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U.S. Citizenship  
and Immigration  
Services

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C<sub>1</sub>

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 17 2008  
WAC 06 264 51166

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

[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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**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 as untimely filed.

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 regulation at 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on March 20, 2008. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The notice was mailed to the petitioner's address of record. A copy of the notice was also mailed to counsel's address as reflected on her August 16, 2006 Form G-28, Notice of Entry of Appearance as Attorney or Representative.<sup>1</sup> Although a copy of the denial was later re-mailed to counsel's present address, the record reflects that the petitioner was sent a timely notice to its address of record.

In letters dated May 22, 2008 and June 6, 2008, counsel states that her copy of the director's decision was sent to the wrong address. We note, however, that the director's decision was mailed to counsel's address as indicated on her Form G-28 in the record at that time. *See* 8 C.F.R. § 103.5a(a)(1) (service of notices and decisions consists of mailing copies to the last known address). The director's reliance on the unrevoked address furnished by counsel on her existing Form G-28 was proper. *See, e.g., Tobeth-Tangang v. Gonzales*, 440 F.3d 537, 540 (1<sup>st</sup> Cir. 2006); *Radkov v. Ashcroft*, 375 F.3d 96, 99 (1<sup>st</sup> Cir. 2004).

In this case, the petitioner's appeal was not received by the director until May 7, 2008, 48 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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). 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.

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<sup>1</sup> The petitioner's appellate submission included an updated Form G-28 from counsel bearing a date of May 6, 2008 and reflecting her new address.

**ORDER:** The appeal is rejected.