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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] OFFICE: BLOOMINGTON, MN Date: JUN 17 2009

IN RE: PETITIONER:
BENEFICIARY: [redacted]

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:

[redacted]

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Bloomington, Minnesota Field Office, initially approved the orphan petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a Notice of Intent to Revoke (NOIR), and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 July 22, 2008. The director improperly gave notice to the petitioner that an appeal could be filed within 33 days of the revocation decision. The director's improper notice of the allowed time does not extend the regulatory requirement that the appeal of a revocation decision issued by mail must be filed within 18 days. U.S. Citizenship and Immigration Services (USCIS) received the petitioner's Form I-290B, Notice of Appeal, on August 25, 2008, which was 34 days after the director's decision was issued. The appeal was thus 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. *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.

The appeal was untimely filed and consequently must be rejected.

ORDER: The appeal is rejected.