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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 05 2010**

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. 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 dark ink, appearing to read "Perry Rhew", with a circular flourish at the end.

Perry Rhew
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 director denied the application because the applicant failed to appear for the requisite interview on two separate occasions as required by 8 C.F.R. § 210.2(c)(2)(iv)

On appeal, the applicant's counsel indicates that the applicant was appealing the denial of a Form I-817, Application for Family Unity Benefits. However, a review of the record reveals that the applicant never filed a Form I-817 application, but instead filed a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker under Section 210 of the Immigration and Nationality Act (Act), on July 21, 1988. The Form I-700 application was denied by the director on August 21, 1990.

Counsel further indicates on the same appeal form that the applicant is filing an appeal pursuant to the Settlement Agreement in the Northwest Immigration Rights Project (NWIRP). NWIRP does not relate to applications for temporary resident status as a special agricultural worker.¹

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 August 21, 1990 and sent copies of this notice to both the applicant and his former counsel at each of their respective addresses of record. The record reflects that the notice mailed to the applicant's former counsel was not returned by the United States Postal Service (USPS) as either undeliverable or unclaimed, but the notice mailed to the applicant was returned by the USPS marked as "attempted, not known." The record shows that the applicant failed to inform the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) of any change in his address of record prior to December 7, 1990, when he attempted file the late Form I-687 application discussed above. Therefore, the applicant's failure to receive the notice was clearly of his own making.

The appeal was not received until March 25, 2009, eighteen years, seven months, and four days after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

ORDER: The appeal is rejected.

¹ See *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration Services, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP) (September 9, 2008).