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



U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE:



Office: LOS ANGELES

Date: SEP 13 2007

XNK-89-046-00164

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 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.

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, Los Angeles District Office.

The Director, Western Service Center, denied the application because the applicant failed to establish admissibility or eligibility for temporary resident status. Specifically, the applicant failed to provide sufficient evidence to overcome the adverse information specified in the Notice of Intent to Deny. This information called into question the credibility of the applicant's evidence of qualifying employment.

Whenever an application for special agricultural worker status is denied or the status of a lawful temporary resident is terminated, the applicant shall be given written notice setting forth the specific reasons for the denial on Form I-692 Notice of Denial. Form I-682 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).

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 Decision on May 6, 1992. The appeal was not received until February 23, 1993, more than nine months after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

It is noted that, prior to the issuance of the director's decision, the applicant provided a Form I-697A Change of Address Card listing his address as [REDACTED] Anaheim, California. However, the director appears to have issued the decision to [REDACTED], Anaheim, California. 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.