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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 06 2008

XHP-89-071-1054

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Application for Temporary Status as a Special Agricultural Worker was denied by the Director, Western Service Center, on October 17, 1991. The decision is now before the Administrative Appeal Office (AAO) on appeal. The appeal will be rejected.

The director determined that the applicant had been convicted of a felony. The director further determined 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 denied the application for temporary resident status on this basis.

The record reveals that the applicant has been convicted of three criminal offenses. The record shows that on July 11, 1989, the applicant was convicted for the *Possession for Sale of Marijuana* in violation of section 11359 of the California Health and Safety Code. The term of imprisonment for this offense is not less than two years or more than ten years. C.A. Health & Safety Code § 11359 (West 1989). Additionally, the record shows that on August 29, 1991, the applicant was convicted for the *Possession or Purchase for Sale of Designated Controlled Substances* in violation of section 11351 of the California Health and Safety Code. The term of imprisonment for this offense is two, three or four years. C.A. Health & Safety Code § 11351 (West 1991). Finally, the record shows that on May 11, 1994, the applicant was convicted of *Attempting to Enter the United States by Making a Willfully False Representation* in violation of section 275(a)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1325(a)(3). The term of imprisonment for this offense is not more than six months.

On appeal, the applicant requested a copy of his record. The applicant asserts that he has 30 days to submit a brief and additional evidence after the receipt of his record.

An adverse decision regarding temporary resident status may be appealed to the AAO. Any appeal with the required fee shall be filed with the Regional Processing Facility within 30 days after the date of the denial notice. An appeal received after the 30 day period has tolled will not be accepted. 8 C.F.R. § 245a.2(p). Whenever a person has the right or is required to do some act within a prescribed period after the service of 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 denial notice on October 17, 1991, and mailed it to the applicant's address of record. The appeal was received as properly filed on February 12, 1992, 118 days after the date indicated on the denial notice. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected as untimely filed.