



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: BUSTOS-MORENO, JULIA

A 075-513-721

Date of this notice: 7/30/2019

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:
Donovan, Teresa L.

User team: Docket

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Falls Church, Virginia 22041

File: A075-513-721 – San Diego, CA

Date: JUL 30 2019

In re: Julia BUSTOS-Moreno

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Erika Vejar, Esquire

ON BEHALF OF DHS: Robert Wities
Senior Attorney

APPLICATION: Reopening; cancellation of removal under 240A(a)

The respondent, a native and citizen of Mexico, has filed a motion to reopen her removal proceedings to permit her to apply for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). In addition, the respondent requests a stay of removal. The Department of Homeland Security opposes the motion. The motion will be granted and the record will be remanded.

The respondent filed her motion on September 18, 2018, well over 90 days after we rendered our final administrative decision on August 10, 2006. It is also the respondent's second motion to reopen, as we denied her first motion to reopen on May 11, 2018. Therefore, the respondent's motion is time-and number-barred pursuant to 8 C.F.R. § 1003.2(c)(2). Nevertheless, we conclude that this case presents exceptional circumstances which warrant reopening pursuant to our sua sponte authority. See 8 C.F.R. § 1003.2(a); *Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999); see also *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). In this regard, the respondent has shown that she is now prima facie eligible for cancellation of removal under section 240A(a)(1) of the Act, due to a fundamental change in the law.

The respondent, who became a lawful permanent resident in July 2003, was served with a Notice to Appear on June 22, 2004 (Exh. 1). The respondent contends in her motion that because her Notice To Appear did not include the time and place of her hearing, under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), her accrual of lawful permanent residence under section 240A(a)(1) of the Act, and her accrual of continuous residence in the United States under section 240A(a)(2) of the Act, was not cut-off by the service of the Notice to Appear (Respondent's Mot. at 1). Accordingly, she contends that she is now prima facie eligible for cancellation of removal (Respondent's Mot. at 1-2).

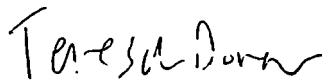
The Board has held that a notice to appear lacking time and place information for the removal hearing can be perfected by a notice of hearing containing the information, like the one the respondent received here. *Matter of Mendoza-Hernandez and Capula-Cortes*, 27 I&N Dec. 520 (BIA 2019); *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). However, the United States Court of Appeals for the Ninth Circuit, in whose jurisdiction these proceedings arise, recently

declined to defer to *Matter of Mendoza-Hernandez and Capula Cortes* and reached a contrary holding. *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019).

The respondent presents an Application for Cancellation of Removal and Adjustment of Status for Certain Permanent Residents (Form EOIR-42A) and supporting evidence. Due to the change in law effectuated by *Pereira*, as interpreted by the Ninth Circuit in *Lopez*, and evidence that the respondent is statutorily eligible for cancellation of removal, we will grant the respondent's motion to reopen pursuant to our sua sponte authority and remand to permit the respondent to apply for cancellation of removal and any other form of relief for which she may be eligible. See *Matter of G-D-*, 22 I&N Dec. at 1135. However, as the respondent conceded removability as an alien smuggler under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), she will need to show that she warrants cancellation of removal under section 240A(a) in the exercise of discretion. See section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A) (an alien has the burden to prove that she satisfies the applicable eligibility requirements *and* merits a favorable exercise of discretion) (emphasis added).

Accordingly, the following order is entered.

ORDER: The motion to reopen and request for a stay of removal is granted, and the record is remanded for further proceedings and the entry of a new decision consistent with this opinion.



FOR THE BOARD