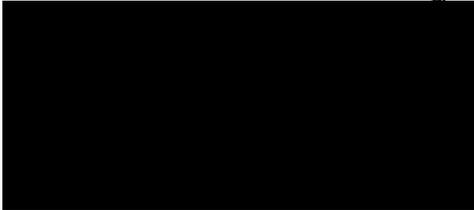




U.S. Citizenship
and Immigration
Services

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



FILE: [REDACTED]
SRC 01 192 54459

Office: TEXAS SERVICE CENTER Date: JUL 23 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

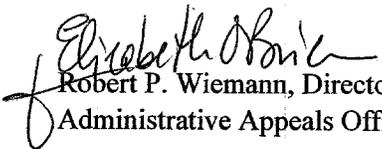
PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

It is noted that the instant appeal was filed by the beneficiary, rather than by an affected party. The regulation at 8 C.F.R. § 103.3(a)(iii) indicates that the beneficiary of a visa petition has no legal standing to file an appeal. 8 C.F.R. § 103.3(a)(2)(v)(A)(1) requires that an appeal filed by a person not entitled to file it must be rejected.

The record indicates that the director issued the decision on October 27, 2003. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. On appeal, the beneficiary asserts that he did not receive the director's decision until November 28, 2003, but he failed to offer proof of the date the decision was mailed. The appeal was received by Citizenship and Immigration Services (CIS) on December 9, 2003, or 42 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.