

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Seudat Bindnarine v. William P. Barr

No. 18-60897, United States Court of Appeals for the Fifth Circuit (June 24, 2020)

SUMMARY

The Fifth Circuit denied Bindnarine's petition for review, holding that a notice to appear (NTA) missing the date and time of removal proceedings does not deprive the immigration court of jurisdiction, as **Pereira v. Sessions** is limited to the stop-time rule context. Any defect in the NTA was cured by a later notice of hearing containing the missing information. The court also lacked jurisdiction to review the BIA's discretionary refusal to reopen proceedings sua sponte.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per Curiam; E. Grady Jolly; Edith H. Jones; Leslie H. Southwick
JURISDICTION	Federal
DECIDED	June 24, 2020
DOCKET	18-60897
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for review of an order of the Board of Immigration Appeals denying motion to reopen removal proceedings
STANDARD OF REVIEW	Not explicitly stated; legal errors reviewed de novo.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Seudat Bindnarine v. William P. Barr

TOPICS

- removal proceedings
- subject matter jurisdiction
- appellate jurisdiction
- chevron deference
- statutory interpretation

PRACTICE AREAS

- Immigration

QUESTIONS PRESENTED

1. Whether the immigration court lacked jurisdiction due to a defective NTA under *Pereira v. Sessions*.
2. Whether the BIA should have exercised its discretionary authority to reopen proceedings sua sponte.

HOLDINGS

1. *Pereira* is limited to the stop-time rule context; the NTA was not defective as it detailed the nature, legal basis, and warning, and any defect was cured by a later notice of hearing. Therefore, the BIA did not commit legal error in denying the motion to reopen.

KEY QUOTATIONS

*“This court has already rejected this jurisdictional challenge and concluded that *Pereira* is limited to the context of the stop-time rule in removal proceedings.” (2)*

“Bindnarine’s NTA was not defective, because it detailed the nature of the removal proceedings, stated their legal basis, and warned about the possibility of in absentia removal; moreover, any alleged defect would have been cured because Bindnarine was issued a later notice of hearing that included the date and time of his removal proceedings.” (2)

“We are without jurisdiction to adjudicate Bindnarine’s claim that the BIA should have exercised its discretionary authority to reopen the proceedings sua sponte.” (2)

FACTUAL BACKGROUND

Bindnarine is a native and citizen of Guyana. He received a notice to appear (NTA) that did not specify the date and time of his removal proceedings, but later received a notice of hearing that included that information. He moved to reopen based on *Pereira v. Sessions*, arguing the NTA was defective and deprived the immigration court of jurisdiction.

PROCEDURAL HISTORY

Bindnarine, a native and citizen of Guyana, filed a motion to reopen and terminate his removal proceedings for lack of jurisdiction, which the BIA denied. He then petitioned for review.

DISPOSITION

dismissed

CASES CITED

- *Pereira v. Sessions*, *Pereira v. Sessions*, 138 S. Ct. 2105 (2018)
- *Pierre-Paul v. Barr*, 930 F.3d 684 (5th Cir. 2019)
- *Mauricio-Benitez v. Sessions*, 908 F.3d 144 (5th Cir. 2018)
- *Matter of Bermudez-Cota*, 27 I. & N. Dec. 441 (BIA 2018)
- *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)
- *Auer v. Robbins*, 519 U.S. 452 (1997)

- Bustamante-Barrera v. Gonzales, 447 F.3d 388 (5th Cir. 2006)
- Ka Fung Chan v. INS, 634 F.2d 248 (5th Cir. 1981)
- Gonzalez-Cantu v. Sessions, 866 F.3d 302 (5th Cir. 2017)

OPINION

PER CURIAM.

Case: 18-60897 Document: 00515464427 Page: 1 Date Filed: 06/24/2020 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals Fifth Circuit FILED No. 18-60897 June 24, 2020 Summary Calendar Lyle W. Cayce Clerk SEUDAT BINDNARINE, Petitioner v. WILLIAM P. BARR, U. S. ATTORNEY GENERAL, Respondent Petition for Review of an Order of the Board of Immigration Appeals BIA No. A078 953 476 Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM: * Seudat Bindnarine is a native and citizen of Guyana. He petitions for review of the denial by the Board of Immigration Appeals (BIA) of his motion to reopen and terminate his removal proceedings for lack of jurisdiction. Relying on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), Bindnarine contends that his notice to appear (NTA) was defective and consequently deprived the immigration court of jurisdiction because it did not state the date * 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. Case: 18-60897 Document: 00515464427 Page: 2 Date Filed: 06/24/2020 No. 18-60897 and time of his removal proceedings. This court has already rejected this jurisdictional challenge and concluded that *Pereira* is limited to the context of the stop-time rule in removal proceedings.

See *Pierre-Paul v. Barr*, 930 F.3d 684, 689-90 (5th Cir. 2019), cert. denied, 2020 WL 1978950 (U.S. Apr. 27, 2020) (No. 19-779); see also *Mauricio-Benitez v. Sessions*, 908 F.3d 144, 148 n.1 (5th Cir. 2018), cert. denied, 139 S. Ct. 2767 (2019). Bindnarine's NTA was not defective, because it detailed the nature of the removal proceedings, stated their legal basis, and warned about the possibility of in absentia removal; moreover, any alleged defect would have been cured because Bindnarine was issued a later notice of hearing that included the date and time of his removal proceedings.

See *Pierre-Paul*, 930 F.3d at 690-91. We need not decide whether *Matter of Bermudez-Cota*, 27 I. & N. Dec. 441 (BIA 2018), is entitled to deference under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), or *Auer v. Robbins*, 519 U.S. 452 (1997), because, in decisions such as *Mauricio-Benitez* and *Pierre-Paul*, this court reached essentially the same conclusion as the BIA regarding the limited reach of *Pereira* without applying *Chevron* or *Auer* deference.

See *Bustamante-Barrera v. Gonzales*, 447 F.3d 388, 394 (5th Cir. 2006). Bindnarine thus fails to show that the BIA committed legal error in denying his motion to reopen based on *Pereira*. See *Ka Fung Chan v. INS*, 634 F.2d 248, 252 (5th Cir. 1981).

We are without jurisdiction to adjudicate Bindnarine's claim that the BIA should have exercised its discretionary authority to reopen the proceedings sua sponte. See *Gonzalez-Cantu v. Sessions*, 866 F.3d 302, 306 (5th Cir. 2017).

We need not reach the number-bar issue, including whether that issue is exhausted, because our conclusion that the BIA did not commit any legal error in denying the motion to reopen moots the number-bar issue. DISMISSED IN PART AND DENIED IN PART. 2