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U.S. Citizenship
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JUN 15 2007

FILE:

XPW 80 702 06218

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

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:

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

The director denied the application¹ 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 Anna Wickersham.

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 Decision on February 29, 1992 and sent it to the applicant at his address of record. The notice was returned by the post office as undeliverable – moved, left no address. The record contains no evidence of a change of address prior to the issuance of the director's decision. Therefore, the applicant's failure to receive the Notice of Decision was of his own making. The Texas Service Center received the appeal on June 22, 1995, over three 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 At the time the Form I-700 application was filed, the applicant was given alien registration number [REDACTED]. On September 30, 2003, all the documentation from the Form I-700 application was consolidated into the [REDACTED].