



U.S. Citizenship  
and Immigration  
Services

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File: [REDACTED] Office: DENVER, COLORADO Date: OCT 20 2004

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

Petition: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent disclosure of unarranted  
invasion of personal privacy

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**DISCUSSION:** The Acting Interim District Director (District Director), of the Citizenship and Immigration Services (CIS), Denver, Colorado office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on behalf of the beneficiary seeking to classify her as an orphan pursuant to section 201(b)(2)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1151. The petitioner is a 37-year-old married citizen of the United States. The beneficiary is 11 years old at the present time and was born in Gondar, Ethiopia on September 29, 1992, to Fisseha T/Giorgis and Lielt Yideg.

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 director issued the decision on April 2, 2004. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The appeal was received by CIS on May 7, 2004, or 35 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 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.