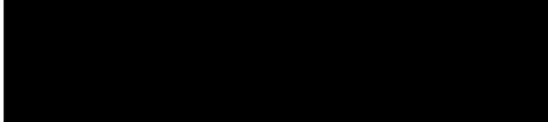




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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FILE:



XSF 89 013 04010

Office: CALIFORNIA SERVICE CENTER

Date:

NOV 20 2007

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, California 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 had been convicted of a felony in the United States. The director also determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) due to his conviction of felony driving under the influence causing injury.

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 July 13, 2007, and mailed it to the applicant's address of record. Counsel dated the appeal September 6, 2007, and the appeal with the required fee was received by the California Service Center on September 19, 2007, over 60 days after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

It is noted that counsel indicates that the untimely filing of the appeal was due to circumstances beyond the applicant's control, and submits a declaration from the applicant's employer who takes full responsibility for the late filing of the appeal. However, neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal.

ORDER: The appeal is rejected as untimely filed.