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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 07 2013 OFFICE: ACCRA, GHANA File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

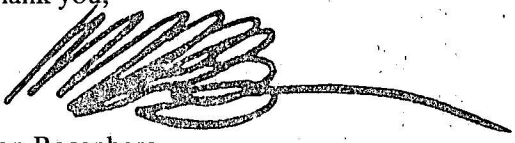
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601 waiver application and the Form I-212 application for permission to reapply for admission were concurrently denied by the Field Office Director, Accra, Ghana and are 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude; section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States; and section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law. The applicant seeks a waiver of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v), and permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his U.S. citizen spouse and his two adult U.S. citizen children.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director,* dated June 30, 2011. The field office director concurrently denied the Form I-212, Application for Permission to Reapply for Admission as a matter of discretion, because granting the permission would serve no purpose. *Id.*

On appeal the applicant asserts that his convictions do not amount to aggravated felonies because the loss to the victim "is far less than $10,000" and that his spouse and adult children are currently experiencing extreme hardship due to their separation from him. *See Form I-290B, Notice of Appeal or Motion, received July 28, 2011.*

In his appeal brief, the applicant additionally takes issue with a number of procedural facts noted by the field office director as determined from the record. These concern but are not limited to: the request by the applicant's second wife to withdraw the Form I-130 petition filed on his behalf; the lawfulness of the applicant's F-1 student status at the time an order to show cause and subsequent grant of voluntary departure with an alternate order of deportation were issued; and his contention that his 12 felony convictions were the result of ineffective assistance of counsel and false charges brought against him because he was "easy prey." The AAO has no jurisdiction over the withdrawal of a Form I-130 petition for alien relative and subsequent denial of a Form I-485 application for adjustment of status based thereon, the orders in removal proceedings of immigration judges, or the decisions of U.S. District Court judges, and will not address the applicant's assertions related thereto. It is noted that the applicant has previously been heard on his contentions without success. The record shows that his motion for retrial based on ineffective assistance of counsel was denied, as were his direct appeal to the U.S. Court of Appeals for the Eleventh Circuit and his collateral motion under 28 U.S.C. § 2255 challenging his convictions. The AAO thus finds that the field office director's summary concerning these issues was accurately determined from the record as currently constituted.

The record contains but is not limited to: Form I-290B and the applicant's appeal brief; hardship letters from the applicant's spouse and adult daughter; a letter from the applicant's third wife; a letter from the applicant's spouse's mother; a letter from the applicant's spouse's son; letters and affidavits from the applicant; a letter from a Christian counselor; letters of support and character reference; medical records for the applicant's spouse concerning a work-related injury and documents concerning her termination for unsafe acts in the workplace; bills and expenses lists; documents pertaining to divorces, marriages and births; documents related to the applicant's criminal record, proceedings and unsuccessful appeals and motions; and documents related to the applicant's removal proceedings, unsuccessful motions and removal. The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to

> the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this "does not mean that the parties would be free to present any and all evidence bearing on an alien's conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703.

The record shows that the applicant was convicted in United States District Court on January 23, 2007 for 11 counts of Filing a False Income Tax Return, in violation of 26 U.S.C. § 7206(2), and Aiding and Abetting, in violation of 18 U.S.C. § 2, and one count of Conspiracy to Defraud the United States, in violation of 18 U.S.C. § 371, for his conduct between January 24, 2000 and April

15, 2000. The applicant was sentenced to 24-months imprisonment and ordered to pay $56,003 in restitution as well as a $1,200 assessment.

At the time of the applicant's conviction, 26 U.S.C. § 7206(2) provided:

> §7206. Fraud and false statements
>
> Any person who—
>
> (2) Aid or assistance
>
> Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document.

18 U.S.C. § 2 provided:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

At that time 18 U.S.C. § 371 provided:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct." 341 U.S. 223, 232 (1951). Therefore, the AAO concurs that the applicant's convictions for conspiracy to defraud the United States in violation of 18 U.S.C. § 371 and filing a false income tax return and aiding and abetting in violation of 26 U.S.C. § 7206(2) and 18 U.S.C. § 2 are crimes involving moral turpitude. The applicant does not contest this determination on appeal.

The applicant does, however, contest that his convictions constitute aggravated felonies. However, it is first noted that whether the applicant was convicted of an aggravated felony has no bearing on his inadmissibility under section 212(a)(2)(A) of the Act, and he requires a waiver under section 212(h) of the Act regardless. The applicant claims that the loss to the victim "is far less than $10,000." The applicant's assertion is unpersuasive as he was ordered by the court to pay restitution in the amount of $56,003 to his victim, the Internal Revenue Service, the amount of pecuniary loss suffered thereby. Thus the AAO concurs with the field office director that the applicant's convictions are aggravated felonies consistent with section 101(a)(43)(M)(i) of the Act, which includes as an aggravated felony an offense involving fraud or deceit in which the loss to the victim or victims exceeds $10,000, and section 101(a)(43)(U) of the Act, a law relating to an attempt or conspiracy to commit an offense described in section 101(a)(43) of the Act. An immigration effect of the applicant's aggravated felony convictions is that he is permanently required to apply for permission to reapply for admission, pursuant to section 212(a)(9)(A)(iii) of the Act, in order to enter the United States.

For his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, the applicant requires a waiver under section 212(h) of the Act. The applicant is additionally inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver under section 212(a)(9)(B)(v) of the Act.

Section 212(a)(9) of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> > (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who- ...
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record shows that the applicant entered the United States on September 22, 1985 and was admitted as an F-1 student. On August 16, 1988 the applicant was ordered to show cause based on unlawful status in the United States, and he was no longer in valid F-1 status and was employed without authorization. The applicant failed to show cause and on September 2, 1988 an immigration judge granted him voluntary departure on or before September 9, 1988, with an alternate order of deportation. The applicant did not depart within the designated period. On May 16, 2008, following felony convictions for 11 counts of filing a false income tax return and aiding and abetting, and one count of conspiracy to defraud the United States, the applicant was ordered removed by an immigration judge based on the September 1988 deportation order. He was removed from the United States on June 3, 2008. The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions under the Act, to June 3, 2008, a period in excess of one year. As the applicant is seeking admission to the United States within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding

and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (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*, 138 F.3d at 1293 (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 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.

The applicant's spouse is a 50-year-old native and citizen of the United States who has been married to the applicant since February 2007. They have no children together but each has two U.S. citizen adult children from prior marriages. The applicant's spouse indicates that she also has an 18-year-old son who is disabled. She states that she lost her job "due to a medical injury" and underwent surgery in September 2010 which has left her unemployed and the sole provider for her family. The applicant's spouse writes that she is unable to work and needs the applicant to take his role as headship for his wife and children and cook and do other house maintenance and work until she is able to use both her hands properly.

The record shows that the applicant's spouse was terminated from her employment with [redacted] on September 17, 2010 following numerous recorded warnings concerning her violations for unsafe acts in the workplace. A State of Alabama "Employer's First Report of Injury or Occupational Disease" form completed by [redacted] indicates that the applicant, who "while climbing a ladder and carrying roofing materials slipped on wet floor causing worker to fall 20 feet," returned to work on December 29, 2010. A "Patient Surgery Information" form from [redacted] notes that the applicant's spouse is scheduled for left hand surgery on September 22, 2010 but provides no details concerning the diagnosis, nature of the surgery or prognosis. [redacted] writes that he evaluated the applicant's spouse for possible carpal tunnel syndrome on January 5, 2011 and February 28, 2011. He relays that the applicant's spouse "elected to have surgery on the left side" in September 2010 followed by occupational therapy in November and December 2010, and was discharged and returned to work.

While asserting on appeal that she has been unemployed since September 2010, the applicant's spouse does not address the documentary evidence of her continued employment. Conversely, there is no documentary evidence demonstrating that the applicant's spouse is either unemployed or unable to work due to any disability. As noted by the field office director, going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this

proceeding. *See 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)). writes in January 2011 that the applicant's spouse "does not qualify for any impairment based on objective measurements," and in February 2011 that she "moves around in no acute discomfort," and "does not qualify for any impairment, based on her sensation she does not qualify for any impairment, and she has no objective data that would qualify her for any impairment." He notes, however, that the applicant's spouse is "reporting continued mild carpal tunnel symptoms on the left" so may "qualify possibly for a 10% impairment of the upper extremity based on median nerve entrapment at the wrist."

The applicant's spouse maintains that matters are made worse because she has an 18-year-old son who is legally disabled. The field office director noted that the record contains no corroborating documentary evidence. On appeal, a letter from the Social Security Administration was submitted indicating that the applicant's spouse receives $674 per month in supplemental social security income for a No evidence establishing the relationship between the two, such as a birth certificate listing the applicant's spouse as mother, has been submitted. While birth certificates have likewise not been submitted for her two other adult children, it can be determined from a January 1992 divorce stipulation and agreement that the applicant's spouse has two children, who were minors 21 years ago. In an undated single-paragraph letter, indicates that he has been supporting the applicant's spouse "since she lost her job monthly from time to time as much as 300 dollars per month." An equally brief and undated letter from the applicant's spouse's mother indicates that she has provided "as much as 200 dollars per month" from time to time. As these letters are undated and no corroborating financial documentation has been submitted, very little probative weight is afforded.

Several billing statements have been submitted, including some showing overdue accounts. Also submitted is a list of expenses on which is noted: "As you can see financially there is need for more income for the house hold." While greater household income would certainly benefit the applicant's spouse, the record contains no documentary evidence demonstrating that the applicant has ever supported her financially or contributed to her household income. On January 23, 2007 the applicant was convicted on 12 felony counts and ordered to pay more than $56,000 in restitution. Approximately three weeks later, while under a final order of removal, the applicant married his fourth and current spouse. The record does not indicate that the applicant and his spouse have ever resided together either before or after they married in February 2007. On the applicant's Form G-325A, Biographic Information, dated March 2, 2008, he indicates that he has resided at in Dothan, Alabama since May 2000. On the applicant's spouse's Form G-325A, also dated March 2, 2008, she indicates that she has been residing at in Dothan since October 2007 and previously resided at in Dothan, from October 2006 to October 2007. No joint income tax returns have been submitted for 2007 or 2008 demonstrating any combined income or assets nor have more recent returns been submitted to substantiate the claim that the applicant's spouse has been unemployed since September 2010, despite evidence to the contrary showing that she returned to work in December 2010. The evidentiary deficiencies in the record are significant and prevent the AAO from finding that the

applicant's spouse is experiencing extreme hardship of an economic nature as a result of separation from the applicant.

The applicant's spouse states that she does not wish to have a nervous breakdown while trying to hold her family together by herself without help from the able-bodied applicant. She writes in an email to the applicant that she has sleepless nights and "can't think right." [redacted] explains that he provides Christian counseling to the applicant's spouse and from conversations with her has found she is depressed and stressed due to separation from the applicant. [redacted] adds that such problems are common to anyone who loses a loved one and the applicant's spouse is no different. The AAO recognizes the emotional difficulties inherent in a lengthy separation. However, in the present case the evidence does not demonstrate difficulties beyond those ordinarily associated with a loved one's inadmissibility or removal.

Assertions have been made concerning the applicant's children. It is noted that while the applicant's two adult U.S. citizen children would be considered qualifying relatives for a waiver under section 212(h) of the Act, they are not qualifying relatives for a waiver under section 212(a)(9)(B)(v). Thus, even if extreme hardship to either could be established, the applicant would remain inadmissible under section 212(a)(9)(B)(i)(II) of the Act throughout the duration of his 10 year unlawful presence bar. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the applicant's qualifying relative for a section 212(a)(9)(B)(v) waiver – here the applicant's current spouse. The record does not indicate that the applicant's two adult children from his third marriage reside with the applicant's current spouse or that they provide any form of support to one another. [redacted] indicates that her 24-year-old daughter, [redacted] is not attending college because she has no finances and that her 22-year-old son, [redacted] has joined the military. [redacted] states that [redacted] loves the applicant but cannot afford to visit him in Africa, is depressed, has no medical insurance and is struggling to pay her expenses. [redacted] writes that her father was her sole provider before her removal, but submits no corroborating documentary evidence. She states that life is meaningless without the applicant, that she is having sleepless nights due to stress and depression, and she misses his financial, emotional, physical and mental support. While the difficulties described are not insignificant, they are not distinguished from those ordinarily associated with a loved one's inadmissibility such that they rise to the level of extreme hardship, and the evidence in the record does not establish that any hardship to the applicant's adult daughter or son from a prior marriage elevates the applicant's current spouse's hardship to an extreme level.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Neither the applicant nor the applicant's spouse have addressed in the record the possibility of the latter relocating to Nigeria. The AAO notes that to consider whether the applicant's spouse would suffer relocation-related hardship in Nigeria, an assertion to that effect must be made and must be supported by corroborating documentary evidence. While the field office director concluded that

the applicant's spouse would suffer such hardship because she is "U.S.-born with no connection to Nigeria besides her marriage" to the applicant, the AAO will not similarly speculate in this regard. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As said review has demonstrated that the record is silent concerning the possibility of relocation, the AAO finds the evidence therein is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Nigeria to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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 proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The AAO notes that the field office director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, (Form I-212) in the same decision denying the applicant's Form I-601 application. The AAO has dismissed the appeal of the Form I-601 application. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant remains inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Act, no purpose would be served in approving the applicant's Form I-212.

ORDER: The appeal is dismissed.