U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: VILLALPANDO-VELASQUEZ, R... **A 077-150-018**

Date of this notice: 7/2/2019

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:
Greer, Anne J.

Userteam: Docket

File: A077-150-018 – Seattle, WA Date: JUL - 2 2019

In re: Rosa VILLALPANDO-VELASQUEZ a.k.a. Rosa Maria Villalpando-Velasquez

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Roxana V. Muro, Esquire

ON BEHALF OF DHS: Mark Hardy
Assistant Chief Counsel

APPLICATION: Reopening; cancellation of removal

The respondent, a native and citizen of Mexico, has filed a motion to reopen her removal proceedings. The motion will be granted and the record will be remanded.

On May 7, 1998, an Immigration Judge granted the respondent the privilege of voluntarily departing the United States on or before September 7, 1998. The respondent did not depart as ordered. Subsequently, on December 7, 2009, the Immigration Judge denied the respondent's motion to reopen for the purpose of applying for asylum and related relief. This matter was last before the Board on August 16, 2011, when we dismissed the respondent's appeal of this decision.

The respondent filed the instant motion to reopen on September 19, 2018, well over 90 days after we rendered our final administrative decision on August 16, 2011. The respondent's motion is thus subject to the time bar of 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).

The respondent's Notice to Appear, Form I-862, does not specify the time and place of her initial hearing (Exh. 1; Respondent's Mot. at 3). The Department of Homeland Security ("DHS") contends that the respondent incorrectly argues that this is a jurisdictional defect requiring reopening and rescission of her removal order pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (DHS's Response at 2). *See Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018) (holding that a notice to appear that does not specify the time and place of an alien's initial hearing vests an Immigration Judge with jurisdiction over removal proceedings so long as a notice of hearing specifying this information is later sent to the alien, as occurred here); *Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019) (upholding *Matter of Bermudez-Cota*).

However, as the respondent observes in her response to the DHS's submission, she has not argued that any jurisdictional defect is present. Rather, the respondent asserts that because she entered the United States without inspection on May 20, 1994, at the time of her final hearing on May 7, 1998, she was ineligible for cancellation of removal pursuant to section 240A(b)(1) of the

Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), because the service of her Notice to Appear triggered the "stop-time" rule of section 240A(d)(1) of the Act before she had accrued the necessary 10 years of continuous physical presence in the United States (Respondent's Mot. at 8). The respondent contends that under *Pereira*, the "stop-time" rule no longer prevents her from establishing 10 years of continuous physical presence in the United States and she is otherwise prima facie eligible for cancellation of removal (Respondent's Mot. at 5-10). The respondent has presented a completed Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, Form EOIR-42B, together with supporting evidence.

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, as occurred here. *Matter of Mendoza-Hernandez and Capula-Cortes*, 27 I&N Dec. 520 (BIA 2019). The United States Court of Appeals for the Ninth Circuit, in whose jurisdiction these proceedings arise, recently disagreed with *Matter of Mendoza-Hernandez and Capula Cortes* and reached a contrary holding. *Lopez v. Barr*, No. 15-72406, 2019 WL 2202952 (9th Cir. May 22, 2019). Moreover, because over 10 years have elapsed since the expiration of the respondent's voluntary departure order, she is not barred from receiving cancellation of removal under section 240B(d) of the Act, 8 U.S.C. § 1229c(d). In light of *Lopez* and the respondent's showing of prima facie eligibility for cancellation of removal, we will grant her motion to reopen pursuant to our sua sponte authority and remand to permit the respondent to apply for this form of relief.

Accordingly, the following order is entered.

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

FOR THE BOARD