U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19238557

Date: AUG. 18, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(l)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(l)(A)(iii). The Director of the Vermont Service Center (the Director) denied the Form 1-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), determining that the Petitioner did not establish that he was a person of good moral character, and the matter is before us on appeal. On appeal, the Petitioner submits additional evidence and a brief. The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See 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

Immigrant classification under the VAWA provisions may be granted to an individual subjected to battery or extreme cruelty by their U.S. citizen spouse if that individual demonstrates, among other requirements, that they are a person of good moral character. Section 204(a)(l)(A)(iii) of the Act. Primary evidence of good moral character is the VAWA self-petitioner's affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from where the petitioner resided during the three years before filing the VAWA petition. 8 C.F.R. § 204.2(c)(2)(v).

U.S. Citizenship and Immigration Services (USCIS) evaluates a VAWA self-petitioner's claim of good moral character on a case-by-case basis, considering the provisions of section l01(f) of the Act, 8 U.S.C. § 1101(f) and the standards of the average citizen in the community. 8 C.F.R. § 204.2(c)(l)(vii). Section l0l(f) of the Act enumerates various grounds that will automatically preclude a finding of good moral character, but also states that "[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character . . . ." Section l0l(f) of the Act applies "during the period for which good moral character is required to be established . . . ."

As explained in policy guidance, USCIS generally examines the three-year period immediately preceding the date the VAWA petition is filed; however, if there is evidence that a self-petitioner's conduct or acts do not fall under the enumerated grounds at section l0l(f) of the Act but are contrary

to the standards of the average citizen in the community, we consider all of the evidence in the record to determine whether the self-petitioner has established their good moral character. *See* 3 *USCIS Policy Manual* D.2(G)(1), https://www.uscis.gov/policy-manual. Unless a VAWA self-petitioner establishes extenuating circumstances, they will be found to lack good moral character if they committed unlawful acts that adversely reflect upon their moral character or were convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character, or they were not convicted of an offense or offenses but admit to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. 8 C.F.R. § 204.2(c)(1)(vii).

Petitioners bear the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Petitioners may submit any credible evidence relevant to the VAWA petition for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a native and citizen of Mexico who last entered the United States in October 2014 as a B2 nonimmigrant visitor, filed his VAWA petition in June 2019 based on his marriage to K-A-M-,[1] a U.S. citizen, in [redacted] 2016. The Director denied the VAWA petition, finding that the Petitioner had not established that he was a person of good moral character.

As initial evidence of his good moral character, the Petitioner only submitted character reference letters. The Petitioner submitted a personal statement; however, it did not directly discuss his good moral character or disclose his prior criminal history, and instead focused primarily on his spouse's alleged abuse and its effects on him. The Director subsequently issued a request for evidence (RFE) to establish, among other things, that the Petitioner is a person of good moral character, informing him that the record revealed he had been arrested or charged with driving while intoxicated (DWI) in [redacted] 2011, assault causing bodily injury in [redacted] 2017, and reckless driving in [redacted] 2019. Specifically, the Director requested additional evidence showing the dispositions of the charges and establishing his good moral character in light of his criminal history. In response, the Petitioner provided a police report and court records showing his 2011 DWI was dismissed after he completed a pre-trial diversion program,[2] records indicating his 2017 arrest led to a conviction for misdemeanor assault causing

[1] We use initials to protect the privacy of individuals.

[2] The Petitioner's 2011 DWI may nevertheless have resulted in a conviction for immigration purposes despite its dismissal. The Act defines a conviction for immigration purposes as a "formal judgment of guilt . . . entered by a court or, if adjudication of guilt has been withheld, where . . . the [individual] has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and . . . the judge has ordered some form of punishment, penalty, or restraint on the [individual]'s liberty to be imposed." Section 101(a)(48) of the Act. Although the Petitioner claims in his appeal statement that the 2011 DWI charges were dismissed because his urine test did not indicate intoxication, his claim appears inconsistent with court records' indicating that the charges were dismissed upon his completion of a pre-trial diversion program. As stated, the Petitioner bears the burden of proof to establish his claimed eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, as the Petitioner did not submit copies of his pre-trial diversion agreement or other relevant court filings, we are unable to determine whether the Petitioner was required to enter an admission of guilt, plead nolo contendere, or admit sufficient facts to warrant a

bodily injury, and a police report and court records revealing that his 2019 arrest was for driving under the influence (DUI) and resulted in a conviction for reckless driving pursuant to a plea agreement. The Petitioner also submitted additional character reference letters, federal tax returns, a November 2019 drug and alcohol assessment summary from a substance use disorder professional therapist from "Alternative Counseling," a November 2019 notice of completion for an eight-hour "Alcohol & Drug Information School" offered by that same agency, and an October 2019 certificate of completion for a "DUI Victims Impact Panel."[3]

In denying the petition, the Director explained that, although the Petitioner did not fall within any of the grounds at section 101(f) of the Act that automatically preclude a finding of good moral character, his conduct fell below the standards of the average citizen of the community and raised concerns about public-safety and the well-being of others. The Director acknowledged the Petitioner's evidence in support of his good moral character, including his volunteer work with veterans, evidence of completion of drug and alcohol counseling programs, payment of taxes, and positive character references, but concluded they were not sufficient to establish his good moral character in light of his criminal history. The Director highlighted the fact that the Petitioner's conviction for an assault causing bodily injury to another person was a serious offense and that no explanation concerning the events that precipitated it was provided. The Director also highlighted information from the Petitioner's drug and alcohol assessment, in which he admitted to throwing a bottle at another driver prior to his reckless driving conviction and to having engaged in domestic arguments while under the influence of alcohol.

On appeal, the Petitioner asserts he has established his good moral character and merits a favorable exercise of discretion despite his criminal history. In support of his assertion, he submits a new personal statement, academic and employment records, additional court records for his assault and reckless driving convictions, a psychosocial evaluation, records showing his divorce from K-A-M- was dismissed for want of prosecution, and additional signed letters of recommendation. He emphasizes that his 2011 DWI occurred over five years before he submitted his VAWA petition and was ultimately dismissed. He further argues that extenuating circumstances and positive discretionary factors overcome the negative weight of his other arrests and convictions.

In the instant case, considering the totality of the evidence before the Director and on appeal, the Petitioner has not met his burden to demonstrate his good moral character. As stated, the record indicates that in addition to a 2011 DWI arrest that he maintains was dismissed, the Petitioner was arrested twice more within the three years preceding the filing of this petition, both of which arrests resulted in convictions. Although the Petitioner asserts that he is not a violent person and that his two convictions were isolated incidents not reflective of his character, his characterization is not supported by the record and does not overcome the negative weight of his convictions, for which he also has not established the existence of extenuating circumstance. With respect to his conviction for assault involving injuries in 2017, the Petitioner claims in his appeal statement that he pled guilty to the crime

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finding of guilt in order to be eligible for the pre-trial division program, or whether the program constituted or involved some form of judicially ordered punishment, penalty, or restraint on his liberty. He therefore has not shown that his 2011 DWI did not result in a conviction for immigration purposes.

[3] According to the judgement and sentencing order for the 2019 conviction, which was submitted for the first time on appeal, the drug and alcohol assessment, completion of recommended treatment/education, and DUI victim's impact panel (as documented in the record below) were court-mandated conditions of the Petitioner's reckless driving sentence.

on the advice of his attorney who said it would be "easier" and would not hurt him with immigration. He explains that the incident was actually a case of self-defense wherein he got into a fight to defend his wife from their roommate who had become aggressive towards her. Notwithstanding this explanation, the Petitioner was ultimately convicted of a serious offense involving violent conduct, and we lack authority to look behind the conviction to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine guilt or innocence). Moreover, his description of the event provides little detail concerning his underlying actions leading to his arrest and the injuries he inflicted on the victim during the commission of the offense, and he did not submit a police report or other probative court records to corroborate his description of the event. The submitted court records, which included a judgment of conviction, protective order against the Petitioner, and case event history records, also did not include information regarding the underlying circumstances of this arrest.

The Petitioner's subsequent arrest in 2019, as well as his 2011 arrest, also reflect that he engaged in serious and dangerous conduct. Although his 2019 arrest resulted in a conviction for reckless driving, he was initially arrested for DUI. Similarly, although, as the Petitioner asserts, the 2011 arrest charges against him were dismissed, the record indicates that he was charged with DWI and the dismissal was based solely on his completion of a pre-trial program. According to the police report for the 2019 reckless driving conviction, the police were called after the Petitioner blocked a restaurant drive-through with his vehicle while appearing intoxicated and throwing water bottles at other vehicles. The report indicates that when the police arrived they arrested the Petitioner for DUI after noting he was exhibiting various physical signs of intoxication while behind the wheel of a running car. In his appeal statement, the Petitioner admits he was "being stupid and drunk," threw a bottle at another person, and made the terrible decision to drink and drive. His 2011 DWI arrest report also indicates that he was pulled over after he was observed almost striking another vehicle while driving through an intersection at an extreme rate of speed, displayed various physical signs of intoxication, and admitted to drinking multiple "mixed drinks" at a club. DUI and DWI are serious crimes and significant adverse factors relevant to our consideration of whether the Petitioner has established his good moral character. *See Matter of Siniaiskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding that the offense of driving under the influence of alcohol is a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (discussing the "reckless and dangerous nature of the crime of DUI"). Although the Petitioner was not ultimately convicted of either the DWI or DUI, the evidence related to his 2011 and 2019 arrests involving drinking and driving indicates a pattern of unlawful and serious behavior that falls below the standards of the average citizen of the community and adversely reflects on his good moral character. 8 C.F.R. § 204.2(c)(1)(vii).[4]

The Petitioner also has not shown extenuating circumstances for his unlawful conduct underlying his criminal arrests and convictions. With respect to his 2019 arrest, he explains generally that his poor choices resulted from immense emotional strain related to the combined effects of his girlfriend having an abortion and breaking up with him, his spouse continuing to threaten and harass him, and his own inability to successfully dissolve his marriage to her. As to his 2017 assault conviction, he states that

[4] Moreover, as discussed above, the Petitioner's 2011 DWI arrest may have in fact resulted in a conviction for immigration purposes, and the Petitioner, who bears the burden in these proceedings, has not shown otherwise. *See supra* note 2.

he should have walked away rather than getting into the fight to defend his spouse's honor, but that his judgment was warped by the ongoing abuse by his spouse and he felt he needed to prove himself because of his spouse's frequent demeaning and emasculating comments about him. We do not diminish the severity of the psychological stress the Petitioner described experiencing in his relationship with K-A-M-. However, as discussed, apart from indicating his remorse and generally describing his motivations for the acts that led to his arrests, the Petitioner did not provide probative testimony about his underlying conduct leading to his arrests. In addition, in his 2021 psychosocial evaluation, the Petitioner provided a conflicting account of his 2011 DWI arrest, claiming that he "only had one beer" at a friend's birthday party the night of the incident and was pulled over for having "too many people in [his] car." In contrast, the arrest report for the incident indicated he was arrested after he almost struck another vehicle while driving at an extremely high speed, admitted to drinking multiple drinks, and was visibly intoxicated.

Notwithstanding his criminal history, the Petitioner also contends he is a person of good moral character because he is a hard worker, loyal friend, and a peaceful person; he has volunteered to help veterans; he pays his taxes; and, he has acknowledged and accepted responsibility for his actions. In addition, he cites to publications regarding Mexican country conditions and asserts that he fears returning to Mexico because of threats to his family relating to his father's employment with the Mexican government and due to the violence there. While we acknowledge these considerations, we agree with the Director that they do not overcome his criminal history, particularly his two convictions within the three years preceding the filing of this petition, which, as discussed above, involve serious and dangerous conduct.

In summary, we acknowledge the favorable factors in the record, including the Petitioner's evidence of his remorse and rehabilitation. Nevertheless, we find that the Petitioner's conduct—which includes the commission of unlawful acts relating to a 2017 conviction for assault causing bodily injury, a 2019 conviction for reckless driving stemming from a DUI, and a 2011 arrest for DWI— falls below the standards of the average citizen of the community and that he has not established extenuating circumstances, as contemplated in 8 C.F.R. § 204.2(c)(1)(vii), that would overcome the adverse weight of his criminal history. Consequently, he has not established by a preponderance of the evidence that he is a person of good moral character, as required to demonstrate eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.