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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

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 26 2004
WAC 02 052 52837

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

**DISCUSSION**: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

8 C.F.R. § 103.3(a)(1)(iii)(B) defines "affected party" as the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has been filed by [redacted] who identifies himself as counsel for the petitioner. The record, however, does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. 8 C.F.R. § 103.3(a)(2)(v)(A)(*2*)(*i*) states that, if an attorney files an appeal without Form G-28, the appeal is considered improperly filed and must be rejected.

We note that 8 C.F.R. §§ 103.3(a)(2)(v)(A)(*2*)(*ii*) and (*iii*) indicate that the director should attempt to obtain Form G-28 from the attorney before rejecting the appeal. These sections, however, apply only with respect to an otherwise properly filed appeal. If there are other grounds for rejection of the appeal, obtaining the Form G-28 would serve no practical purpose. In this instance, the appeal was filed untimely.

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 September 12, 2003. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Citizenship and Immigration Services received the appeal on October 21, 39 days after the decision was issued. Accordingly, the appeal was untimely filed.

As the appeal was filed untimely, by someone other than an affected party, the appeal must be rejected.

**ORDER**: The appeal is rejected.