United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 19, 2020
Lyle W. Cayce
Clerk

No. 19-60477
Summary Calendar

Roxana Elizabeth Menjivar-Guzman,

Petitioner,

versus

William P. Barr, U. S. Attorney General,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A099 480 823

Before Wiener, Southwick, and Oldham, *Circuit Judges*.

Per Curiam:*

Roxana Elizabeth Menjivar-Guzman, a native and citizen of El Salvador, has filed a petition for review of the decision of the Board of

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Immigration Appeals (BIA) denying her motion to reopen or terminate her in absentia removal order. In her motion to reopen, she relied on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), to assert that she lacked adequate notice of the removal hearing and that she is now eligible for cancellation of removal under 8 U.S.C. § 1229b(b) because she has resided in the United States for more than 10 years as required by § 1229b(b)(1)(A).

Menjivar-Guzman was first detained by immigration officials in November 2005, when she entered the United States without authorization. A Notice to Appear (NTA) ordered her to appear at a removal hearing in San Antonio at a date and time to be set. The NTA also advised her that she was required to provide the Immigration and Naturalization Service—now the Department of Homeland Security (DHS)—with an updated mailing address and telephone number. She was further advised that the DHS would not be required to notify her of the date and time of her hearing if she did not provide a valid address, and that she could be ordered removed if she failed to appear at the hearing. The NTA also indicates that Menjivar-Guzman was given oral notice in Spanish of the consequences of failing to appear.

In 2013, the BIA dismissed an appeal from the denial of a motion to reopen based on a lack of notice of the removal hearing. That motion was denied because Menjivar-Guzman never provided a mailing address to which notice of the time and date of the hearing could have been sent. The instant motion to reopen was denied on the ground that, even in light of *Pereira*, neither reopening nor termination were warranted because Menjivar-Guzman failed to provide an address where a notice of hearing could be sent, even if the NTA did not specify the time and date of the removal hearing.

This court has jurisdiction over orders denying motions to reopen. *Mata v. Lynch*, 576 U.S. 143, 146-48 (2015). "In reviewing the denial of a motion to reopen, this court applies a highly deferential abuse-of-discretion

standard, regardless of the basis of the alien's request for relief." *Gomez-Palacios v. Holder*, 560 F.3d 354, 358 (5th Cir. 2009). We will not reverse the BIA's decision "as long as it is not capricious, without foundation in the evidence, or otherwise so irrational that it is arbitrary rather than the result of any perceptible rational approach." *Id.* Questions of law are reviewed de novo and factual findings are reviewed under the substantial-evidence test, "meaning that this court may not overturn the BIA's factual findings unless the evidence compels a contrary conclusion." *Id.*

Underlying all of Menjivar-Guzman's arguments is her assertion that the DHS must provide the date, time, and place of the removal hearing on the initial NTA because it is the most "practicable" thing to do, especially in her case where she did not have an address to give at the time of her initial encounter. She therefore contends that the defective NTA did not confer jurisdiction on the immigration court for her removal proceedings, that her failure to provide an address would not have mattered if she had received full notice in the NTA, and that she is now eligible for cancellation of removal because the defective NTA did not stop the running of the 10-year period of continuous presence and good conduct that is one requirement for cancellation.

Pereira held that an NTA that does not inform a noncitizen of the time and place to appear for removal proceedings is inadequate to stop the running of the 10-year period for cancellation of removal, the so-called "stop-time rule." *Pereira*, 138 S. Ct. at 2110. This court has held that *Pereira*'s holding is limited to the stop-time rule, and this court has rejected *Pereira*-based jurisdictional arguments like Menjivar-Guzman's. *See Pierre-Paul*, 930 F.3d at 691-92 (5th Cir. 2019), *cert. denied*, 2020 WL 1978950 (U.S. Apr. 27, 2020) (No. 19-779); *see also Mejia v. Barr*, 952 F.3d 255, 261 (5th Cir. 2020) (following *Pierre-Paul* to reject a challenge to an in absentia removal order).

Contrary to Menjivar-Guzman's general arguments about the need for the NTA to inform an alien about the time and date of the hearing, this court has "observed time and time again that an in absentia removal order should not be revoked on the grounds that an alien failed to actually receive the required statutory notice of his removal hearing when the alien's failure to receive actual notice was due to his neglect of his obligation to keep the immigration court apprised of his current mailing address." *Ramos-Portillo v. Barr*, 919 F.3d 955, 959-60 (5th Cir. 2019) (internal quotation marks and citation omitted); *see Gomez-Palacios*, 560 F.3d at 360-61. *Pereira* does not affect this rule. *See Fuentes-Pena v. Barr*, 917 F.3d 827, 830 n.2 (5th Cir. 2019) (reiterating that *Pereira* does not affect *Gomez-Palacios*); *Mauricio-Benitez v. Sessions*, 908 F.3d 144, 148 & n.1 (5th Cir. 2018). Menjivar-Guzman's assertions that she was "unable" to provide an address when first encountered and that she neither refused to provide an address nor provided an incorrect address are immaterial, especially where she does not explain how she was unable to provide an address for four months. Menjivar-Guzman was not entitled to notice because she failed to provide a mailing address, despite receiving notice of her obligation to do so and the consequences of failing to do so. *See Gomez-Palacios*, 560 F.3d at 359.

Menjivar-Guzman fails to show that the BIA abused its discretion by denying her motion to reopen. *See id.* at 361. Accordingly, we need not consider her contention that she is entitled to cancellation of removal. *See Mauricio-Benitez*, 908 F.3d at 148 n.1 (noting that the case pertained only to reopening, so that "*Pereira*'s rule regarding cancellation is inapplicable"); *see also Mejia v. Barr*, 952 F.3d 255, 261 (5th Cir. 2020) (holding that "the BIA had no obligation to reach the merits" of a cancellation claim where the motion to reopen was barred). The petition for review is DENIED.