U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

F1

[redacted]

File: [redacted] Office: HO CHI MINH CITY, VIETNAM Date: SEP 16 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwanted invasion of personal privacy

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DISCUSSION: The Officer in Charge, American Consulate General, Ho Chi Minh City, Vietnam, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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.

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. [1]

The record indicates that the Officer in Charge issued the decision on July 2, 2003, and provided the petitioner with the Form I-290B. We note the following instructions, which are stated on the Form I-290B:

> **Filing.** You must file your appeal with the [Citizenship and Immigration Services] office which made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed). The date of service is normally the date of the decision. Do *not* send your appeal directly to the [AAO]. Submit an original appeal only. Additional copies are not required.

[Emphasis added in original.]

Despite the clear instructions on the Form I-290B, the petitioner sent her original request for appeal to the AAO. On August 19, 2003, the AAO returned the petitioner's appeal and fee with a letter stating that in order to be considered properly filed, the appeal must be filed "at the office that made the original decision . . . ."

The record reflects that on October 29, 2003, 109 days after the decision was issued, the petitioner's appeal was received and accepted for filing. 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

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[1] If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

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 Officer in Charge, American Consulate General, Ho Chi Minh City, Vietnam. *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.