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U.S. Department of Homeland Security  
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Washington, D.C. 20529



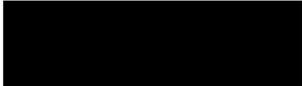
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: TEXAS SERVICE CENTER Date:

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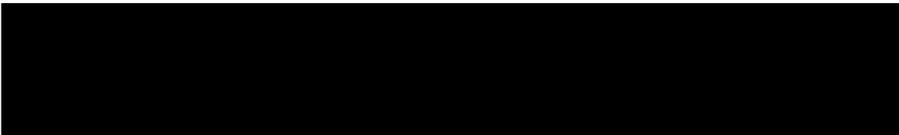
Applicant:



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:



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. Any further inquiry must be made to that office.

  
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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The director denied the application for lack of prosecution because the applicant failed to appear and file a complete application at a legalization office within the authorized 90-day period as required by 8 C.F.R. § 210.2(c)(4)(iii).

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 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 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).

The record reflects that the director issued his Notice of Decision on May 28, 1991. The notice was returned by the post office as undeliverable – no such number. The Texas Service Center received the appeal on January 6, 1998, over six years after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

It is noted that the applicant provided a Form I-697A, Change of Address Card, which was received by the legacy Immigration and Naturalization Services prior to the issuance of the director's decision. The director, however, did not mail the Notice of Decision to the applicant's new address of record. The untimely filing of the appeal appears to be due to the director's error. Pursuant to 8 C.F.R. § 210.2(g), the director may *sua sponte* reopen any adverse decision. Additionally, the director may certify any such decision to the AAO. See 8 C.F.R. § 210.2(h).

**ORDER:** The appeal is rejected as untimely filed.