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



U.S. Citizenship
and Immigration
Services

DATE: **JUL 14 2014** Office: NATIONAL BENEFITS CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:

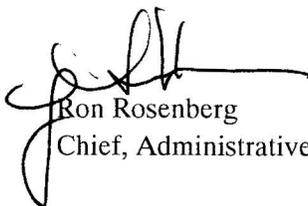
[REDACTED]

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 but returned to the director to be treated as a motion to reconsider.

Applicable Law

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins three days after it is mailed. 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. 8 C.F.R. § 103.2(a)(7)(i).

Analysis

The director sent the decision to the applicant on December 11, 2013. The director stated that the applicant had 33 days to file an appeal; however, the Form I-290B appeal was not received until January 14, 2014, thirty four days after the decision was issued. Therefore, 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. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion and a decision must be made on the merits of the case.

Counsel submitted her appellate brief and evidence directly to the AAO, and it was not reviewed by the director prior to sending the matter to us. Counsel's appellate submission meets the requirements of a motion to reconsider and the late appeal must, therefore, be treated as a motion. The official having jurisdiction over the motion is the official who made the last decision in the proceeding, in this case the director of the National Benefits Center. See 8 C.F.R. § 103.3(a)(2)(ii).

Conclusion

Although the appeal was untimely filed, it meets the requirements of a motion to reconsider and must therefore be returned to the director to treat it as a motion and enter a decision in to the record.

ORDER: The matter is remanded to the director to treat the appeal as a motion to reconsider.