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U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted]

OFFICE: MIAMI, FLORIDA Date:

JUN 09 2004

IN RE: Petitioner:  
Beneficiary:

[Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

**DISCUSSION:** The Acting District Director of the Miami, Florida District Office denied the Form I-360 immigrant visa petition on March 24, 2003. 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 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 March 24, 2003. It is noted that the acting district director properly gave notice to the petitioner that the Notice of Appeal must be filed with the district office with the required fee. Counsel for the petitioner asserts that he sought to file the Notice of Appeal directly with the AAO. According to the evidence on the record, in a letter dated July 21, 2003, the Deputy Director of the AAO notified the petitioner that appeals must be properly filed with the office that made the initial decision. The petitioner filed the Notice of Appeal with the filing fee at the proper office on September 23, 2003, 189 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 acting district director of the Miami district office. *See* 8 C.F.R. § 103.5(a)(1)(ii). The acting district 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.