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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

JUN 15 2007

XSN 88 025 04194

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:



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, Southern 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 twelve-month eligibility period ending May 1, 1986.

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 regulation at 8 C.F.R. § 103.2(a)(7)(i) provides that an application or petition that is submitted with the wrong filing fee shall be rejected as improperly filed.

The director sent his Notice of Decision of July 3, 1991, to the applicant and to counsel at their addresses of record. Counsel dated the appeal September 23, 1991, and it was initially received by the Southern Service Center on October 1, 1991. The appeal, however, was rejected as an incorrect fee was submitted. The Southern Service Center received the appeal with correct fee on January 31, 1992, over five months after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

Assuming, arguendo, counsel had submitted the correct fee of \$50 on October 1, 1991, the appeal would have still been untimely filed as it was received by the Southern Service Center 90 days after the decision was issued.

ORDER: The appeal is rejected as untimely filed.