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U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

06

[Redacted]

FILE:

[Redacted]

Office: MIAMI

Date: APR 01 2005

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]

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 District Director, Miami denied the 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).

The record indicates that the district director issued the decision on August 5, 2004. It is noted that he properly gave notice to the applicant and her counsel that she had 30 days to file the appeal.¹ The appeal was received by Citizenship and Immigration Services (CIS) on October 14, 2004, or seventy (70) days after the decision was issued. Accordingly, the appeal was untimely filed.

Counsel acknowledges that the appeal was not timely filed noting that the applicant mistakenly sent it to the AAO. Although the record does reflect that the appeal had originally been sent to the AAO, the appeal is not properly filed until it is filed with the proper office, in this case the district office.²

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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The 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.

¹ The AAO notes that the notice while correctly stating that the applicant had 30 days to file an appeal, erroneously noted that the time period would be 18 days if the decision was received by mail, instead of the 33 days provided in the regulations. However, this error did not contribute to the delay in filing, and, if anything, should have resulted in the appeal being filed much earlier than its due date.

² Counsel explains in a letter dated October 12, 2004, that the applicant was in the process of seeking new counsel and submitted the Notice of Appeal (Form I-290B) on her own without the assistance of counsel. Counsel further explains that counsel was not apprised of the error until receiving notice from the AAO after the due date. While the AAO is not unsympathetic to the situation, it notes that although there may have been a miscommunication between counsel and her client, it was still their mutual responsibility to ensure that the appeal was timely filed. The applicant, whom the record reflects was over the age of eighteen at the time she misrouted the appeal, assumed responsibility for her appeal and elected to proceed without the assistance of counsel. The AAO further notes that even had the appeal been timely filed, the appeal was subject to summary dismissal due to the failure to adequately set forth the reasons for appeal and identify any errors of law or fact in the district director's decision. Furthermore, although the Form I-290B stated that a brief in support of appeal would be filed, no brief has been received.