

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JORGE LUIS HERNANDEZ-CABELLO,

No. 17-70041

Petitioner,

Agency No. A206-263-228

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

Jorge Luis Hernandez-Cabello, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The agency denied cancellation of removal for failure to demonstrate ten years of continuous physical presence prior to service of Hernandez-Cabello's Notice to Appear ("NTA"). However, the agency did not have the benefit of the Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), which held that an NTA that does not specify a place and time for a non-citizen's first hearing does not trigger the stop-time rule to calculate continuous physical presence. As Hernandez-Cabello's NTA did not specify the date and time of his hearing, we remand to the BIA to consider his eligibility for cancellation of removal in light of that decision.

In light of our disposition, we do not reach Hernandez-Cabello's contentions regarding the agency's adverse credibility determination.

PETITION FOR REVIEW GRANTED; REMANDED.