



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

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

In Re: 20185369

Date: MAY 23, 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), concluding that the Petitioner was not eligible for immigrant classification because he had been convicted of an aggravated felony, and therefore, could not establish his good moral character, as required. We dismissed the Petitioner's appeal. The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

**I. LAW**

Immigrant classification under the VAWA provisions may be granted to an individual subjected to battery or extreme cruelty by his or her 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. 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, including "one who at any time has been convicted of an aggravated felony" as defined under section 101(a)(43) of the Act. Section 101(f)(8) of the Act. 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 provides that it applies "during the period for which good moral character is required to be established . . . ."

USCIS evaluates a VAWA self-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 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, 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 reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought. The burden of proof is on the 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).

## II. ANALYSIS

The Petitioner, a native and citizen of Nigeria was convicted of battery in 1998, possession of unauthorized access devices in 2002, and driving under the influence (DUI) in 2008. The Petitioner married M-S-,<sup>1</sup> a U.S. citizen, in [REDACTED] 2013. He filed the instant VAWA petition in January 2018 based on this marriage. The Director denied the petition, concluding that the Petitioner was permanently barred from establishing good moral character because he was convicted of an aggravated felony.

In our prior decision on appeal, incorporated here by reference, we acknowledged the Petitioner's assertion that he only pled guilty to one criminal count of access device fraud, and did not commit identity theft because he used his own biographical information to obtain the credit cards. We further acknowledged his assertion that the Notice to Appear (NTA) initiating removal proceedings against him did not charge him with removability based on having committed or been convicted of an aggravated felony, and that he is rehabilitated and has lived an exemplary life for the past 11 years. Nevertheless, we concluded that the evidence in the record including the Petitioner's plea agreement<sup>2</sup> and judgment from the U.S. District Court for the Northern District of Illinois, as well as decisions from an Immigration Judge (IJ), the Board of Immigration Appeals (Board), and the U.S. Court of Appeals for the Ninth Circuit indicated that he committed and was convicted of an aggravated felony. We therefore concluded that the Petitioner could not establish good moral character regardless of whether he was convicted of identity theft or the NTA specifically charged him with having committed an aggravated felony. Regarding his assertions of eligibility for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182, we noted that the Ninth Circuit Court of Appeals held that his conviction was

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<sup>1</sup> Initials are used to protect the identities of individuals.

<sup>2</sup> The plea agreement documents the Petitioner admitting that he used different names, dates of birth and parents' names, and non-existing employer information to fraudulently apply for social security cards in 1991 and 1997. He further admitted using the social security cards, as well as various aliases, to apply for approximately 43 credit cards. He stated that he had no intention of paying off the balances on the credit cards and acknowledged the loss to the credit card companies was at least \$97,300.

both a crime involving moral turpitude (CMT) *and* an aggravated felony. We also noted that, regardless, a person convicted of an aggravated felony is precluded from establishing good moral character, and there is no waiver available for an aggravated felony conviction with respect to establishing good moral character pursuant to section 101(f)(8) of the Act.

On motion, the Petitioner submits a brief again arguing that he is eligible for relief under section 212(h) of the Act,<sup>3</sup> his NTA did not charge him with having committed an aggravated felony, and his conviction for one criminal count occurred over 19 years ago. As stated above, motions to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Here, the Petitioner has not satisfied these requirements, as he has not submitted any arguments on motion that were not previously considered on appeal or otherwise established that our prior decision was incorrect based on the record at the time the decision was made. Therefore, the motion to reconsider is dismissed and the VAWA petition remains denied.

**ORDER:** The motion to reconsider is dismissed.

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<sup>3</sup> In support of his argument, the Petitioner cites to *Matter of Michel*, 21 I&N Dec. 1001 (BIA). However, *Michel* is inapplicable to the Petitioner's case because, in that case, the respondent was the beneficiary of an approved immediate relative visa petition under section 204(a)(1)(A)(i) of the Act, which contains no explicit, statutory requirement to show good moral character. Additionally, the Petitioner references a Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQPRD 70/8.1.8.2, *Determinations of Good Moral Character in VAWA-Based Self-Petitions* (January 19, 2005), <http://www.uscis.gov/legal-resources/policy-memoranda>. The memorandum addresses the application of section 204(a)(1)(C) of the Act, which allows for a finding of good moral character if the act or conviction barring the self-petitioner from establishing good moral character under section 101(f) of the Act is "waivable" for purposes of determining inadmissibility or deportability under section 212(a) or 237(a) of the Act and "connected to the [foreign national's] having been battered or subjected to extreme cruelty." Here, the Petitioner was convicted of an aggravated felony under section 101(a)(43) of the Act, which is not waivable. Moreover, the record does not contain any evidence suggesting that his conviction was in any way related to his having been battered or subjected to extreme cruelty.