U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: HERNANDEZ-LAZO, FRANCISC... **A 200-711-490**

Date of this notice: 6/27/2019

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

Userteam: Docket

File: A200-711-490 – Los Angeles, CA Date: JUN 27 2019

In re: Francisco Jose HERNANDEZ-LAZO

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Erika L. Roman, Esquire

APPLICATION: Termination; reopening

On March 15, 2018, the Board dismissed the respondent's appeal from the Immigration Judge's October 13, 2017, decision denying his applications for asylum and related relief. The respondent has filed a motion to terminate the proceedings due to a lack of jurisdiction or, alternatively, to reopen to apply for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1).[1] The record before us does not include a brief in opposition to the motion from the Department of Homeland Security (DHS). The motion to terminate will be denied, but the motion to reopen will be granted and the record will be remanded to the Immigration Judge for further proceedings.

As an initial matter, termination is not warranted in light of the Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). The respondent contends that under *Pereira v. Sessions* his Notice to Appear (Form I-862) was defective because it failed to designate the date and time of his hearing as required under section 239(a) of the Act, 8 U.S.C. § 1229(a) (Motion to Reopen at 2-6). Accordingly, the respondent argues, the filing of the Notice to Appear with the Immigration Court in his case was insufficient to commence removal proceedings against him. We disagree.

The decision in *Pereira v. Sessions* involved the "stop-time" rule in cancellation of removal cases. The respondent asserts that the decision should not be limited to such cases, but should be applied to all Notices to Appear that do not include the date and time of the hearing. However, 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, 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, 447 (BIA 2018); *see also Karingithi v. Whitaker*, 913 F.3d 1158, 1161-62 (9th Cir. 2019) (deferring to *Bermudez-Cota* and concluding that an Immigration Court had jurisdiction over the proceedings where the initial notice to appear did not specify the date or time of the proceedings, but later notices of hearings contained this information).

[1] On June 24, 2019, the Board granted the respondent's request for a stay of removal pending adjudication of the instant motion.

Here, the record indicates that the respondent subsequently received proper notices of his removal hearings, which specified the dates, times, and locations of his scheduled hearings; and he attended these hearings. Consequently, the requirements of section 239(a) of the Act were satisfied in this case, and the Immigration Judge was vested with jurisdiction over the removal proceedings.

However, in view of the facts and circumstances presented here, including the lack of opposition from DHS and developments in the law regarding the stop-time rule, we will exercise our sua sponte authority to reopen and remand the record to the Immigration Judge for further proceedings. *See* 8 C.F.R. § 1003.2(a); *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997); *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019) (finding that for purposes of the stop-time rule, a notice of hearing cannot cure a notice to appear's omission of the time and place of a hearing). In particular, under *Lopez v. Barr*, the Notice to Appear that was served upon the respondent in 2010 did not trigger the stop-time rule, and the respondent now appears to have the requisite 10 years of continuous physical presence for cancellation of removal (Motion to Reopen at 2). *See* sections 240A(b)(1)(A) and (d)(1)(A) of the Act. Consequently, sua sponte reopening and remand are warranted in this case. On remand, the parties may submit evidence and arguments pertinent to the respondent's application for cancellation of removal. We express no opinion on the outcome of this case. Accordingly, the following orders are entered.

ORDER: The respondent's motion to terminate is denied.

FURTHER ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision, and for the entry of a new decision.

FOR THE BOARD