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U.S. Department of Homeland Security
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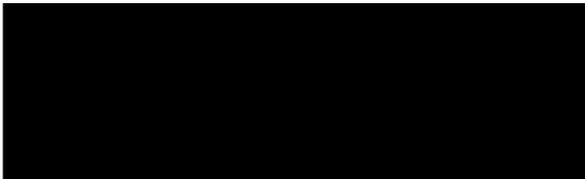


U.S. Citizenship
and Immigration
Services

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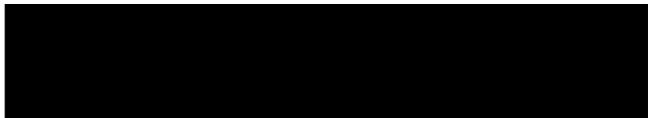


FILE: [Redacted]
XES 88 051 02004

Office: CALIFORNIA SERVICE CENTER

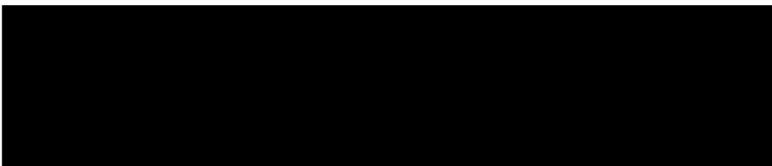
Date:

IN RE: Applicant:



APPLICATION: Application for Application for Temporary Resident Status under Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:



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. 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director denied the adjustment application because the applicant had been convicted of one felony and one misdemeanor in the United States.¹

An adverse decision on an application to adjust to temporary resident status may be appealed to the Administrative Appeals Office. Any appeal with the required fee shall be filed with the Service Center within thirty (30) days after service of the notice of denial or termination. An appeal received after the thirty-day period has tolled will not be accepted. *See* 8 C.F.R. § 245a.3(j). Whenever a person has the right or is required to do some act within a 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).

Citizenship and Immigration Services or CIS issued the notice of decision on October 19, 2006. The director erroneously mailed the denial decision to the applicant's former address, "[REDACTED] Escondido, California." The record reveals that the applicant had reported a new address to CIS on August 18, 2006, "[REDACTED] Escondido, CA 92025."

The applicant, on appeal, stated that he didn't receive the denial decision until December 11, 2006. The applicant provided a photocopy of a mailing envelope from the California Service Center that is postmarked December 8, 2006, along with a photocopy of a money order issued on December 20, 2006, that is payable to United States Citizenship and Immigration Services in the amount of \$110.00.

Counsel subsequently mailed the Form I-694, Notice of Appeal of Decision Under Section 210 or 245A of the Act, with the filing fee of \$110.00 to the California Service Center on an unknown date. The record contains a notice from the California Service Center dated February 9, 2007, stating that the appeal package was being returned to counsel after an **initial screening** (Emphasis in original) with the following notation: "returning I-694 and G-28 for completion and signature by applicant and attorney. Please resubmit with fee."

The Form I-694 was not re-submitted with the required signatures until March 14, 2006, 96 days after the date the denial decision was re-mailed to the applicant at his updated address, December 8, 2006. Therefore, the appeal was untimely filed and must be rejected.

¹ It is noted that a review of the evidence of record reveals that the applicant has actually been convicted of one felony and four misdemeanors. Furthermore, the record does not contain any court documents revealing the final court disposition of the applicant's arrest in San Diego, California, on January 29, 2001, on the charge of battery on a spouse or ex-spouse.

ORDER: The appeal is rejected.