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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE **OCT 24 2013** Office: MOUNT LAUREL, NJ

FILE: [Redacted]

IN RE: APPLICANT: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Mount Laurel, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed violations related to a controlled substance. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility under section 212(h), 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse and children.

The Field Office Director concluded that the applicant had two controlled substance convictions and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated November 16, 2012.

On appeal, counsel submits a brief in support, copies of records related to criminal and immigration proceedings, a statement from the applicant's spouse, medical records, a 2012 psychological evaluation, and documentation on country conditions in Nigeria. In the brief, counsel contends the applicant has only one conviction for a controlled substance violation, and is therefore eligible for a waiver of inadmissibility under section 212(h) of the Act. Counsel moreover asserts that the applicant's spouse and children would experience extreme hardship given the applicant's inadmissibility.

The record includes, but is not limited to, the documents listed above, evidence of birth, marriage, residence, and citizenship, documentation on business ownership, a psychological evaluation, letters from family and friends, educational records, documentation of criminal and immigration proceedings, medical and financial records, and other applications and petitions. The entire record was reviewed and considered in rendering a decision on the appeal.

We will first address the applicant's inadmissibility and eligibility for a waiver. The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance.

Section 212(a)(2)(A) of the Act states, in pertinent part:

(A) Conviction of certain crimes. –

(i) In general. - Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

...

(II) a violation of (or conspiracy or attempt 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)), is inadmissible.

The applicant's criminal record indicates he was arrested on five different occasions. The applicant was first arrested on September 10, 2000 in Tinton Falls, New Jersey, and charged with violating New Jersey Statute Annotated (NJSA) §2C:35-10A(4) for possession of 50 grams or less of marijuana. The applicant submitted a disposition and transcript of docket which indicates the applicant did not make a plea, and on December 11, 2001, the charge was dismissed pursuant to a conditional discharge program.

The record reflects the applicant was arrested a second time on July 23, 2002, and charged with violating NJSA §2C:35-10A(1) for unlawful use, possession, control, or being under the influence of a controlled substance. The applicant pled guilty to an amended charge, NJSA §2A:170-77.8, on October 23, 2002. However, in 2009 the case was reopened, as the statute the applicant was convicted under did not exist at the time of his conviction. On November 18, 2009, the charge and conviction were amended to NJSA §2C:33-2A(1), improper behavior. As this amended conviction is based on a substantive defect in the original proceedings, the AAO will give full faith and credit to the trial court's amendment of the applicant's conviction under NJSA §2C:33-2A(1).

The applicant was arrested a third time on or about April 6, 2003. He was charged with violating NJSA §2C:12-1A(1), obstructing the administration of law, NJSA §2C:12-3, terroristic threats, and NJSA §2C:12-1B(5), assault. On November 6, 2003 the applicant pled guilty and was found guilty of the assault charge, and was sentenced to serve 45 days in jail.

The applicant's fourth arrest occurred on February 5, 2004. He was then charged with violating NJSA §2C:35-10A(4) for possession of 50 grams or less of marijuana, and with NJSA §2C:29-3A for hindering apprehension. A police officer indicates in a February 5, 2004 report that the applicant was charged with possession of marijuana because he was found with a marijuana roach, which he ate. The charge under NJSA §2C:29-3A was dropped. On November 18, 2004 the applicant pled guilty to the marijuana possession charge, a judge found him guilty, and he was sentenced to 30 days in jail and a \$758 fine.

The applicant was arrested a fifth time on May 10, 2007. On that date, the applicant was charged with two counts of unlawful possession of weapons under NJSA §§2C:39-4B and 39-5D. On May 10, 2007 the charges were amended to two counts of disorderly conduct under §2C:33-2A(2). The applicant pled guilty to the second amended charge in 2008.

The applicant does not contest that he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his 2004 conviction for marijuana possession. As this finding is supported by the record, the AAO concludes that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of an offense involving possession of a controlled substance.

Section 212(h) of the Act provides, in pertinent parts:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
  - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
  - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
  - (iii) the alien has been rehabilitated; or
- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . ; and
- (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In order to be eligible for consideration for a waiver under section 212(h) of the Act, the applicant must establish that his conviction relates to simple possession of 30 grams or less of marijuana. The statute under which the applicant was convicted penalizes possession of 50 grams or less of marijuana, so an analysis of the record of conviction must be undertaken to determine whether the applicant possessed 30 grams or less, or between 30 and 50 grams of marijuana.

Although the record is unclear on the exact amount of marijuana the applicant possessed, the police report indicates the applicant was found with a "small marijuana roach" in his pocket. [REDACTED] *police department report*, February 5, 2004. *See also affidavit of probable cause*, February 5, 2004. The record also indicates that the roach was unavailable for evaluation, as the applicant obtained the roach and swallowed it. *Id.*

The burden of proof is upon the applicant to establish he is admissible to the United States in accordance with the requirements at 8 C.F.R. 103.2(b). The applicant has submitted documentation establishing that generally, a marijuana roach contains less than 30 grams of marijuana. In light of this documentation, as well as the police report's characterization of the marijuana as a "small marijuana roach," the AAO finds the applicant has met his burden in establishing that he possessed less than 30 grams of marijuana. As the applicant's conviction was for simple possession of 30

grams or less of marijuana, the AAO finds the applicant is eligible for a waiver under section 212(h) of the Act.

Counsel does, however, contest the Field Office Director's finding that the applicant has two convictions for possession of marijuana. Counsel contends that the applicant's September 10, 2000 arrest for possession of marijuana did not result in a conviction for purposes of immigration law, and that consequently the Field Office Director's finding that the applicant has two convictions related to controlled substance offenses is erroneous.

Section 101(a)(48) provides:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—
  - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
  - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

New Jersey law provides for conditional discharges for certain first offenses. To be eligible for the conditional discharge program under NJSA §2C:36A-1, a defendant must not have any previous convictions for certain offenses, including drug possession offenses. If a defendant is eligible for the conditional discharge program, the court may take one of two options. NJSA §2C:36A-1 (2001). The court may either: "(1) Suspend further proceedings and with the consent of the person after reference to the State Bureau of Identification criminal history record information files, place him under supervisory treatment upon such reasonable terms and conditions as it may require; or (2) After plea of guilty or finding of guilty, and without entering a judgment of conviction, and with the consent of the person after proper reference to the State Bureau of Identification criminal history record information files, place him on supervisory treatment upon reasonable terms and conditions as it may require, or as otherwise provided by law." *Id.* Based on the record, the applicant did not plead guilty, nor did the court find the applicant to be guilty. *Disposition and transcript of docket*, December 29, 2009. Instead, the applicant was placed in a supervisory treatment program for approximately 12 months, and he was ordered to pay \$1166.00 in fines and costs. *Disposition and transcript of docket*, December 29, 2009. The conditional discharge statute further provides, "[u]pon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt..." NJSA §2C:36A-1 (2001). The record reflects that on December 11, 2001, the applicant met the conditions of his discharge, and the charges were consequently dismissed. *Id.*

The AAO finds that applicant's twelve month supervisory treatment is a restraint on his liberty that

satisfies the second prong of section 101(a)(48)(A) of the Act. However, there is no evidence that a judge or jury has found him guilty or he has entered a plea of guilt or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, as required by the first prong of section 101(a)(48)(A) of the Act. It can thus be concluded that the criminal charges against the applicant have been dismissed. Since this offense did not result in a conviction within the definition of section 101(a)(48)(A) of the Act, we cannot find that it constitutes a conviction of an offense related to controlled substances. The applicant remains inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his 2004 marijuana possession conviction, as stated above. The applicant's qualifying relatives for a waiver of this inadmissibility under section 212(h) of the Act are his U.S. citizen spouse and children.<sup>1</sup>

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Under section 212(h), qualifying relatives include U.S. citizen or lawful permanent resident spouses, parents, sons and daughters. Hardship to the applicant is considered only to the extent it results in hardship to the qualifying relative. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios are possible should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action to be taken is difficult, and it is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

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<sup>1</sup> The AAO notes that in the applicant's case, as he is found to be inadmissible for a violation of a state law relating to a controlled substance under section 212(a)(2)(A)(i)(II) of the Act, we need not discuss whether his other convictions are also crimes involving moral turpitude.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For

example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Hardship to the applicant's spouse will be addressed first. The spouse claims that she would experience medical and professional hardship upon separation from the applicant. The spouse explains that after he was released from immigration detention, the applicant has become an integral part of assisting her with her business, and that without him her business would be in jeopardy. The spouse also contends that if she were unable to work because of her hypertension, the business would have to be shut down, and the entire family would lose not only her income but also their health insurance. She indicates that the applicant alleviates her stress, which has a beneficial effect on her hypertension.

The applicant's spouse contends she would experience medical, professional, and safety-related hardship upon relocation to Nigeria. The spouse explains she is currently being treated for chronic hypertension, and that she has tried multiple medications in an attempt to control the condition. The spouse asserts that because medical care in Nigeria is so poor, relocating there would place her health at risk and could lead to permanent damage, such as a heart attack, stroke, aneurisms, and heart failure. A 2012 medical chart document and a medical expenses summary are submitted on appeal. The spouse states that her medical condition would only add to the stressful situation caused by adverse country conditions in Nigeria. Articles on the unequal treatment of women and the poor Nigerian health care system are submitted in support. The spouse indicates in an earlier statement that women are treated badly by men and under the law in Nigeria. She explains that Nigeria lacks basic infrastructure, and is constantly under threats of terrorism. She states that she would worry about her family's safety, and that she would be unable to afford even basic health care in Nigeria. The spouse explains that she would not be able to find suitable employment in Nigeria, which would entail defaulting on her financial obligations, including her student loans. The spouse moreover claims that she would lose her house and her vehicle if she relocated, and that she would also have to give up her mental health clinic in New Jersey, which has three sites and employs 20 people. She explains that her business provides mental health and behavioral services to the

as well as the Supplementary Educational System. The spouse concludes that she has lived in the United States for 44 years, and that re-adjustment to Nigeria would be difficult.

The spouse claims that the applicant helps her with her business, and that the business would suffer if they were separated. However, the spouse does not provide any specific details, such as a description of the applicant's role in the business, or the applicant's day-to-day duties. Without such details, the AAO is unable to evaluate the hardship the spouse will experience

without the applicant present to provide assistance. Furthermore, the spouse does not explain why her twenty employees could not provide adequate assistance in the event of an emergency, or why, given the size of the staff, she would have to shut down her business if she were unable to work. Consequently, there is no documentation to support her claim that she would lose her business and health insurance if she had medical difficulties. Although these assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without sufficient details and supporting evidence, the AAO cannot determine what, if any, impact the applicant’s absence would have on his spouse’s business.

The AAO acknowledges that separation from the applicant may cause stress and other family-related difficulties. However, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant’s spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Nigeria without his spouse.

The applicant has demonstrated that his spouse would experience extreme hardship upon relocation to Nigeria. The record reflects that the spouse has an established business in New Jersey, and that the business has three locations and several employees. The applicant has submitted sufficient evidence demonstrating that his spouse could no longer be involved in her business if she moved to Nigeria. In addition to hardship related to her business, the record reflects that the spouse would relinquish property, family, and community ties upon relocation to a country she left when she was a child. Moreover, assertions with respect to safety concerns in Nigeria are corroborated by the U.S. Department of State in a recent travel warning. Therein, the State department advises against traveling to several areas in Nigeria, and indicates that [REDACTED] where the applicant was born, has been the site of kidnappings, armed robberies, and other violent crimes. *Travel warning: Nigeria, U.S. Department of State*, June 3, 2013. As such, the applicant has shown that his spouse would experience professional, safety-related, and other hardship upon relocation to Nigeria.

In light of the evidence of record, the AAO finds the applicant has established that his spouse’s difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant’s spouse are in the aggregate above and beyond the

hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Nigeria.

The applicant's spouse asserts that the children would experience emotional hardship without their father present. The spouse explains that the applicant has a strong presence in the direction and the support of the children's everyday lives, and that separation from the applicant caused the children to mourn the absence as a death. A report from a licensed clinical social worker (LCSW) is submitted in support. Therein, the LCSW indicates the child Tioluwani suffered from unresolved grief when the applicant was absent, but with both parents present he seems to have a healthy sense of self and family. The same LCSW states in a report about the child Afioluwa that he continues to experience residual anxiety as a result of the applicant's absence, and that he still has to work through issues which trigger his anxiety. The spouse adds that although the children have had therapy, love, support, and one on one time, they still have fear in their eyes when the applicant leaves the house. The spouse states that a clinician has told her there could be considerable negative impacts to the children if they are again separated from the applicant. LCSW evaluations from 2010 indicate that both children had anxiety issues develop while they were separated from the applicant.

The spouse claims that her children would be subject to inadequate health care, adverse country conditions, and difficulty adjusting to life in Nigeria. She additionally states that they would experience financial hardship because she and the applicant would be unable to find adequate employment in Nigeria. She explains that lawlessness, a lack of basic infrastructure, crime, unemployment, a lack of health insurance, and general poverty in Nigeria will create extreme hardship for herself and the children in that country. Counsel submits a 2012 travel warning, a 2012 U.S. diplomatic mission to Nigeria security message, and articles on terrorist attacks in Nigeria.

The applicant has not demonstrated that his children will experience extreme hardship in the event of separation. The applicant's spouse discusses the separation anxiety the children suffered while the applicant was in immigration detention, and submits evaluations from 2010 and 2012 in support. As such, the record reflects that the applicant's children experienced some anxiety when they were separated from the applicant, and they may have similar issues in the event of future separation. However, there is insufficient evidence of record to demonstrate that their hardship rises above the hardship commonly created when families separate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional or other impacts of separation on the applicant's children are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that they would experience extreme hardship if the waiver application is denied and the applicant relocates to Nigeria without them.

The applicant has demonstrated that his nine year old U.S. citizen sons will experience extreme hardship upon relocation to Nigeria. The record reflects that the applicant's children, as well as his spouse, would be subject to adverse country conditions in Nigeria. Furthermore, relocation would also entail relinquishing their family and community ties to the United States, as well as adjustment

to a country they have never lived in. Given the documentation of record, the AAO finds the applicant's children would experience extreme hardship in the event of relocation to Nigeria.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse or children as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.