



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

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

In Re: 22718156

Date: DEC. 13, 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 under the Violence Against Women Act (VAWA) provisions codified in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as an abused spouse of a U.S. citizen. The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition). The matter is now before us on appeal. On appeal, the Petitioner submits a brief asserting his eligibility. We review the questions in this matter *de novo*. *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**

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification under the VAWA if they demonstrate, among other requirements, that they are a person of good moral character. Section 204(a)(1)(A)(iii)(II)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(F). U.S. Citizenship and Immigration Services (USCIS) evaluates a petitioner's claim of good moral character on a case-by-case basis, considering the provisions of section 101(f) of the Act and the standards of the average citizen in the community. 8 C.F.R. § 204.2(c)(1)(vii). Unless a 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, although the acts do not require an automatic finding of lack of good moral character. *Id.*

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 petitioner's conduct or acts do not fall under the enumerated grounds at section 101(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 petitioner has established their good moral character. *See* 3 USCIS Policy Manual *D.2(G)(1)*, <https://www.uscis.gov/policy-manual>. Primary evidence of the petitioner's good moral character is their affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the petitioner's residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v).

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Although USCIS must consider "any credible evidence" relevant to the VAWA petition, we determine, in our sole discretion, the credibility

of and the weight to give to that evidence. See 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, married a U.S. citizen, J-N-,<sup>1</sup> in [ ] 2010. They resided together from July 2008 until January 2013. In June 2019, the Petitioner filed the instant VAWA petition based on his marriage to J-N-, claiming that she engaged in abusive behavior. The Director denied the VAWA petition, concluding that the Petitioner had not demonstrated that he is a person of good moral character.

After the Director reviewed the evidence submitted with the VAWA petition, the Petitioner was sent a Notice of Intent to Deny (NOID), informing him that due to his criminal history, it did not appear that he was a person of good moral character, and sought further explanation of some of the criminal charges in his record, which could have rendered him ineligible under Section 101(f) of the Act. The Director stated that it appeared the Petitioner may have been barred from establishing good moral character and weighed his positive and negative factors as they appeared in the record at that time.

The Petitioner timely responded to the NOID and supplemented the record with additional evidence; however, while the Director determined that the Petitioner was not barred from establishing good moral character, a review of his criminal history and actions resulted in the Director finding that the Petitioner's conduct fell below the standards of the average citizen in the community, as discussed at 8 C.F.R. § 204.2(c)(1)(vii). The Director noted that the Petitioner had a lengthy criminal history, beginning with his first arrest in 2001, and continuing until his most recent arrest in [ ] 2019. The Director noted that the Petitioner had been arrested and convicted of crimes, such as three instances of Driving Under the Influence, and violations of his probation, and further charged with crimes such as being under the influence of illegal substances and grand theft which indicated "a disregard for the public's safety, the well-being and property of others, and the laws of the U[nited] S[tates]." The Petitioner was additionally arrested in [ ] 2019, just six months prior to filing his VAWA petition, and charged with possession of a deadly weapon, receiving stolen property, use or under the influence of a controlled substance, manufacture/sale/possession of a shuriken, and possession of stun gun/taser/silencer by a convicted felon, and these charges remain pending. The Director also noted that he had failed to appear for previous immigration hearings, which resulted in his being ordered removed *in absentia*.

In the decision, the Director analyzed in detail the evidence provided by the Petitioner, both with his initial filing, and in response to the NOID. The Director acknowledged the Petitioner's statements that his drinking became worse when he lost contact with his daughter sometime in 2013, and that he has intentions of entering programs to rehabilitate himself and to become sober. The decision noted that the Petitioner, in his statement in response to the NOID, indicated the work he had done while incarcerated, that indicated that he took courses, and did not receive any disciplinary write-ups while in custody. He further stated that he had been released in [ ] 2021, and was ordered to appear weekly, be subject to drug tests, wear both a SCRAM device (which monitors for the presence of alcohol in sweat) and a GPS device. He explained that since his release, he was working with his mother at her cleaning jobs, as a line cook, and took other side jobs from his employers. He stressed that he

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<sup>1</sup> Initials are used throughout this decision to protect the identity of the individual.

understood the importance of remaining sober and provided evidence of Alcoholics Anonymous meetings he had attended since his release and stated that he had been seeing a therapist. The Director indicated that these efforts were viewed positively and reflected well on his good moral character.

The Director reviewed the updated third-party affidavits, which noted the Petitioner's struggles with alcohol and the abuse he had suffered in his life, and these affidavits reflected well on his good moral character. The Director further noted that the affidavit from the Petitioner's public defender, M-B-, reflected positively on him, as it established that he appeared to be working towards his rehabilitation. The Petitioner also submitted a letter from a non-profit organization which obtained signatures on a petition in order to have him released from custody and is making efforts to have the pending charges against him dismissed. This was viewed as a positive factor by the Director. The Director also viewed a letter of reference from J-C-, who indicated that while incarcerated, the Petitioner had attended numerous classes and was on track to complete the courses.

The Petitioner provided an assessment from his psychiatrist, A-A-, which detailed how his past abuses influenced his decision-making; however, the Director questioned whether A-A-'s statements regarding the resources needed by the Petitioner to avoid re-offending indicated that the Petitioner had not yet fully rehabilitated, and the likelihood that he might re-offend in the future. In the letter from C-S-, the Petitioner's immigration social worker, the Director again noted language that indicated that he had not yet fully rehabilitated and noted that this letter was neither a positive nor negative factor. The Director further assessed additional letters and affidavits that acknowledged that the Petitioner was receiving help or attending courses. The Director acknowledged the Petitioner's arguments that abuse he suffered from previous romantic partners caused his criminal behavior; however, the Director found that the extent and length of time of his criminal behaviors remained concerning. The Director indicated that while most of the Petitioner's conduct occurred outside of the three years immediately prior to the filing of his VAWA petition and he appeared to be making efforts toward his rehabilitation, the Petitioner had done all of this while still experiencing constraints on his liberty and had not shown that he could successfully live as a law-abiding member of the community with those constraints removed. The Director further noted that the Petitioner has pending charges for serious crimes, for which the Petitioner has declined to explain, which further reduced the weight given to his efforts at rehabilitation, and noted that he had not established, by a preponderance of the evidence, that he was a person of good moral character.

On appeal, the Petitioner argues that the Director's decision erred in assessing the evidence he submitted in a number of ways. However, based on a *de novo* review of the record below, we adopt and affirm the Director's decision that the Petitioner did not establish by a preponderance of the evidence that he is a person of good moral character. *See, e.g., Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that the "independent review authority" of the Board of Immigration Appeals (Board) does not preclude adopting or affirming the decision below "in whole or in part, when [the Board is] in agreement with the reasoning and result of that decision"); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (noting that, "[a]s a general proposition, if a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by" the decision below, "then the tribunal is free to simply adopt those findings" provided the tribunal's order reflects individualized attention to the case"). The Director's decision thoroughly discussed relevant evidence submitted by the Petitioner, and his submission on appeal does not include new evidence which would overcome the Director's findings.

In his appeal brief, the Petitioner contends that the Director ignored his evidence that his history of “alcohol-related offenses and arrests were “connected to” his history of experiencing intimate partner violence” and that the Director improperly disregarded the psychological evaluation from A-A-. However, our review of the Director’s decision indicates otherwise. As discussed above, the Director noted that A-A- provided reasons for the Petitioner’s behaviors and his diagnosis, but also discussed how the Petitioner needs to obtain treatment in order to avoid re-offending, which resulted in the Director’s finding that the Petitioner had not fully rehabilitated from his prior conduct. The Petitioner further states that the Director failed to account for the extenuating circumstances of his criminal conduct, which should be made to include childhood abuse, in addition to the abuse he suffered at the hands of J-N-. We find that the Director’s decision acknowledged the Petitioner’s statements submitted with his petition and noted that his behavior was still concerning. In response to this, the Petitioner states in his brief that the Director’s finding that his behavior reflected a disregard for the safety of others contradicts A-A-’s finding that he “demonstrates great regard toward his community, his own recover, and the laws of the United States of America.” However, the crime of driving under the influence is both a serious crime and a significant adverse factor relevant to our consideration of whether the Petitioner has established his good moral character. *See Matter of Siniaskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding that the offense of driving under the influence of alcohol (DUI) 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. at 671 (discussing the “reckless and dangerous nature of the crime of DUI”). The Petitioner argues that these are “only” misdemeanor convictions, and that he has been sober for 3 years. While the Petitioner repeatedly contends that his behavior should be viewed only in the context of the abuse he suffered, he only contends that one of his DUI convictions directly relates to his relationship with J-N-.

The Petitioner further argues that he was a juvenile at the time of his 2006 arrest for vandalism, but also notes that he was 21 years of age, past the time when an individual can be considered a juvenile. He cites two cases, *Graham v. Florida*, 130 S. Ct. 2011 2026 (2010) and *Miller v. Alabama*, 567 U.S. 460, 471-72 (2012), where the defendants were 16 and 14 years old, respectively. We further note that immigration law defines a child as an unmarried person who is under the age of 21 years of age. *See* Section 101(b)(1) of the Act. As noted by the Petitioner, he was 21 years of age at the time of his 2006 arrest.

The Petitioner also contends that the Director erred in not following the “any credible evidence” standard; however, as previously noted, we determine, in our sole discretion, the credibility of and the weight to give to that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). He states that the agency is precluded from denying a self-petition on evidentiary grounds for “failure to submit particular evidence;” however, we do not find that the Director’s decision noted any specific lack of evidence as a reason for the denial of his petition. While the decision mentioned a number of the associated charges listed on the Petitioner’s RAP sheet which did not have court documents submitted, the Director’s decision only noted them, and did not make any adverse determination on the fact that these documents appeared to be missing from the record.

The Petitioner argues that the Director failed to consider his rehabilitation while in custody. We disagree with this assessment and find that the Director’s decision extensively reviewed the documentation submitted and found this to be a positive factor in reviewing his good moral character.

Finally, the Petitioner states that the Director improperly considered his arrests for pending charges that have not resulted in a conviction. In our review, we agree with the Director's determination that the Petitioner's outstanding charges present significant concerns. The Petitioner has opted not to provide an explanation or documentation relating to these charges, and we therefore cannot make a positive determination regarding them. While the Petitioner has argued that he is making efforts to avoid an aggravated felony conviction, he can make no such guarantee, and as the charges remain pending even over three years later, we view the pending charges negatively. As we have noted, the Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). While we do not make a presumption of guilt, we cannot overlook these charges, given the Petitioner's prior criminal history. Further, the Petitioner has not provided any new evidence with his appeal, and as such, it appears that he remains with constraints on his liberty, by the presence of his SCRAM alcohol monitor, and GPS tracking device.<sup>2</sup>

A petitioner's "claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community." 8 C.F.R. § 204.2(c)(1)(vii). Here, the Petitioner was arrested numerous times between 2001 and 2019, to include convictions for driving under the influence, and violations of his probation, and further serious charges against the Petitioner remain pending and unresolved for possession of a deadly weapon, receiving stolen property, use or under the influence of a controlled substance, manufacture/sale/possession of a shuriken, and possession of stun gun/taser/silencer by a convicted felon. The arrests and conviction adversely reflect upon his moral character and indicate his conduct falls below the standards of the average citizen in the community. Moreover, he has not established extenuating circumstances that would mitigate their adverse impact on his good moral character determination.

Therefore, the Petitioner has not established his eligibility for immigrant classification as an abused spouse of a U.S. citizen under the VAWA. Further, we decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The Petitioner also argues that USCIS deprived him of his due process rights when it declined to schedule him for an interview and further declined to hold his VAWA petition in abeyance to allow him to resolve his pending criminal charges. There are no due process rights implicated in the adjudication of a benefits application. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) (holding that "[w]e have never held that applicants for benefits . . . have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *see also Azizi v. Thornburgh*, 908 F.2d 1130, 1134 (2d Cir. 1990) (finding that the Fifth Amendment protects against the deprivation of property rights granted to immigrants, but petitioners do not have an inherent property right in an immigrant visa).