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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

C6

[Redacted]

Date:

Office: OMAHA, NEBRASKA

FILE: [Redacted]

**SEP 17 2012**

IN RE:

Self-Petitioner: [Redacted]

PETITION: Petition for Special Immigrant Juvenile 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)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

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,

Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Omaha, Nebraska Field Office Director (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 is a 19-year-old native and citizen of Mexico who seeks classification as a special immigrant juvenile (SIJ) pursuant to sections 1101(a)(27)(J) and 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4).

An appeal must be filed within 30 days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). An appeal filed without the proper fee or complete fee waiver request will be rejected. 8 C.F.R. § 103.2(a)(7)(i). A rejected Form I-290B, Notice of Appeal, will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii).

In this case, the director denied the petition on January 3, 2012. Counsel initially submitted a Form I-290B on January 30, 2012, which was rejected as improperly filed because it was not accompanied by the correct fee or sufficient documentation to support a fee waiver. U.S. Citizenship and Immigration Services (USCIS) did not receive the appeal with the correct fee until February 28, 2012, which was 46 days after the director's decision was issued.<sup>1</sup>

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO or the director authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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 Omaha, Nebraska Field Office Director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the director. 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.

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<sup>1</sup> In a letter dated February 23, 2012 (41 days after the director's decision was issued), counsel acknowledged that she was then submitting "the corrected fee amount."