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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room 3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 30 2004
WAC 02 277 51055

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 Director, California Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order properly to 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 the 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 13, 2003. The director properly notified the petitioner that it had 33 days to file the appeal. Although new counsel dated the appeal April 3, 2003, Citizenship and Immigration Services (CIS) received it on April 17, 2003, or 34 days after the director issued the decision. Therefore, the appeal was untimely filed. [1]

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 who made the last decision in the proceeding has jurisdiction over a motion, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, it must be rejected. [2] The AAO will give notice of this decision only to the petitioner and the counsel recognized on the front of this decision.

ORDER: The appeal is rejected.

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[1] Also, the appeal is improperly filed. New counsel represents only the beneficiary. The beneficiary has no standing as an affected party to appeal. *See* 8 C.F.R. § 103.3(a)(1)(iii). Consequently, an attorney filing a beneficiary's appeal cannot have a properly executed Form G-28 and is not entitled to file an appeal. *See* 8 C.F.R. § 103.3(a)(2)(v)(A)*(2)*.

[2] The petitioner executed Form G-28 and authorized other counsel (original counsel), recognized on the front of this decision, to act in all immigration matters. The original counsel and the petitioner have not substituted other counsel or withdrawn her representation. The AAO offered requested the original counsel to submit a G-28 for the petitioner in support of the appeal, but she declined to do so on December 1, 2004. *See* 8 C.F.R. §§ 103.3(a)(2)(v)(A)*(2)(ii), (iii)*. Hence, the beneficiary and new counsel improperly filed the appeal, for reasons set forth in footnote 1.