**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

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**Name: ARRIETA CRUZ, MARIA**

**A 216-171-871**

**Date of this notice: 11/1/2018**

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

Userteam: Docket

File: A216-171-871 – Pompano Beach, FL

Date: NOV - 1 2018

In re: Maria ARRIETA CRUZ

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Idalis Perez, Esquire

ON BEHALF OF DHS: Patricia B. Kelly Le Bienvenu
Assistant Chief Counsel

APPLICATIONS: Continuance; remand; termination of proceedings

The respondent appeals the Immigration Judge's decision of May 14, 2018, which denied her request for another continuance and ordered her to be removed to Mexico. The respondent submitted a motion to reopen, remand, and terminate her proceedings. The Department of Homeland Security (DHS) opposes the appeal. The appeal from the Immigration Judge's decision will be sustained and the record will be remanded. The motion to terminate will be denied.

We review findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review all other issues under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is a native and citizen of Mexico. The record reflects that the respondent appeared before an Immigration Judge for the first time, at master calendar proceedings, on April 18, 2018. She was granted a continuance until May 14, 2018, to complete and file an application for cancellation of removal, and she was warned that if her application was not filed on that day, it would be considered abandoned and denied. *See* Tr. at 10-11. The respondent stated that she understood, but the hearing transcript clearly reflects some confusion. Her statement on appeal details her confusion. The record further reflects that on May 14, 2018, the respondent appeared before the Immigration Judge at a second master calendar, with counsel but without a completed application for cancellation of removal. The Immigration Judge denied her request for a further continuance, found that her cancellation application was deemed abandoned for failure to file, and ordered her to be removed. *See* Tr. at 15-20; IJ at 2-5.

We are persuaded by the respondent's assertion on appeal that her proceedings were held in a manner that violated her right to due process, specifically that she was denied a full and fair hearing. *See* Brief at 4-6. She contends that she retained her counsel only several days before the May 14, 2018, master calendar hearing due to her financial difficulties, and that her counsel

interviewed her but was not apprised of the deadline set by the Immigration Judge. *Id.* at 4, 6. She claims that her counsel was able to prepare a skeletal application for cancellation of removal, spoke to a psychologist, and requested additional documents to supplement the application for cancellation of removal, but due to the limited number of days to prepare, the application and supporting documents were not ready to be filed with the court. *Id.* at 4-5. She asserts that she suffered prejudice as a result of the Immigration Judge's decision to enter an order of removal, that the Immigration Judge's order was premature and violated her right to due process, and that she meets all the statutory requirements for cancellation of removal. *Id.* at 5.

An immigration judge may grant a continuance in his discretion if good cause is shown. *See* 8 C.F.R. § 1003.29; *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009). An immigration judge's decision denying a motion for a continuance will not be reversed unless the alien establishes that the denial caused him actual prejudice and materially affected the outcome of his case. *See Matter of Perez-Andrade*, 19 I&N Dec. 433, 434 (BIA 1987); *Matter of Sibrun*, 18 I&N Dec. 354, 355-56 (BIA 1983) (a decision to deny a continuance will not be overturned on appeal unless it appears that the respondents were deprived of a full and fair hearing). The record here reflects that the respondent showed good cause for a second continuance under the circumstances set forth above. Only one continuance, of less than a month, had previously been granted in this case. The respondent was able to secure counsel in that time, and counsel acted promptly to prepare for the case, including consulting with a psychologist. A further continuance would have been reasonable at the May 14, 2018, hearing: there was good cause to grant it, and the respondent, who appears to be prima facie eligible for cancellation of removal, was prejudiced by the denial of the continuance. The appeal from the Immigration Judge's denial of the continuance will therefore be sustained and the record will be remanded.

However, we will deny the respondent's request to terminate her removal proceedings based on her contention that, pursuant to the decision of the United States Supreme Court in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), her notice to appear was defective because it did not include the time and place of her removal hearing, and that the Immigration Court therefore had no jurisdiction in her case. *See* Brief at 1-3. In *Pereira,* the Court held that a notice to appear that does not include the time and place of the hearing does not trigger the Act's stop-time rule ending the period of continuous presence in the United States for cancellation of removal purposes. The Court did not hold that any notice to appear that does not include the time and place of an respondent's hearing is defective per se, and requires termination.

Further, we have now held that a notice to appear that does not specify the time and place of an alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the requirements of section 239(a) of the Act, 8 U.S.C. § 1229(a), so long as a notice of hearing specifying this information is later sent to the alien, distinguishing *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). *See Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). The record reflects that the respondent was sent such information. *See* Notices dated April 2, 2018, and April 18, 2018. The stop-time rule is not at issue in this case. We will deny the respondent's motion to terminate her removal proceedings based on her claim of an inadequate notice to appear.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal from the Immigration Judge's denial of a continuance is sustained and the record is remanded to the Immigration Judge for further proceedings consistent with this decision.

FURTHER ORDER: The motion to terminate is denied.

FOR THE BOARD