U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 12 2013 OFFICE: NATIONAL BENEFITS CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the National Benefits Center (the director) denied the Petition to Classify Orphan as an Immediate Relative (Form I-600), 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 service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The director issued the decision on April 17, 2013, and he properly gave notice to the petitioner that he had 33 days to file the appeal. Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend this time limit.

On May 1, 2013, the director received correspondence from the petitioner, contesting the denial of the Form I-600; however, the petitioner did not concurrently submit a Notice of Appeal or Motion (Form I-290B), which the regulation at 8 C.F.R. § 103.3(a)(2)(i) requires to appeal an adverse decision. The director did not receive the petitioner's Form I-290B until May 23, 2013, or 36 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*) allows for an untimely appeal to be treated as a motion to reopen or reconsider by the director, if the appellate filing meets the motion requirements at 8 C.F.R. § 103.5(a)(2) or (3). The director reviewed the petitioner's evidence submitted on appeal, including the May 1, 2013 correspondence, and determined that the appellate filing did not meet the requirements of a motion to reopen or reconsider. The director subsequently forwarded the matter to the AAO for review and decision. While the petitioner submits additional evidence directly to the AAO on appeal, this evidence also does not meet the motion requirements at 8 C.F.R. §§ 103.3(a)(2) and (3).

As the appeal was filed untimely and does not meet the requirements of a motion to reopen or reconsider, it must be rejected pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*1*).

ORDER: The appeal is rejected. The petition remains denied