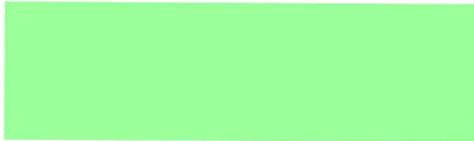
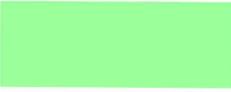
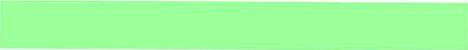




(b)(6)



Date: **JUN 20 2013** Office: TUCSON FILE: 

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. 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 black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Western Service Center (now known as the California Service Center) denied the application for temporary resident status as a special agricultural worker. The applicant appealed the decision to the Legalization Appeals Unit (LAU).¹ LAU remanded the matter to the director to issue a new decision after complying with the applicant's request for a copy of the record of proceedings. The director provided the applicant with a copy of the record of proceedings (Control No. [REDACTED]) and subsequently denied the application again. The director certified his decision to the Administrative Appeals Office (AAO). The AAO will affirm the director's decision and the application will remain denied.

The director initially informed the applicant of adverse information regarding his application. The applicant had submitted an employment letter from [REDACTED], a farm labor contractor, in support of his application. The director advised the applicant that [REDACTED] had given the Service a sworn statement admitting that he provided fraudulent employment letters for applicants seeking Special Agricultural Worker (SAW) status. The director gave the applicant 30 days to respond to the notice of adverse information. The applicant failed to respond and the director denied the application for SAW status because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the 12-month period ending on May 1, 1986.

The Tucson Field Office director scheduled the applicant for an interview and requested that the applicant submit final court dispositions for eight arrests. The applicant failed to respond to the request.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

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 contains the following criminal history:

On [REDACTED] 1995, the applicant was found guilty of *obstructing justice* in the [REDACTED] Magistrate's Court (Case No. [REDACTED]).

On [REDACTED] 1999, the [REDACTED] Sheriff's Office arrested the applicant and charged him on two felony counts: *trafficking in marijuana*, and *conspiring to traffic in marijuana*. The applicant pled guilty to a lesser charge, *possession of marijuana in an amount between ½ and 1 and ½ ounces*, a violation of section 90-95(d)(4) of the General Statutes of North Carolina on [REDACTED] 2000 in the [REDACTED] Court (Case No. [REDACTED]).

¹ The Legalization Appeals Unit was absorbed by the Administrative Appeals Office.

Page 3

On [REDACTED] 2000, the applicant was convicted of *solicitation to unlawfully possess a narcotic drug, cocaine base*, in violation of sections 13-1002, 13-3408(a) and 13-901.01 of the Ariz. Rev. Stat. in the [REDACTED] Court of Arizona (Case No. [REDACTED]).

On [REDACTED] 2001, the applicant was found guilty of *theft*, in violation of section 13-1802 of the Ariz. Rev. Stat. in the [REDACTED] in Bisbee, Arizona (Case No. [REDACTED]).

In 2003, the applicant was arrested for a violation of section 893.13(6b) of Florida Statutes, *possession of less than 20 grams of marijuana*, a misdemeanor.

On [REDACTED] 2005, the applicant was charged on two counts of violating section 13-2810 of the Ariz. Rev. Stat, *interference with judicial proceedings* in [REDACTED] Arizona. He was found guilty on one count on [REDACTED] 2005.

No documentation has been submitted which would indicate, much less establish, that the convictions shown above related to infractions or offenses other than misdemeanors. The applicant is ineligible for temporary residence due to his multiple misdemeanor convictions.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act (formerly section 212(a)(23) of the Act).

A waiver of grounds of inadmissibility is not available to an alien found to be inadmissible under specifically enumerated grounds of section 212(a) of the Act including section 212(a)(2)(A)(i)(II) of the Act. Section 210(c)(2)(B)(ii) of the Act, Section 245A(d)(2)(B)(ii) of the Act, 8 C.F.R. § 210.3(d)(3)(iii), and 8 C.F.R. § 245a.2(k)(3)(ii).

The sole exception allowing for the waiver of the ground of inadmissibility for an alien found inadmissible under Section 212(a)(2)(A)(i)(II) of the Act as a result of a conviction involving a controlled substance is that available to an alien convicted of "...a single offense of simple possession of 30 grams or less of marijuana..." Section 210(c)(2)(B)(ii)(III) of the Act, Section 245A(d)(2)(b)(ii)(II) of the Act, 8 C.F.R. § 210.3(d)(3)(iii), and 8 C.F.R. § 245a.2(k)(3)(ii). Here, the applicant has more than one conviction involving a controlled substance, so he is ineligible for this waiver.

The applicant has failed to establish he engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986. He is ineligible due to his multiple misdemeanor convictions and his inadmissibility.

The applicant has failed to establish his eligibility for Special Agricultural Worker status.

ORDER: The director's decision of April 19, 2013 is affirmed and the application is denied. This decision constitutes a final notice of ineligibility.