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U.S. Citizenship
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JUN 05 2007

FILE:

[REDACTED]
XPD 89 092 00010

Office: NEBRASKA 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. 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, Northern Regional Processing Facility, and is now before the Administrative Appeals Office 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 twelve-month eligibility period. This decision was based on adverse information regarding 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 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 sent his decision of July 29, 1991, to the applicant at her address of record.¹ The notice was returned by the post office as unclaimed. The envelope indicates that the post office provided the applicant at least two opportunities to acquire the notice before it was returned to the Northern Service Center. Therefore, the applicant's failure to receive the Notice of Decision was of her own making. The appeal was properly received by the Nebraska Service Center on July 18, 1994, over two years after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

ORDER: The appeal is rejected as untimely filed.

¹ The applicant provided a change of address in March 1992.