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

Wong, Margaret W
Margaret W. Wong
3150 Chester Avenue
Cleveland, OH 44114

DHS/ICE Office of Chief Counsel - SFR
P.O. Box 26449
San Francisco, CA 94126-6449

Name: BHOGANADHAM, SURESH KUM... **A 089-050-426**

Date of this notice: 7/12/2019

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: A089-050-426 – San Francisco, CA

Date: JUL 12 2019

In re: Suresh Kumar BHOGANADHAM

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Margaret W. Wong, Esquire

ON BEHALF OF DHS: Mark W. Payne
Assistant Chief Counsel

APPLICATION: Reopening

The respondent is a native and citizen of India. He filed an untimely motion to reconsider based on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) on July 30, 2018, after the Board dismissed his appeal on August 25, 2016. Section 240(c)(6)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(6)(B); 8 C.F.R. § 1003.2(b). Our August 25, 2016, decision affirmed an Immigration Judge's decision finding the respondent subject to removal as charged, and denying his applications for adjustment of status and voluntary departure. Sections 240B(b) and 245(a) of the Act, 8 U.S.C. §§ 1229c(b), 1255(a). The Department of Homeland Security (DHS) opposes the motion, which will be granted.

The Immigration Judge determined that the respondent did not have the 10 years of continuous physical presence required to be eligible for cancellation of removal for nonpermanent residents, under section 240A(b) of the Act, 8 U.S.C. § 1229b(b). *See* section 240A(b)(1)(A) of the Act; IJ at 4; Tr. at 51-53, 56-57. Our prior decision noted that the respondent had not identified any error in the Immigration Judge's decision concerning the denial of cancellation of removal. Board at 2, n. 2, Aug. 25, 2016.

Since our last decision, the Supreme Court has determined 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, 8 U.S.C. § 1229(a)(1) and so does not trigger the stop-time rule" that applies to cancellation of removal applications. *Pereira v. Sessions*, 138 S. Ct. at 2113-14.

Furthermore, the United States Court of Appeals for the Ninth Circuit, the controlling circuit in this case, has determined that, regarding the stop-time rule for cancellation of removal, a Notice to Appear that is defective under *Pereira* cannot be cured by a subsequent Notice of Hearing. *Lopez v. Barr*, 925 F.3d 396, 399-405 (9th Cir. 2019).[1]

[1] The respondent filed a "supplemental brief" on May 29, 2019, citing *Lopez v. Barr*. The DHS did not respond to the May 29, 2019, filing.

The Notice to Appear served on the respondent did not include the time and place of his hearing (Exh. 1). Accordingly, the service of the Notice to Appear did not stop the clock on the respondent's continuous physical presence.

Under the circumstances, we will reconsider our last decision pursuant to 8 C.F.R. § 1003.2(a), and will remand the record to the Immigration Judge for further proceedings.

ORDER: The Board's decision dated August 25, 2016, is reconsidered pursuant to 8 C.F.R. § 1003.2(a).

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.[2]

FOR THE BOARD

[2] The parties should advise the Ninth Circuit of the entry of this order.