



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

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

In Re: 17018377

Date: JUN. 07, 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 in the Immigration and Nationality Act (the Act) at section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the matter is before us on appeal. 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 if the petitioner demonstrates, 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 VAWA 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 VAWA 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 self-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 self-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 burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). While we must consider any credible evidence relevant to the VAWA petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R.

§ 204.2(c)(2)(i). We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Petitioner is a native and citizen of Mexico who entered the United States without inspection in 1999, married his U.S. citizen spouse, S-S-G-,¹ in [] 2016, and filed his VAWA petition in January 2019. With the petition he submitted personal affidavits, letters of support, criminal records, a psychosocial assessment, financial records, school records for his children, civil documents, and photographs. The Director denied the petition, finding that the Petitioner did not establish that he was a person of good moral character.

The Director issued a request for evidence (RFE) because the record indicated the Petitioner was arrested in 2003 for operating a vehicle while intoxicated (OWI), in 2005 for public intoxication, and in 2011 for possession of cocaine, but that the court summaries he submitted provided few details of his arrests, that his personal affidavit did not address his arrests, and that third-party affidavits did not mention his criminal history. In response, the Petitioner submitted court dispositions and an affidavit where he explained that in 2003, he was drinking with friends, one of them begged for a ride, and he finally gave in but was then stopped by police. The Petitioner explained the 2005 arrest for public intoxication as occurring after drinking with friends and then deciding to walk home but being stopped by police. He described the circumstances of his 2011 arrest, stating that he gave a friend a ride, the friend offered a small bag of cocaine, and the Petitioner refused but the friend put it in his sweater and the Petitioner then placed it in his wallet, where it was discovered when they were stopped by police. The Petitioner asserted that he always completed probation, that he has since changed his life, and that he now works to provide for his family.

In denying the petition, the Director referenced the Petitioner's multiple arrests between 2003 and 2011,² noting that in 2003 he pled guilty to OWI, that a 2005 public intoxication charge was deferred where he then completed a treatment course, and that 2011 charges of cocaine possession and OWI resulted in guilty findings. The Director acknowledged that the Petitioner's affidavit submitted in response to the RFE offered explanations for the OWI and public intoxication charges and his contention that his possession of cocaine arrest was because a friend gave him a bag of cocaine that was found by police. The Director observed, however, that the record showed that in [] 2006 the Petitioner violated his treatment agreement for public intoxication by twice testing positive for cocaine, extending the deferral period before later completing the program in [] 2006, and the Director further noted that in 2010 the Petitioner was arrested for possession of cocaine. The Director concluded that though the Petitioner was not mandatorily barred from a good moral character finding, in weighing his positive factors with the negative ones, his positive cocaine tests, possession of cocaine charges, and alcohol-related arrests fall below the standards of the average citizen of the community.

On appeal, the Petitioner does not dispute the Director's summation of his arrests but argues, through counsel, that he has shown good moral character during the three-year period preceding the filing of Form I-360 and has otherwise shown that he changed his behavior and rehabilitated himself. He

¹ We use initials to protect individual identities.

² Criminal records show that the Petitioner was charged in [] 2011 for an offense occurring in [] 2010.

contends that he completed sentence conditions for this 2003 OWI more than 15 years ago; that his 2005 arrest did not result in a conviction and he completed the deferral agreement more than 13 years before he filed his VAWA petition; and that during his 2010 arrest he admitted to OWI although the cocaine was not his. He states that both charges were misdemeanors, he completed a monitoring program, and the actual offense was committed eight years prior to filing his Form I-360. Court transcripts confirm his probation following the 2003 and 2010 arrests was discharged satisfactorily. The Petitioner maintains that in 2005 he knew he should not be driving so walked instead, which showed good judgment, and explains that the failed tests during the deferral agreement period were because he made a mistake sniffing a rolled-up dollar bill not knowing it had cocaine. He further claims that his 2010 arrest for possession of cocaine was because a friend asked him to hold a bag, he refused, and the friend put it in his jacket anyway. The Petitioner maintains that more weight should be put on his rehabilitation because since his daughter was born in 2011, he has focused on raising her and two stepsons as the sole provider for the family and contends that he has had the same job for 10 years, is no longer involved with cocaine, and drinks only occasionally. He contends that letters of support attest to his changed character and argues that his support of his spouse and her sons who abuse him shows character better than the average citizen.

In an updated affidavit the Petitioner asserts that when he tested positive for cocaine in [REDACTED] 2006, he had not intended to use cocaine that day, but a friend put it in a dollar bill, asked the Petitioner to pick the one with cocaine, and the Petitioner sniffed thinking it was a joke. The Petitioner contends that was the only time he had cocaine in [REDACTED] 2006, has not had it since, and reasserts that when arrested in 2010 a friend had put cocaine in his jacket. The Petitioner claims that he made mistakes when young, that he no longer hangs out with the same people, that he now only drinks socially, and that since 2010 he never drives after drinking. He claims that since the birth of his daughter he is a different person as she is his main focus, that he works and goes home to care for the children, that he pays his bills, and that he supports two stepchildren even though they treat him horribly.

In an additional letter of support submitted on appeal a friend states that he is aware of the Petitioner's trouble for cocaine possession in 2010 but that he rarely used cocaine and told the friend that he accidentally violated his probation agreement in 2006, for which he felt foolish. The friend described the Petitioner as a new man who is hardworking and cares for his children. A letter from the Petitioner's employer confirms that he has been employed since 2010 without providing detail, but in a prior statement the employer referred to him as a conscientious worker and family man with high integrity.

Upon review of the record, we agree with the Director that evidence is not sufficient to establish that the Petitioner is a person of good moral character. As noted by the Director, the Petitioner was arrested three times over a seven-year period, failed two drug tests during a deferral treatment period, and was subsequently found with cocaine and convicted for possession. The Director correctly weighed the multiple arrests prior to the three-year period as they demonstrated a pattern of unlawful behavior that adversely reflected upon the Petitioner's moral character and is contrary to the standards of an average citizen in the community. We acknowledge the Petitioner's claim that he was victim of the behavior and actions of friends; however without additional supporting evidence, his explanations do not establish extenuating circumstances leading to his arrests or to the violation of the terms of his deferral agreement.

The Petition also argues that he has shown rehabilitation as he now focuses on work and caring for his family, no longer engaging in his past behavior. Although he asserts generally that he focuses on supporting his family, he provides little detail or evidence of how he supports his family or of his activities with his family or outside the home to support his assertion of rehabilitation from past behavior.

Letters of support for the Petitioner pointed to his positive attributes of being hardworking and responsible to his family. C-G-H- and C-I-L-C- indicated generally a knowledge of the Petitioner's past mistakes and observed that he stopped drinking and hanging around the wrong people, and that he is dedicated to his family. J-G-, who identified himself as the Petitioner's brother-in-law, described him as trustworthy and raising his children in a healthy, empowering home. Although the letters attest to the Petitioner's character, they do not display knowledge of his arrests or his prior activities and provide little insight into his efforts at rehabilitation other than being dedicated to his family.

We recognize the passage of time since the Petitioner's activities that led to his arrests, but due to the serious nature of his past activities, his conduct is an important factor to consider even though it occurred outside the three-year period prior to the VAWA petition filing date. The record, in its totality, suggests that the Petitioner's conduct falls below the standard of the average person in the community. The Petitioner's arguments and evidence submitted on appeal are not sufficient to overcome the Director's finding. In review of the evidence in the record as it stands, the Petitioner has not met his burden of establishing that he is a person of good moral character, and he has not demonstrated his eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.