U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: E[redacted]-M[redacted], A[redacted] A... **A[redacted]-358**

Date of this notice: 12/13/2019

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:
Goodwin, Deborah K.

Userteam: Docket

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File: A[redacted]-358 – San Antonio, TX

Date: DEC 13 2019

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

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Rachel Thompson, Esquire

ON BEHALF OF DHS: Emmanuel Garcia
Assistant Chief Counsel

APPLICATION: Termination

The Department of Homeland Security (DHS) appeals the decision of the Immigration Judge dated August 14, 2018, granting the respondent's motion to reopen and terminate removal proceedings. The DHS appeal will be sustained. However, the motion to reopen will be granted sua sponte and proceedings will be terminated.

Before the Immigration Judge, the respondent filed a motion to reopen and terminate removal proceedings. In the August 14, 2018, decision, the Immigration Judge, relying on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), granted the respondent's motion to reopen and terminate removal proceedings without prejudice because the respondent's notice to appear, did not set forth the time and place of her hearing.[1] In *Pereira*, 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 section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). *Pereira*, 138 S. Ct. at 2108. The DHS argues on appeal that the notice to appear properly vested jurisdiction with the immigration court, and that *Pereira v. Sessions* only applies to the stop-time rule in the context of cancellation of removal and provides no lawful basis for terminating proceedings (DHS's Br. at 8-10).

Since the Immigration Judge's August 14, 2018, decision, we issued a precedent decision holding 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. *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). We emphasized that *Pereira* involved a distinct set of facts raising the narrow issue of when (or whether) the "stop-time rule" is triggered. Because the respondent in *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 omission of the time and place of his initial removal hearing in the notice to appear was not a jurisdictional defect.

[1] We note that the respondent's notice to appear does set forth the place she was to appear before an immigration judge.

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Here, the first Notice of Hearing was served on June 17, 2004, which listed the date, time and location, and several subsequent notices of hearings were also issued. Moreover, the respondent has been able to file motions and applications for relief from removal with the correct and appropriate immigration courts. In July 2018, the respondent's attorney filed a motion to reopen and terminate with the Immigration Judge. Because the respondent received proper notice of the time and place of her proceedings when she received the hearing notices, her notice to appear was not defective, and the Immigration Judge had proper jurisdiction over her removal proceedings. *See Matter of Bermudez-Cota*, 27 I&N Dec. at 447. Accordingly, the DHS's appeal of the decision terminating proceedings based on *Pereira* will be sustained.

Subsequent to the decision in August 2018 that terminated proceedings, however, the respondent's application to adjust status (I-485), based on the previously approved application for special immigrant juvenile status (I-360), was granted by the United States Citizenship and Immigration Services (USCIS) (Exh. G, page 25). USCIS records also confirm that the respondent received her permanent resident card on March 28, 2019. The DHS has not argued that the respondent's I-485 was improperly approved or invalid.

In light of the evidence demonstrating that the respondent is now a lawful permanent resident of the United States, and no longer subject to removal proceedings, we deem it appropriate to exercise our sua sponte authority to grant the respondent's motion to reopen and terminate proceedings. *See* 8 C.F.R. § 1003.2(a); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

ORDER: The DHS's appeal is sustained.

FURTHER ORDER: The respondent's motion to reopen is granted, and the respondent's proceedings are terminated.

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