



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



L1

JUL 16 2007

FILE: [REDACTED]
XLA 88 069 3002

Office: CALIFORNIA SERVICE CENTER

Date:

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: SELF-REPRESENTED

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

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) relating to the applicant's claim of employment for [REDACTED] at [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 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 director issued the Notice of Denial on June 17, 1991. The notice of denial was mailed to the applicant's address at that time, [REDACTED] Los Angeles, CA 90032," but was returned to the Western Service Center as undeliverable mail.

On July 16, 1991, the applicant reported a change of address to the Service and requested a copy of the denial notice. On September 12, 1991, the Service re-mailed copies of the notice of intent to deny and the notice of denial to the applicant at his updated address, [REDACTED] Brawley, CA 92227," but the notices were once again returned to the Service as undeliverable mail. The United States Postal Service (USPS) stamped the mailing envelope, "Moved, left no address – return to sender, unable to forward."

The applicant's appeal from the denial decision was not received at the California Service Center until January 2, 1992, 112 after the copies of the notice of intent to deny and the notice of denial were re-mailed to the applicant at his updated address and six months and 16 days after the issuance of the denial decision. The applicant listed his address on the Form I-694, Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act, as [REDACTED] [REDACTED] CA 92227," the same address to which copies of the notice of intent to deny and the notice of denial were re-mailed on September 12, 1991. It is not clear why the envelope containing the re-mailed notices was returned to the Service with USPS stamps indicating that

the applicant had moved and left no forwarding address. Since the notices were re-mailed to the correct address, the applicant's failure to receive the notices in sufficient time to file a timely appeal was not due to any error on the part of the Service. The appeal was untimely filed and, therefore, must be rejected.

ORDER: The appeal is rejected.