



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18887515

Date: APR. 20, 2022

Appeal of California Service Center Decision

Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker

The Applicant, a native and citizen of Mexico, seeks status as a temporary resident under section 210 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1160. In 1991, the Director of the California Service Center (Director) denied the Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker (TRS application). In 2018, the Applicant filed a motion to reopen, which the Director denied in September 2020. The Applicant then filed an appeal with this office, requesting *sua sponte* reopening of her case. We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Foreign nationals who performed seasonal agricultural services in the United States during specified time periods may adjust status to that of temporary residents as special agricultural workers, if they are admissible to the United States and have not been convicted of a felony or three or more misdemeanors in the United States. *See generally* 8 C.F.R. § 210.3 (describing this classification's basic eligibility requirements). Pursuant to 8 C.F.R. § 210.2(f), the appeal must be filed with the Administrative Appeals Unit (now the Administrative Appeals Office) and pursuant to 8 C.F.R. § 103.3(a), the appeal must be filed within 30 days of an adverse decision. In these proceedings, the Applicant has the burden to establish eligibility for the requested benefit by a preponderance of the evidence. 8 C.F.R. § 210.3(b); section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Procedural History

In September 1988, the Applicant filed the TRS application and in November of the same year, the Director issued a notice of intent to deny (NOID), affording the Applicant 30 days in which to respond to the notice. The Applicant did not respond within the allotted timeframe and in July 1991, the

Director denied the TRS application for that reason. Within that decision, the Director informed the Applicant of her appeal rights but did not mention that she possessed any motion rights.

In November 2018, the Applicant filed a Form I-290B, Notice of Appeal or Motion, as a motion to reopen the July 1991 denial decision. The Director dismissed the motion in September 2020, noting that the Applicant did not possess any motion rights in response to the denial of her TRS application and instead could only appeal that decision on a Form I-694, Notice of Appeal of Decision Under INA Section 210 or 245A of the Immigration and Nationality Act (Form I-694). The Director further noted that even if she were able to file a motion on the 1991 decision, the Applicant did not file a motion within the permissible 33-day timeframe. Finally, the Director determined that the Applicant did not demonstrate that she merited a favorable exercise of discretion to excuse the untimely motion filing.

In March 2021—approximately six months after the Director denied the motion—the Applicant filed this appeal on a Form I-694, requesting *sua sponte* reopen the case, claiming that she could not respond to the 1988 NOID because she did not receive it.

B. Untimely Filing

At the outset, the Director issued the motion dismissal decision in September of 2020 and this appeal was filed approximately six months later, in March 2021. Even considering the extended timeframe in which to file appeals because of the COVID-19 pandemic, the Form I-694 was not timely filed and it will not be accepted for processing because appeals of unfavorable decisions dated in September of 2020 must have been filed within 63 calendar days. 8 C.F.R. § 103.3(a)(3)(iv)(C) (“An appeal received after the thirty (30) day period has tolled will not be accepted for processing.”); *see also* USCIS Alert, *USCIS Extends Flexibility for Responding to Agency Requests* (Jan. 28, 2021), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-3>. As it relates to the Form I-694, the Applicant does not explain why we should accept it as being filed timely or excuse its untimeliness.

C. An Applicant’s Rights to Contest a Denial

Assuming *arguendo* that the Applicant had filed the Form I-694 in a timely manner, she does not have motion rights under the regulations. In this regard, 8 C.F.R. § 210.2(f) provides that “[a]n adverse decision under this part including an overseas application may be appealed to the Associate Commissioner, Examinations (Administrative Appeals [Office]) on Form I-694.” Moreover, 8 C.F.R. § 210.2(g) provides that “[m]otions to reopen a proceeding or reconsider a decision shall not be considered under this part.” Finally, 8 C.F.R. § 103.5(b) reiterates this prohibition on filing motions to reopen or reconsider for TRS applications. Because the Applicant does not have motion rights under the regulations, we will treat this filing as an appeal and not as a motion to reopen.

D. Lack of Notice

On appeal, the Applicant does not argue that the Director erred in denying her motion to reopen in September 2020. Moreover, she does not claim that the Director either: (1) served a notice to an incorrect address, or (2) that she filed a change of address with the Service prior to the date on the 1988 NOID or the 1991 TRS application denial. Rather, the Applicant only claims that she did not

receive the notices and identifies evidence that both notices were returned to the agency as proof that she did not receive them.¹ We note, however, that both notices were sent to the address the Applicant provided on her Form I-700 and the record does not reflect that she filed a change of address form. The regulations require that applicants who move to a different address than the one listed on a form filed with this agency must report that change of address within 10 days. 8 C.F.R. § 265.1. As a result, the Applicant has not met her burden to demonstrate that the Director erred in denying her motion to reopen and reconsider due to a lack of notice. Based on the foregoing, the Applicant has not overcome the reason for the denial of her motions or the denial of her Form I-700, and we must dismiss her appeal.

ORDER: The appeal is dismissed.

¹ The first piece of evidence the Applicant submits on appeal relates to the NOID and is a photocopy of a page containing two images. The first is an image of a U.S. Postal Service form—a PS Form 3811, Domestic Return Receipt—and the second is an image of an agency received stamp dated May 2, 1991. The second piece of evidence is a photocopy of an envelope originating from legacy Immigration and Naturalization Service (INS) bearing a postmark of July 15, 1991. The envelope contains two stamps reflecting the following: “CERTIFIED MAIL” and “RETURNED TO SENDER MOVED LEFT NO ADDRESS.” The envelope also bears a computer-generated label reflecting that on August 6, 1991, the envelope was returned to the sender because no forwarding address was on file.