

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

16

FILE:



Office: TEXAS SERVICE CENTER

Date: **NOV 13 2006**

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. The file has been returned to the service center that processed 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.

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

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 AAO will return the matter for further action by the director.

The director denied the application because the applicant did not submit any evidence of 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 July 15, 1993. The appeal was not received until November 22, 1993. The appeal was untimely filed and, therefore, must be rejected.

It is noted that the director did not mail the Notice of Denial to the applicant's address of record. The untimely filing of the appeal appears to be due to the director's error. Pursuant to 8 C.F.R. § 210.2(g), the director may sua sponte reopen any adverse decision. Additionally, the director may certify any such decision to the AAO. See 8 C.F.R. § 210.2(h). Furthermore, the applicant is seemingly a class member under the *Haitian Refugee Center v. McNary*, No. 88-1066, stipulated settlement agreement at 2 (S.D. Fla. June 22, 1992), and he did respond to the director's notice by stating that he did want to be re-interviewed pursuant to that agreement. Therefore, the director may wish to consider reopening the application and scheduling the applicant for another interview under the H.R.C. agreement.

ORDER: The appeal is rejected as untimely filed.