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U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

41

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 04 2006**

XBA-89-040-2127

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, then reopened and denied by the Director, Southern Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director concluded the documentation submitted did not satisfy the applicant's burden of proof of having performed qualifying agricultural employment. This decision was based on adverse information acquired by the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), relating to the applicant's claim of employment for [REDACTED]

Whenever an application for special agricultural worker status is denied or the status of a lawful temporary resident is terminated, the alien shall be given written notice setting forth the specific reasons for the denial on Form I-692, Notice of Denial. Form I-692 shall also contain advice to the applicant that he or she may appeal the decision and that such appeal must be taken within **30 days** following the service of the notification of decision. 8 C.F.R. § 103.3(a)(3)(i). An appeal received after the thirty (30) day period has tolled will not be accepted for processing. 8 C.F.R. § 103.3(a)(3)(iv). Form I-694, Notice of Appeal, shall be used to file the appeal and must be accompanied by the appropriate fee. 8 C.F.R. § 103.3(a)(3)(ii). Whenever a person has the right to or is required to do some act within the prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director issued the initial Notice of Decision on November 13, 1989, and sent it to the applicant's address of record via certified mail. The appeal to the initial denial was not received until June 17, 1991. The final Notice of Decision was issued on February 3, 1993 and the final appeal was filed on August 12, 1994. The appeal was untimely filed and, therefore, must be rejected.

ORDER: The appeal is rejected.