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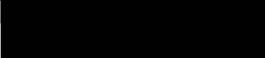
U.S. Citizenship  
and Immigration  
Services

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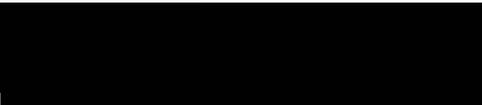


FILE:



Office: SAN FRANCISCO (FRESNO) Date: **MAY 23 2007**

IN RE: Petitioner:



Beneficiary:

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Petition to Classify Orphan as an Immediate Relative was denied by the District Director, San Francisco. 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 Title 8, Code of Federal Regulations (8 C.F.R.) § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision with the office where the unfavorable decision was made. 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 February 10, 2006. The Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B), dated March 10, 2006, was received by the AAO on March 24, 2006; as the appeal must be timely filed with the office that rendered the decision, the AAO returned the appeal and fee to the applicant. The applicant filed the appeal with the appropriate office; it was received by the United States Citizenship and Immigration Services (CIS) Fresno Sub Office on April 6, 2006, or 55 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 District Director in San Francisco. *See* 8 C.F.R. § 103.5(a)(1)(ii). The District 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.