U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: KANSAS CITY, MISSOURI Date:

IN RE: Petitioner:
Beneficiary: [redacted]

DEC 1 3 2004

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

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The District Director of the Citizenship and Immigration Services (CIS) Kansas City, Missouri, 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.

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 district director issued the denial of the petition on December 29, 1999. The Form I-292 attached to the district director's decision states the following:

> You may, if you wish, appeal this decision. You must submit such an appeal to THIS OFFICE with a filing fee of $110.00. If you do not file an appeal within the time allowed, this decision is final. Appeal in your case may be made to:
>
> ___ The Board of Immigration Appeals (Board) in Falls Church Virginia. It must reach this office within 15 calendar days from the date this notice is served (18 days if this notice is mailed).
>
> X The Administrative Appeals Unit (AAU) in Washington, D.C. It must reach this office within 30 calendar days from the date this notice is served (33 days if this notice is mailed).
>
> Do NOT send your appeal directly to the Board or the AAU. Please direct any questions you may have to the Immigration and Naturalization Service office nearest your residence.

[Emphasis added in original.]

Similarly, the directions contained on the Form I-290B provided to the petitioner with the district director's decision, contains the following instructions:

> **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

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

> 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 of the regulation and the Forms I-292 and I-290B, the petitioner sent his original request for appeal directly to the AAO. The record reflects that it was not until June 2, 2000, 156 days after the decision was issued, that the petitioner's appeal was received by the district director and accepted for filing.

On the Form I-290B, the petitioner confirms that the original appeal was improperly submitted to the AAO. The petitioner states:

> This [appeal] was sent to the AAO. (The address that we had) before the 30 days expired. It has, however, been every where except where it needs to be.
>
> We are waiting for a Form G-620 in order to obtain blood tests to prove that the father of record is not the father. The result will follow through Sen. Roberts [sic] office.

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, 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.