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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 1 2 2008
WAC 08 034 51051

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and 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). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on March 28, 2008. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The envelope containing the Form I-290B, Notice of Appeal, was postmarked April 30, 2008 and it was received by the director on May 1, 2008, 34 days after the decision was issued. Accordingly, the appeal was untimely filed. The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.