

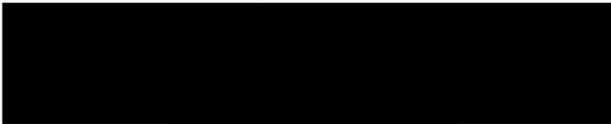


U.S. Citizenship
and Immigration
Services

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FILE:

XLI 88 245 07023

Office: NEBRASKA SERVICE CENTER

Date: **AUG 29 2008**

IN RE:

Applicant:



APPLICATION:

Application for Temporary Resident Status under 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 National Benefits Center. 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 application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application on the basis that 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. The director specifically noted that the applicant's landscaping employment cannot be deemed qualifying agricultural employment.

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 April 22, 1991. The record contains a signed postal return receipt showing that the director's decision was received. There is also no evidence that the applicant changed his address and promptly notified Citizenship and Immigration Services of the change prior to the date the director's decision was issued. The record shows that the appeal was received on December 31, 1998, more than seven years after the adverse decision was issued. The appeal was untimely filed and, therefore, must be rejected.

ORDER: The appeal is rejected as untimely filed.