



U.S. Citizenship
and Immigration
Services

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JUN 15 2007

FILE:

XSI 88 138 01129

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. The matter 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 eligibility period ending May 1, 1986. This determination 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 Notice of Decision dated June 25, 1992, to the applicant at his address of record. 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 Western Service Center. Therefore, the applicant's failure to receive the Notice of Decision was of his own making. The Western Service Center received the appeal on July 8, 1993, over 11 months after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

It is noted that on July 15, 1997, the Director, California Service Center sent a notice informing the applicant that his original Form I-694 filed on July 8, 1993 was not contained in the record. The applicant was directed to submit a duplicate copy of his Form I-694, and was provided with copies of Form I-694 in the event he did not retain a copy of his original appeal. The applicant was provided 30 days in which to submit the requested documentation. The applicant, however, did not respond to the director's notice. Nevertheless, even if the applicant had responded to the notice, the appeal would be rejected as it was untimely filed.

ORDER: The appeal is rejected as untimely filed.