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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
XCA 88 018 01096

Office: CALIFORNIA SERVICE CENTER

Date: JUL 30 2008

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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, Western Regional Processing Facility, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director denied the application based on the determination that the applicant failed to provide credible evidence to establish that he performed the requisite 90 man-days of qualifying agricultural employment during the statutory 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 November 13, 1988. The record contains a signed postal return receipt showing that the director's decision was received on November 16, 1988. The applicant filed a Form I-694, Notice of Appeal, on February 14, 1989, over three months after the decision was issued.¹ The appeal was untimely filed and, therefore, must be rejected.

ORDER: The appeal is rejected as untimely filed.

¹ The applicant filed a second Form I-694 on December 30, 1992, with a change of address card attached. Although the applicant indicated that he believed a change of address form had been filed with Citizenship and Immigration Services previously, there is no documentation on record to substantiate the applicant's belief.