prima facie eligibility for SIJS.[3] *See* 8 C.F.R. § 1003.2(c)(1); *see also INS v. Abudu*, 485 U.S. 94, 104-06 (1988). We will remand the record for further proceedings pertaining to SIJS. On remand the parties should be given an opportunity to update the record regarding the respondent's pending petition.

[2] For the same reasons we conclude that sua sponte reconsideration is not warranted (Motion at 8).

[3] We note that guidance provided to Immigration Judges by the Chief Immigration Judge states that "appropriate time must be given for [USCIS] to adjudicate the Form I-360 after the requisite state or juvenile court findings have been made." Memorandum from Brian M. O'Leary, Chief Immigration Judge, to Immigration Judges (March 24, 2015) (Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of the New Priorities).

Accordingly, the following orders will be entered.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen sua sponte is granted.

FURTHER ORDER: The record is remanded for further proceedings consistent with this opinion and for the entry of a new decision.

FOR THE BOARD