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

Jajonie Daman, Eman Hayat
Jajonie Daman, P.C.
29201 Telegraph Road
Suite 330
Southfield, MI 48034

DHS/ICE Office of Chief Counsel - DET
333 Mt. Elliott St., Rm. 204
Detroit, MI 48207

Name: Y[redacted], W[redacted] [redacted]

A [redacted]-044

Date of this notice: 1/28/2019

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:
Grant, Edward R.

Userteam: Docket

File: A[redacted]-044 – Detroit, MI

Date: JAN 28 2019

In re: W[redacted] M[redacted] Y[redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Eman H. Jajonie-Daman, Esquire

APPLICATION: Reopening

This matter was most recently before us on April 5, 2018, when we denied the respondent's motion to reopen as untimely and barred by numerical limitations. The final administrative decision remains the Board's September 29, 2010, dismissal of his appeal. On April 30, 2018, the respondent filed an untimely and number-barred motion to reopen proceedings, and on July 23, 2018, the respondent filed an untimely motion to reconsider and terminate proceedings. *See* sections 240(c)(7)(A), (C)(i) of the Immigration and Nationality Act; 8 U.S.C. §§ 1229a(c)(7)(A), (C)(i); 8 C.F.R. §§ 1003.2(b), (c)(2). The Department of Homeland Security (DHS) has not responded to these motions.

We first address the respondent's motion requesting reconsideration and termination of proceedings. A party seeking reconsideration requests that the original decision be reexamined in light of alleged legal or factual errors, a change of law, or an argument or aspect of the case that was overlooked. *See Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006); *Matter of Cerna*, 20 I&N Dec. 399 (BIA 1991). The respondent contends that his proceedings should be terminated in light of the Supreme Court's recent decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). In particular, the respondent claims that 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 Immigration and Nationality Act, 8 U.S.C. § 1229(a). Accordingly, the respondent argues, the filing of the Notice to Appear with the Immigration Court in his case was insufficient to vest jurisdiction with the Immigration Court.

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 time and place of the hearing. However, as this Board recently explained in *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), a Notice to Appear that does not specify the time or 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. 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 that he attended these hearings. Consequently, the requirements of section 239(a) of the Act were satisfied in this case, and termination is unwarranted.

We next turn to the respondent's motion to reopen proceedings. The respondent continues to argue that he is a Chaldean Christian and that reopening is warranted based on changed conditions in Iraq material to his eligibility for asylum, withholding of removal and protection under the Convention Against Torture. The time limitation for motions to reopen does not apply to a motion to reopen proceedings to apply or reapply for asylum, based on changed country conditions, if such evidence is material and was not available and could not have been discovered or presented at the former hearing. 8 C.F.R. § 1003.2(c)(3)(ii); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). The motion must state the new facts to be proved and must be supported by evidentiary material. *Id.* The alien must show a "reasonable likelihood of success on the merits so as to make it worthwhile to develop the issues further at a full evidentiary hearing." *Matter of A-N- & R-M-N-*, 22 I&N Dec. 953 (BIA 1999).

We find that the respondent's motion warrants reopening for changed country conditions. 8 C.F.R. § 1003.2(c)(3)(ii). Along with the current motion, the respondent has submitted a Form I-589, additional evidence which he alleges corroborates his Chaldean ethnicity and his Christian religion, and updated country condition evidence for Iraq. He argues that he received this personal information regarding his religion through a Freedom of Information Act request, and that the information overcomes the Immigration Judge's 2008 adverse credibility finding (IJ at 17-18). Given the lack of DHS opposition, in conjunction with current conditions in Iraq and the respondent's claim that the proffered evidence regarding his Christianity was at least constructively known to the DHS, we will remand the record to allow the respondent to present his application for relief from removal. The following orders will, thus, be entered.

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

FURTHER ORDER: The respondent's motion to reopen is granted, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing decision.

FOR THE BOARD