



U.S. Citizenship
and Immigration
Services

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[REDACTED]

DATE: Office: NEBRASKA SERVICE CENTER

[REDACTED]

NOV 27 2012

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center (the director) denied the special immigrant visa petition (Form I-360) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner seeks classification as a special immigrant 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)(I) of the Act, 8 U.S.C. § 1101(a)(27)(I).

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 with U.S. Citizenship and Immigration Services (USCIS) within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). Regarding receipt dates for applications and petitions, the regulation at 8 C.F.R. § 103.2(a)(7)(i) provides, in pertinent part: “[A] benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request”

The record indicates that the director issued the decision on February 17, 2012, and he properly gave notice to the petitioner that she had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The Notice of Appeal or Motion (Form I-290B) was not received by the service center as properly filed until March 29, 2012, or 41 days after the decision was issued. 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 Director of the Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will be returned to the director to consider the petitioner’s brief submitted on appeal. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

ORDER: The appeal is rejected.