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U.S. Citizenship  
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FILE: [REDACTED]  
XEC 88 175 2200

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 30 2007**

IN RE: Applicant: [REDACTED]

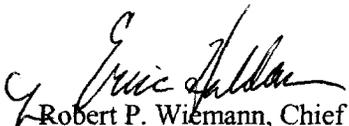
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preliminary 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 application for lack of prosecution because the applicant failed to appear at a local legalization office to file a complete application within the requisite 90-day filing period.

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 February 22, 1991, and sent it to the applicant's address of record via certified mail. However, the notice was returned to the Western Service Center as undeliverable mail. The appeal was not received until July 31, 2007, 16 years and five months after the issuance of the denial decision.

On appeal, counsel asserts that the applicant filed a change of address report with the local legalization office but never received any correspondence from the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), regarding her preliminary application for temporary resident status as a special agricultural worker. Counsel submits an affidavit from the applicant in which she states that she and her husband filed change of address report forms with the Service office in North Hollywood, California, but never received any correspondence from the Service regarding her application.

There is no indication in the record of proceeding that the applicant filed a change of address report with the Service in or around June or July of 1988. The record contains no correspondence from the applicant from the time of her admission to the United States as a preliminary applicant on May 11, 1988, until the filing of her appeal by counsel on July 31, 2007. Therefore, the applicant's failure to receive the notice of denial was not due to any error on the part of the Service. The appeal was untimely filed and must be rejected.

**ORDER:** The appeal is rejected. This notice constitutes a final notice of ineligibility.