



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

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

In Re: 18410470

Date: MAY 19, 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)(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). The matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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 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>.

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 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).

## II. ANALYSIS

The Petitioner married her U.S. citizen spouse, R-S-,<sup>1</sup> in [REDACTED] 2003. In 2005, the Petitioner was charged with removability pursuant to section 212(a)(6)(E)(i) of the Act for alien smuggling and ordered removed *in absentia* in 2006 after failing to appear at her removal proceedings. The Petitioner filed her VAWA petition in May 2018.

After initial review of the VAWA petition, the Director issued the Petitioner a request for evidence (RFE) to establish, among other things, that she is a person of good moral character. The Director noted the record contained inconsistencies between the Petitioner's description of the alien smuggling incident as noted in her affidavit submitted with the VAWA petition and her interview with a U.S. border patrol officer in 2005. In her affidavit, the Petitioner stated that a friend asked her to bring his nephews to the United States from Mexico, he told her that the children were born here, and he gave her the children's birth certificates. She found out the birth certificates did not belong to the children when they gave names to the immigration officer that did not match the birth certificates. She did not know if the children were her friend's nephews or if he was paid to bring the children into the United States. However, in the Petitioner's interview with a U.S. border patrol officer, she stated that a friend asked her to bring his sister's children into the United States and they did not have any documents, but his aunt would lend her two birth certificates belonging to her own children. The Petitioner was paid \$300 and was told she would receive another \$500 upon returning with the children.

The Petitioner submitted a second affidavit in response to the RFE, where she indicated that she should have been more cautious and suspicious of the situation, she knows now she should not have agreed to do it, she regrets her mistake, and she has learned to think more about her actions. The Petitioner noted that she has tried her best to be a good person, she worked hard and studied to become a self-employed massage therapist, and her two children are her priority in life. She also cares for her ill mother and provides emotional and financial support to her nieces and nephews. The Director denied the petition, determining, in pertinent part, that the submitted evidence, including the two affidavits from the Petitioner, third party affidavits, and employment and education documents, was not sufficient to demonstrate her good moral character.

On appeal, the Petitioner submits a brief from counsel and asserts, in pertinent part, the Director erred in finding that she is not a person of good moral character. She states that she has not violated the law and has no derogatory instances within the three-year period preceding the filing of the VAWA petition. She contends the Director failed to evaluate all submitted evidence and consider the relevant factors for determining good moral character, the totality of the circumstances, and her rehabilitation as her only violation of law occurred over 15 years ago. According to counsel's brief on appeal, the Petitioner was struggling to overcome extreme circumstances in her personal life at the time of the 2005 alien smuggling incident, such as an abusive relationship, her own cognitive difficulties, and pursuing a vocational program.

As previously stated, 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

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<sup>1</sup> Initials are used to protect the privacy of this individual.

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.* A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner has not satisfied her burden to establish that she is a person of good moral character.

The evidence provided by the Petitioner in support of her character addresses her remorse for engaging in alien smuggling, her efforts to support her children and other family members, her history of paying taxes, and the abuse she suffered as a child and an adult. However, while the Petitioner stated that she regretted her decision to bring the children into the United States, she has not addressed, either in response to the RFE or on appeal, the inconsistent statements she provided to government officials regarding the alien smuggling. Specifically, the Petitioner has not addressed why her initial affidavit submitted with the VAWA petition indicated she believed the children were U.S. citizens, even though she told the U.S. border patrol officer that she was paid to bring children into the United States with birth certificates that did not belong to them. Moreover, due to the serious nature of knowingly engaging in alien smuggling, which resulted in an order of removal from the United States, the Petitioner's 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. Consequently, the Petitioner has not established by a preponderance of the evidence that she is a person of good moral character, and she has not demonstrated her eligibility for immigrant classification under VAWA.<sup>2</sup>

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The Director further concluded that the Petitioner had not met her burden of establishing that she entered into marriage with R-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. However, because the identified basis for denial is dispositive of this matter, we decline to reach and hereby reserve the Petitioner's arguments regarding whether she has also established that she entered into marriage with R-S- in good faith. *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).