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

U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: SAN DIEGO Date: JUL 29 2010

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The district director initially approved the Form I-600, Petition to Classify Orphan as an Immediate Relative. However, upon receipt of correspondence from the United States Embassy in Tokyo, Japan, the district director issued a notice of intent to revoke, and ultimately revoked, 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 AAO will return the matter to the district director for consideration as a motion.

The regulation requires that an appeal from the revocation of the approval of a petition must be filed within 15 days after 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 district director revoked approval of the petition on May 17, 2010. It is noted that the district director improperly gave notice to the petitioner that an appeal could be filed within 33 days of the revocation decision. However, the district director's improper notice to the petitioner regarding the time period during which an appeal may be filed 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 June 10, 2010, 24 days after the district director's decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 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.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

Here, the untimely appeal meets the requirements of a motion to reconsider. 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). Therefore, the district director must consider the untimely appeal as a motion and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the district director for consideration as a motion and the issuance of a new decision.