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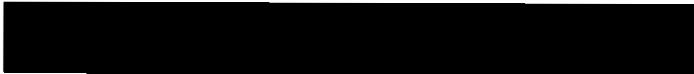
Office: CALIFORNIA SERVICE CENTER

Date:

XTU 88 206 01047

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. 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, Western 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 failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month eligibility period. This decision was based on adverse information regarding the applicant's claim of employment for [REDACTED]

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 record reflects that the director sent his decision of July 9, 1991 to the applicant at her address of record. The notice was returned by the post office as unclaimed. The envelope indicates that the post office provided the applicant at least two opportunities to acquire the notice before it was returned to the Western Service Center. The Western Service Center received the appeal on November 2, 1992, over 15 months after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

It is noted that on appeal, the applicant claims that she provided a change of address in 1990 to the Stockton Legalization Office. Because the address is not indicated on the photocopied Notice of Decision in the record, it cannot be determined to what address the notice was mailed to. 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).

ORDER: The appeal is rejected as untimely filed.