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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: CINCINNATI

Date:

APR 21 2009

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:

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 "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Cincinnati District Office, initially approved the orphan petition. Upon further review, the director determined that the petition had been approved in error. The director issued a Notice of Revocation of the approval of the orphan petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the case will be returned to the director for further action.

The regulation requires that an appeal from the revocation of the approval of a petition must be filed within 15 days after the service of the notice of revocation. 8 C.F.R. § 205.2(d). If the notice was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b).

The record in this case indicates that the director issued the revocation decision on April 15, 2008. U.S. Citizenship and Immigration Services (USCIS) received the petitioner's Form I-290B, Notice of Appeal, on May 20, 2008, which was 35 days after the director's decision was issued. The appeal was thus untimely filed.

The director did not issue a Notice of Intent to Revoke (NOIR) the approval of the Form I-600, Petition to Classify Orphan as an Immediate Relative, as required by the regulations at 8 C.F.R. §§ 204.3(h)(14), 205.2(b).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) further directs 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. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The petitioner's untimely appeal meets the requirements of a motion to reconsider because the director failed to issue a NOIR as required by the regulations at 8 C.F.R. §§ 204.3(h)(14), 205.2(b). Accordingly, the petition will be returned to the director for treatment as a motion, issuance of a NOIR and issuance of a new decision.

ORDER: The appeal is rejected and returned for further action in accordance with the foregoing discussion.