



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

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

In Re: 17573458

Date: JUN. 22, 2022

Motion on Administrative Appeals Office 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)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), finding that he had not met his burden to demonstrate that he is a person of good moral character, married his U.S. citizen spouse in good faith, and resided with his spouse, as required. We dismissed the Petitioner's subsequent appeal of the denial of his VAWA petition. The matter is now before us on motions to reopen and to reconsider. Upon review, we will dismiss the motions.

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)(1)(A)(iii) of the Act; 8 C.F.R. § 204.2(c)(1)(i). 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).

A VAWA self-petitioner's good moral character is assessed under section 101(f) of the Act, 8 U.S.C. § 1101(f). 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act enumerates grounds that will automatically preclude a finding of good moral character. In addition, it 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 101(f) of the Act. Section 101(f) of the Act applies "during the period for which good moral character is required to be established"

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). 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>. 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, or 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).

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

The burden of proof is on a petitioner 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). While we must consider any credible evidence relevant to the VAWA self-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).

II. ANALYSIS

The Petitioner, a citizen of Mexico who claims to have most recently entered the United States without inspection, admission or parole in 1998, filed the instant VAWA petition in June 2019 based on his marriage to V-G-,¹ a U.S. citizen, in [REDACTED] 2000. The Director denied the VAWA petition, concluding that the Petitioner had not established his good moral character and that he had resided with V-G- and entered into his marriage with her in good faith.

In our previous decision dismissing the Petitioner's appeal, incorporated here by reference, we determined the Petitioner had not overcome the Director's determination that the Petitioner's criminal history and immigration violations evidenced his lack of good moral character.² As we explained, a police records search certification from the [REDACTED] California Police Department reflected the Petitioner had a 2002 arrest for robbery for which he had not provided a court disposition. We acknowledged the Petitioner's assertion on appeal that the Director misinterpreted the police certification referencing the 2002 robbery and that he was actually the victim of that crime. We also

¹ We use initials to protect the privacy of individuals.

² In our appeal decision, we determined that the Petitioner had not established his good moral character and that he had entered into his marriage with his V-G- in good faith. As our determinations were dispositive of the Petitioner's appeal, we declined to reach and reserved the issue of whether the Petitioner had established his joint residence with his U.S. citizen spouse, as required under section 204(a)(1)(A)(iii) of the Act. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Likewise, here, as our finding that the Petitioner has not established he is a person of good moral character is determinative, we do not reach his arguments on motion regarding whether he entered his marriage in good faith and hereby reserve the Petitioner's remaining motion arguments on that issue.

acknowledged his claim that he had no criminal convictions and noted the police clearances and background check report he submitted below in support of his assertion. However, we gave the clearances and background check less evidentiary weight in establishing his good moral character because they appeared to be based on name searches that did not include any of the Petitioner's numerous aliases reflected in USCIS records. We also observed he had not provided any new evidence to support his professed lack of criminal history and his claim that he was the victim and not the perpetrator of the 2002 robbery despite indicating a willingness on appeal to provide an FBI clearance report. We further noted that he had also failed to address other evidence in the record which the Director determined showed a pattern of untruthfulness and cast significant doubt on his credibility. Specifically, we found that he did not address evidence showing he made a false claim to U.S. citizenship in 1997 while attempting to enter the United States and had provided false answers on his 2003 Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), related to whether he had ever been deported or removed from the United States. Additionally, while we acknowledged the Petitioner's statements asserting his good moral character, we found that they did not sufficiently address his criminal and immigration history, and neither his statements nor the remainder of the record established any extenuating circumstances, under 8 C.F.R. § 204.2(c)(1)(vii), that would negate or outweigh his criminal history and immigration violations. As such, we concluded that the Petitioner's conduct as described falls below the standards of the average citizen in the community and that he had not demonstrated that he is a person of good moral character, as required by the Act.

On motion, the Petitioner asserts that we determined that he failed to establish his good moral character based solely on a lack of evidence showing he does not have any criminal convictions and notes in response that he submitted several local clearances based on a search of his name indicating that he has no arrest history. The Petitioner now also submits an FBI clearance report, based on a search of his fingerprints, and an updated personal statement. As we discussed in our previous decision, the previously proffered local clearances were insufficient to establish his good moral character and lack of criminal history. Likewise, the new evidence is also insufficient because it does not adequately address previously noted deficiencies in the record and discloses a new arrest.

The record, as supplemented on motion, still does not adequately establish the nature and disposition of the 2002 robbery incident. The Petitioner inaccurately asserts through counsel that the previously submitted [redacted] Police Department's records search certification "unequivocally states that [he] was not a suspect" in the robbery. To the contrary, the certification does not identify the Petitioner as the victim and instead, reflects that a search of the Petitioner by his first, middle, and last names and his date of birth yielded an "Incident Type," specifically a robbery under section 211 of the California Penal Code that occurred in [redacted] 2002. The certification further indicates that requested records relating to the robbery had been purged and were therefore unavailable. The newly submitted FBI report is likewise entirely silent regarding the incident. In his updated statement, the Petitioner provides a more detailed account of the incident and alleges he was robbed and injured with a knife by an unknown person while inside a restaurant. He claims that afterwards police took his report and called him back to identify suspects but, to his knowledge, never found the actual perpetrator. He states he attempted to obtain the police report, but the police indicated they no longer have it. However, he does not submit an updated certification or other evidence from the police department clarifying the previous certification and supporting his claim that he was the victim and not the

perpetrator of the robbery, nor has he proffered a criminal court disposition to reflect that no charges had ever been filed against him as he maintains.

Additionally, per the FBI report submitted on motion here, the Petitioner has a second, previously undisclosed arrest where he was charged with “resist or obstruct officer” in 2005 by the [redacted] Wisconsin Sheriff’s Office. The FBI report indicates a warrant was issued for his arrest less than two weeks later and may still be outstanding. In his statement, the Petitioner explains that he believes the 2005 arrest was for parking in the wrong location. He states that, after parking in a lot where he was not allowed to park, a police officer told him he looked suspicious and took him to the police station where he was fingerprinted and given a fine before being released. He claims he provided the police his address in Minnesota, but he never received a citation to appear for any proceedings and was unaware that the case was outstanding because it occurred over 15 years earlier. The Petitioner’s claim that the arrest was for a parking violation is inconsistent with the FBI report’s classification of the incident as resisting or obstructing an officer. The Petitioner has not provided any explanation or evidence, such as an arrest report from the [redacted] Sheriff’s Office, to explain this discrepancy or otherwise support his description of the arrest. Furthermore, as stated, per the FBI report, the warrant for the Petitioner’s arrest appears to still be outstanding, and he has not submitted any evidence to the contrary or otherwise shown that the arrest charge was disposed.

Next, contrary to his assertions, our previous finding, that the Petitioner did not establish his good moral character, was not based solely on his failure to submit evidence demonstrating he had no criminal convictions. As noted, we also determined he had not adequately addressed the Director’s determination that his false claim to U.S. citizenship in 1997 and the false answers on his adjustment application reflected a pattern of untruthfulness. In his updated statement, the Petitioner recounts his immigration history and confirms that he was detained by immigration and returned to Mexico on several occasions, including after he presented documents that did not belong to him in 1997 when attempting to enter “through the line.” However, he does not provide further context for his immigration violations or attempt to describe any extenuating circumstances that would negate or outweigh their negative impact, nor does he specifically admit to falsely claiming U.S. citizenship. As such, he has not overcome our prior determination that his conduct falls below the standards of the average citizen of the community.

As previously stated, although USCIS generally examines the three year period immediately preceding the date the VAWA petition is filed, 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, supra*, at D.2(G)(1). Additionally, 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, although the acts do not require an automatic finding of lack of good moral character. 8 C.F.R. § 204.2(c)(1)(vii). Here, the record shows that the Petitioner committed unlawful acts that reflect adversely on his moral character and fall below the standards of the average citizen of the community when he falsely claimed U.S. citizenship while attempting to re-enter the United States in 1997 and made false representations on his 2003 adjustment application when he indicated he had not previously been deported or removed from the United States. Moreover, as discussed, the record reflects that the Petitioner was arrested on two occasions for which he has not submitted court

dispositions to demonstrate that they were resolved and to support his contentions that he had not been convicted of any crimes and was in fact the victim of the 2002 robbery incident.

Accordingly, the Petitioner has not identified any legal or factual error in, or presented any new evidence or facts that overcomes, our previous determination that the Petitioner did not establish by a preponderance of the evidence his good moral character. He therefore has not established his eligibility for an immigrant classification as the abused spouse of a U.S. citizen under VAWA.

ORDER: The motion to reopen is dismissed

FURTHER ORDER: The motion to reconsider is dismissed.