



**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]-G [REDACTED], M [REDACTED]**

**A [REDACTED]-653**

**Date of this notice: 2/7/2019**

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

Huradyl  
Userteam: Docket

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*WJ*

Falls Church, Virginia 22041

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File: [REDACTED]-653 – San Francisco, CA

Date: **FEB – 7 2019**

In re: M [REDACTED] E [REDACTED] -G [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Saad Ahmad, Esquire

ON BEHALF OF DHS: Vanessa Woodman De Lazo  
Assistant Chief Counsel

APPLICATION: Reconsideration

The respondent has filed a motion requesting that the Board reconsider the decision of August 23, 2017, and terminate proceedings. The motion to reconsider will be denied. The respondent has also requested sua sponte reopening. The record will be remanded.

A motion to reconsider must identify a material error of fact or law in the decision for which reconsideration is being requested. 8 C.F.R. § 1003.2(b)(1); *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006).

The motion to reconsider has been filed out of time and will be denied. A motion to reconsider a decision of the Board must be filed within 30 days after the date of that decision. 8 C.F.R. § 1003.2(b)(2). See section 240(c)(6)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(6)(B). The record reflects, however, that the Board did not receive the motion until July 26, 2018, more than 11 months after our August 23, 2017, decision. The motion to reconsider was therefore filed out of time.

Even if equitable tolling applies, the motion will be denied on the merits. The respondent's motion challenges the validity of the Notice to Appear that initiated the proceedings, based on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). However, this Board has 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. *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018); see also *Karingithi v. Whitaker*, --F.3d--, 2019 WL 333335 (9th Cir. 2019) (deferring to *Bermudez-Cota*). In the instant case, while the Notice to Appear did not specify the time and place of the initial removal hearing, a Notice of Hearing specifying the time and place of the initial removal hearing was later sent to the respondent, as were subsequent notices. Thus, the Notice to Appear was not

defective, and the Immigration Judge did have jurisdiction over the respondent's removal proceedings. Therefore, the motion to reconsider will be denied.

The respondent has also requested sua sponte reopening. The respondent argues that he is now eligible for cancellation of removal in light of the *Pereira v. Sessions* decision, which held that a Notice to Appear that fails to designate the specific time and place of the removal proceedings does not trigger the stop-time rule. The respondent is married to a United States citizen and has two United States citizen stepchildren (including one with severe autism). The respondent is the beneficiary of an approved visa petition filed on his behalf by his wife. The respondent, through counsel, testified that he entered the United States in 2007 (Exh. 1; Tr. at 11). The Notice to Appear was issued in 2008, but the Notice to Appear did not contain the specific time and place of the respondent's initial removal hearing (Exh. 1). In light of the overall circumstances of this case, we will reopen the proceedings sua sponte and remand the record for consideration of the respondent's present eligibility for cancellation of removal or any other relief from removal for which he may be eligible. See 8 C.F.R. § 1003.2(a).

Accordingly, the following orders will be entered.

ORDER: The motion to reconsider is denied.

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

  
 FOR THE BOARD