



U.S. Citizenship  
and Immigration  
Services

C1

[Redacted]

File: [Redacted] Office: TEXAS SERVICE CENTER Date: SEP 13 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant 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:

SELF-REPRESENTED

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.

*Maif Johnson*

← Robert P. Wiemann, Director  
Administrative Appeals Office

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 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 record indicates that the director issued the decision on December 11, 2003. The record further reflects that the appeal was received by the director, Texas Service Center on January 14, 2003, or 34 days after the decision was issued.<sup>1</sup> 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.

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<sup>1</sup> We note that Form I-290B reflects the appeal was filed by Shola Anthony Sutton on behalf of the petitioner. While counsel previously submitted a Form G-28 signed by the beneficiary, the record does not contain a Form G-28 indicating counsel's representation of the petitioner. No new Form G-28 has been submitted on appeal. Although the director acknowledged counsel's appearance on behalf of the beneficiary earlier in these proceedings, the AAO will not perpetuate this error on appeal. Given that the appeal was not filed by the petitioner, or counsel representing the petitioner, the appeal would be denied in accordance with 8 C.F.R. §§ 103.3(a)(1)(iii) and 103.3(a)(2)(v) were it not being rejected as untimely filed.