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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: BALTIMORE DISTRICT Date: SEP 13 2006
BAL 00 236 50011

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

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(F) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director of the Baltimore, Maryland 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.

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 record indicates that the district director issued the decision on March 29, 2002. It is noted that the district director properly gave notice to the petitioner that he had 33 days to file the appeal. The petitioner's wife requested a 30-day grace period for an appeal to be filed. There is no authority to allow the AAO to grant an extension in which to file an appeal. Citizenship and Immigration Services (CIS) received the appeal on May 6, 2002, or 38 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 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, the appeal must be rejected.

ORDER: The appeal is rejected.