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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office MS2090  
20 Massachusetts Ave., N.W.  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



L1

DATE: Office: CALIFORNIA SERVICE CENTER

File: 

**JUN 06 2011**

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. 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.

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Western Service Center denied the application for temporary resident status pursuant to section 210 of the Immigration and Nationality Act (Act). The matter is now before the Administrative Appeals Office (AAO). The appeal will be rejected.

The director denied the application, finding that the applicant failed to establish his eligibility for temporary resident status. More specifically, the director determined that the applicant failed to establish the applicant was eligible due to his criminal history.

On appeal, the applicant states that he initially filed his appeal with the wrong filing fee, and was now remitting the correct fee. The record indicates that the director denied the application on January 6, 1992 and sent it to the applicant by certified mail at his address of record. The notice of decision was returned to the Service, marked "undeliverable as addressed. Forwarding order expired." The applicant attempted to file his appeal on November 29, 2010. He filed his appeal with the correct filing fee on February 2, 2010 [sic].<sup>1</sup>

An applicant is ineligible for temporary residence if he or she has been convicted of any felony or three or more misdemeanors in the United States. 8 C.F.R. § 210.3(d)(3).

The record shows that the applicant has the following criminal record:

On January 18, 1989, the applicant was charged with violating section 11350 of the California Health and Safety Code, for possession of a controlled substance. He was convicted on the charge on March 9, 1989. Court Docket [REDACTED] in the Monterey County Superior Court of California. Section 11350 of the California Health and Safety Code is a felony.

The applicant is ineligible for temporary residence due to his felony conviction. The applicant is also ineligible because he is inadmissible due to his conviction of a violation of a law relating to a controlled substance. No waiver is available for this ground of inadmissibility.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she is admissible to the United States under the provisions of section 210(c) of the Act, 8 U.S.C. § 1160, and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 210.3(b)(1). The applicant has failed to meet this burden.

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

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<sup>1</sup> The appeal was accepted for filing in February 2011.

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 January 6, 1992. The appeal was not received until 2010. The appeal was untimely filed and, therefore, must be rejected.

**ORDER:** The appeal is rejected.