



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

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

In Re: 25965829

Date: JUN. 21, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of China, has applied to adjust status to that of a lawful permanent resident, which requires her to show that she is admissible to the United States or eligible for a waiver of inadmissibility. The Applicant was determined to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation and seeks a waiver of this ground of inadmissibility under section 212(i) of the Act. The Director of the Honolulu, Hawaii Field Office denied the waiver request, concluding that the Applicant did not establish that the only qualifying relative, her U.S. citizen spouse, would experience extreme hardship if the Applicant is denied admission, as required under section 212(i) of the Act. We subsequently dismissed an appeal, concluding that she did not establish the requisite extreme hardship to her spouse. The Applicant now files a combined motion to reconsider and reopen. Upon review, we will dismiss the motion to reconsider, but we will grant the motion to reopen and remand the matter to the Director for further proceedings consistent with this decision.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must show that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

II. ANALYSIS

There are two main issues on motion: (1) whether the Applicant is inadmissible for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act and, if so, (2) whether she has established extreme hardship to her spouse upon their relocation to China if the Applicant is denied admission.

As an initial matter, the Applicant maintains on motion that she is not inadmissible for fraud or willful misrepresentation and argues that we erred in determining otherwise.¹ Specifically, she asserts that

¹ As noted in our prior decision, which we incorporate herein, during her 2014 nonimmigrant student visa application

we failed to consider her appeal argument that she did not willfully or intentionally misrepresent her military background during her visa application process because she had no knowledge of the contents of the application prepared by an agent hired by her mother.

This argument does not overcome our conclusion that she remains inadmissible. The term “willful,” contrary to her assertion on motion, does not require a specific intent to deceive. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); 8 *USCIS Policy Manual* J.3(D), <https://www.uscis.gov/policymanual>. Although the Applicant reasserts on motion that she was unaware of the contents of her student visa application, she signed the visa application certifying that she has read and understood the questions and her answers were true and correct, which establishes a strong presumption that she knew and assented to the contents of her visa application. *See Matter of A.J. Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). The Applicant has not rebutted this presumption through evidence that she was misled and deceived when preparing her visa application. *Id.* Accordingly, she remains inadmissible under section 212(a)(6)(C)(i) for seeking an immigration benefit through fraud or willful misrepresentation and requires a waiver of this inadmissibility ground.²

Turning to the issue of extreme hardship to the Applicant’s U.S. citizen spouse, the Applicant submitted before the Director, her statement, the spouse’s statement, their employment and financial documents, and medical documents for the spouse, including a psychological report and letters from a family doctor and a certified dermatology physician assistant. They also submitted new evidence on appeal, including an updated statement from the spouse clearly indicating his intent to relocate to China with the Applicant if the waiver request is denied, a statement from the spouse’s father, another letter from the family doctor attesting to the spouse’s parents’ medical conditions and their reliance on him, articles related to China’s air pollution and difficulty in learning mandarin, information on high cost of traveling to China, and U.S. Department of State’s (DOS’s) Travel Advisory urging individuals to reconsider traveling to China.

On motion, the Applicant avers that we did not fully consider, in the aggregate, all the evidence that establishes extreme hardship to her spouse based on potential language, cultural, medical, financial, and psychological difficulties upon relocating to China as well as additional emotional hardship resulting from separation from his parents due to their advanced age and medical conditions requiring heavy reliance on him as their primary caretaker, and his parents’ inability to travel to China. The spouse also submits on motion a new statement from his father and a statement from the family physician again attesting to his parents’ vulnerable conditions requiring significant reliance on him.

Upon review of the arguments on motion and the evidence of hardship in its totality, the Applicant has established extreme hardship to her spouse if the waiver request is denied and they relocate to China. The Applicant who is 34 years of age maintains that her 40-year-old spouse will suffer extreme hardship if he relocates to China, in large part due to his physical and mental health conditions and significant emotional hardship that will be adversely impacted by relocation. The record reflects that

process, the Applicant indicated that she has never served in, been a member of, or been involved with any military or paramilitary unit when she in fact actively served as a member of China’s paramilitary unit, People’s Armed Police Force, from 2011 to 2013.

² She also argued on appeal that any purported misrepresentation was not material. But on motion, she does not contest our contrary conclusion on this separate issue, and we thus need not address materiality of her misrepresentation here.

they met in 2014 and have been married since 2019. They reside in Hawaii, where the spouse was born and raised and met the Applicant. The record contains medical documents indicating that he has psoriasis (a chronic skin disease) and asthma, for which he takes medications, and adjustment disorder with anxiety and depression, moderately severe, for which he sees a psychologist on as-needed basis for his symptoms. The statements from the spouse, his father, and their family doctor consistently indicate that the spouse is the primary caretaker for his 77-year-old father and 66-year-old mother with documented medical conditions.

The record indicates that moving to China will adversely impact the spouse's emotional and physical health as well as the couple's marital stability. They assert that the spouse's mental health would be negatively affected by multiple factors, including separation from his family and medical support network here, as well as language and cultural barriers. The spouse asserts that his entire family is on the West Coast of the United States and in Hawaii, where he resides since birth. He avers that he speaks no mandarin and completely lacks cultural familiarity, which would inhibit his efforts to continue treatment for his medical conditions and seek employment. A statement from the family physician who has been the spouse's primary doctor since 1984 states that he must seasonally use his asthma inhaler three times a day in Hawaii and moving to China would worsen his asthma attacks due to known high levels of air pollutants in China that may lead to other respiratory diseases. A letter from the dermatology physician assistant also indicates that it took several years to find the right treatment for his psoriasis, which have affected his daily life, including his ability to sleep and sit for a longer period of time. This letter also states that moving to China may worsen his conditions due to environmental factors. The psychological report notes that he "has had transient suicidal ideation" and he exhibits elevated anxiety and depression, thought problems, and aggressive behavior, which affect his daily function. The report also states that it is "clear that [his] adjustment disorder may intensify into a more serious psychiatric disturbance" such as generalized anxiety disorder or major depressive disorder if the waiver request is denied. The couple's statements before the Director further indicate that while the spouse's relationship with the Applicant is critical to his emotional wellbeing, leaving his elderly parents, local community, and support network would be devastating for him. The Applicant also states that if they relocate to China, they cannot rely on her retired mother who struggled to raise her as a single mother.

Further, the spouse's statement before the Director, combined with the family physician's statements submitted on appeal and motion, show that he remains his parents' primary caretaker. The doctor confirms that the spouse's 77-year-old father has undergone two back operations which sometimes severely limit his mobility and he also suffers from many other chronic conditions that may have severe and unpredictable symptoms, including atherosclerosis of the aorta (hardening of the arteries), trigeminal neuralgia (chronic facial pain disorder), peripheral neuropathy (nerve disease), high blood pressure, and prediabetes; and the spouse's 66-year-old mother receives treatment for anxiety disorder. The doctor's statements also state that the spouse's parents are "heavily reliant" on him for their physical and emotional needs. Further, in addition to the father's statement on appeal supporting the claim that the spouse would suffer significant emotional hardship upon relocation as he would be separated from his parents, his father submits an updated statement on motion stating that his numerous medical conditions require eleven different medications and he is "extremely dependent" on his son (the Applicant's spouse), and stating that no one else could assist him with his needs and daily tasks. The record also indicates that it would be very difficult for the spouse's parents to visit him in China in part due to their age, medical conditions, and the high cost of travelling to and from China. The

spouse's father also states that he cannot even fly domestically and travelling abroad would be impossible for him. Finally, the record reflects that the spouse would also likely experience financial and additional emotional hardship upon relocation as he would be separated from not only his family and local healthcare network but also his professional network.

While individual factors may not rise to the level of extreme hardship to the spouse upon relocation, overall evidence establishes that the hardship considerations presented on the record as a whole cumulatively exceeds the usual and expected results of relocation if the waiver application is denied. Accordingly, we will withdraw our and the Director's conclusions to the contrary and return the matter for the Director to determine whether the waiver request warrants a favorable exercise of discretion.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.