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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 18 2008
WAC 07 066 52972

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:

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.

A handwritten signature in cursive script that reads "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition.¹ The director reopened the matter on motion, and denied the petition again. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely and improperly 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. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that “‘affected party’ (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.” 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 June 12, 2008. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The appeal was not received by the director until July 16, 2008, 34 days after the decision was issued. Accordingly, the appeal was untimely filed. Further, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states that “[a]n 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.” In this instance, the appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the beneficiary’s attorney. Thus, the appeal has not been properly filed by the affected party.

As the appeal is untimely and improperly filed, it must be rejected.

ORDER: The appeal is rejected.

¹ The Form I-360 petition was signed by [REDACTED] Senior Pastor, Atlanta Belvedere Seventh-Day Adventist Church. The record includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from attorney reflecting that she represents the beneficiary, but not the petitioner.