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U.S. Citizenship  
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FI



FILE: [REDACTED] OFFICE: ROME, ITALY

DATE: JUL 10 2006

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)

ON BEHALF OF APPLICANT:

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Rome, Italy, denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that the district director approved the Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) on July 13, 2004. On January 26, 2005, the district director sent the petitioner a Notice of Intent to Revoke the approved I-600 petition based on subsequently discovered, adverse information. The petitioner responded to the Notice of Intent to Revoke. The district director determined that the information provided in the petitioner's response failed to overcome the issues set forth in the Notice of Intent to Revoke, and the district director issued a decision revoking the I-600 petition on November 2, 2005. The Decision to Revoke informed the petitioner that he had 30 days to appeal the decision to the AAO.

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.3(a)(2)(i) provides that in general, "[t]he 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." The AAO notes, however, that 8 C.F.R. §205.2(d) provides that for revocation of immigrant petition purposes, the petitioner must appeal a decision to revoke the approval, within 15 days after the service of notice of the revocation.

The AAO is bound by the provisions set forth in the regulations. The AAO therefore finds that the fact that the district director informed the petitioner that he had 30 days to file an appeal, does not affect or change the regulatory 15 day period allowed for appealing the present revocation of the petitioner's I-600 petition.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed."

The AAO notes that the petitioner sent his Form I-290B, Notice of Appeal to the AAO in error. An appeal is not properly filed, however, until the proper office receives it, in this case the U.S. Citizenship and Immigration Services (CIS) office in Rome, Italy. The petitioner's appeal was received by the CIS office in Rome, Italy in December 2005, more than 15 days after the revocation 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. *See* 8 C.F.R. § 103.5(a)(1)(ii). The district director declined to treat the late appeal as a motion, and upon proper payment, forwarded the matter to the AAO.

Because the petitioner's appeal was not filed within the time period allowed under 8 C.F.R. § 205.2(d), it must be rejected as improperly filed.

**ORDER:** The appeal is rejected.