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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

F1

[Redacted]

File: [Redacted]

Office: NEW DELHI, INDIA

Date: FEB 18 2005

IN RE:           Petitioner:  
                  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:

[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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge of the Citizenship and Immigration Services (CIS) New Delhi, India, district 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 regulation at 8 C.F.R. § 103.2(a)(1) provides:

*General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. *The form must be filed with the appropriate filing fee required by § 103.7.*

[Emphasis added.]

As it pertains to the proper filing of an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides:

*Filing Appeal.* The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by §103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.<sup>1</sup>

The record indicates that the acting officer in charge issued the denial of the petition on August 12, 2004. The Form I-292 cover letter attached to the decision clearly indicated that a fee of \$110.00 is required for submission of a Form I-290B for appeal. The petitioner, through counsel, submitted the original appeal request on September 23, 2004, 42 days after the decision was issued. The appeal, however, was not rejected as being untimely filed but rather for failure to submit the appropriate appeal fee. On October 20, 2004, 69 days after the decision was issued, counsel resubmitted the appeal with the proper fee.

Regardless of which date is used to determine the filing date, 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). In this instance, that official 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> If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).