



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: M [REDACTED], M [REDACTED] T [REDACTED]**

**A [REDACTED]-874**

**Date of this notice: 6/18/2019**

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:  
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

File: A-874 – New York, NY

Date: JUN 18 2019

In re: M-T-M

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: W. Paul Alvarez, Esquire

APPLICATION: Reopening

On July 26, 2011, the Board dismissed the respondent's appeal from the Immigration Judge's decision denying her application for cancellation of removal for failure to establish that removal to Ecuador would result in exceptional and extremely unusual hardship to a qualifying relative. See section 240A(b)(1)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1)(D). On December 17, 2018, the respondent filed the instant untimely motion to reopen. See section 240(c)(7)(C)(i) of the Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). The Department of Homeland Security has not opposed this motion. The Board will reopen the proceedings sua sponte and remand the record to the Immigration Judge. See 8 C.F.R. § 1003.2(a).

Initially, the respondent seeks reopening and termination of the proceedings, asserting that the Notice to Appear (NTA) was defective in light of *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), because it did not specify the time and place of the initial removal hearing. However, the Board subsequently determined in *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), that a NTA that does not specify the time and place of the 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 (NOH) specifying this information is later sent to the alien. In the instant case, the respondent was served with a NOH specifying the date and time of her initial removal hearing. Hence, jurisdiction over these proceedings vested with the Immigration Judge.<sup>1</sup>

The respondent alternatively seeks reopening to enable her to reapply for cancellation of removal and to apply for adjustment of status. With this motion, the respondent has offered evidence of the hardship that will likely accrue to the respondent and her family members, particularly to her 77-year-old mother (a lawful permanent resident), who suffers from serious health issues and is dependent on the respondent for care, as well as to her 17-year-old daughter (a United States citizen), who has been suffering from serious mental health problems. She has

<sup>1</sup> Insofar as the respondent asserts that the decision *Matter of Bermudez-Cota* was wrongly decided, we emphasize that following our decision in *Matter of Bermudez-Cota*, the United States Court of Appeals for the Second Circuit also concluded that *Pereira v. Sessions* "is not properly read to void jurisdiction in cases in which an NTA omits a hearing time or place." *Banegas Gomez v. Barr*, 922 F.3d 101, 110 (2d Cir. 2019).

also offered evidence of her character, her very long residence and ties in the United States, and other equities acquired in the United States.

Upon consideration of the particular circumstances present in this case, including the lack of opposition from the Department of Homeland Security, we find exceptional circumstances and will exercise our sua sponte authority to grant the respondent's unopposed motion to reopen, and remand the record to the Immigration Judge to enable the respondent to reapply for cancellation of removal and for other action as deemed appropriate. *See Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997); 8 C.F.R. § 1003.2(a). On remand, the parties will have an opportunity to update the record, and the Immigration Judge will issue a new decision. Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this decision.

Molly Randall Clark  
FOR THE BOARD