



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

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

In Re: 15979627

Date: NOV. 4, 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 evidence and a brief asserting his eligibility. The Administrative Appeals Office 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 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, S-A-,¹ in [] 2015. They have resided together from December 2014 until the present. In April 2018, the Petitioner filed the instant VAWA petition based on his marriage to S-A-, 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.

The Director initially reviewed a fingerprint clearance from the state of California and third-party affidavits related to the Petitioner’s good moral character. The Director issued a request for evidence (RFE) which provided that the Petitioner was charged, in relation to a [] 1993 offense, under California Penal Code § 288(a) with lewd, lascivious act with a child under 14 and under California Penal Code § 243.4(a) with sexual battery, and he was deported to Mexico in [] 1994. The Petitioner’s probation officer’s report details his sexual abuse of a nine-year-old girl. The Director also referenced a Form I-213, Record of Deportable/Inadmissible Alien, which stated the Petitioner did not accept responsibility for his offense or concern for the victim and there is a possibility he could re-offend if he did not go through counseling, and a psychological evaluation, which recommended that he seek professional counseling. The Director stated that the third-party affidavits did not indicate knowledge of the Petitioner’s criminal history and were therefore insufficient to demonstrate good moral character. The Director requested evidence that the Petitioner had been rehabilitated, a self-affidavit attesting to his good moral character, criminal history records, and any other evidence of his good moral character. In response to the RFE, the Petitioner submitted a self-affidavit, a sex offender evaluation and report, a clearance letter from the [] Sheriff’s Office, a family therapist’s letter, a psychologist’s letter, several letters in support of his good moral character, and tax returns.

The Director acknowledged the documents submitted in response to the RFE. First, the Director noted that the Petitioner initially denied the allegations and asserted it was an accident, he did not accept responsibility or show concern for the victim, and any abuse against a child is a severely negative factor as the purpose of a VAWA petition is to protect victims of abuse. Next, the Director acknowledged the Petitioner’s statements that he takes full responsibility for his actions, he became involved with a church and a men’s ministry dealing with addictions in Mexico, he became involved with a church and men’s ministry in California, he has been involved in different programs to better himself as a person and a father, he has not harmed anyone in 29 years, and he has not been arrested since 1993. However, the Director noted that the Petitioner did not submit sufficient evidence that the men’s groups and programs provided rehabilitative services or that he sought counseling specific to the crimes he committed. The Director acknowledged as a positive factor the clearance letter from the [] Sheriff’s Office showing the Petitioner does not have a local arrest record, but then referenced his criminal record as described above.

¹ Initials are used throughout this decision to protect the identity of the individual.

The Director stated that the Petitioner's participation in a parenting program and attendance of 16 psychotherapy sessions since 2016 are positive factors, but the letters verifying his involvement in these activities did not indicate the authors' knowledge of the Petitioner's criminal history or provide evidence he received rehabilitative services specific to his crimes. The Director also discussed the sex offender evaluation and report. The Director considered it a positive factor but also noted that the basis for the low rating that the Petitioner would reoffend was based on a probation officer's social study report, the sheriff's clearance letter, and self-reporting on a single occasion. The Director highlighted the Petitioner's claim in the report that his criminal conduct was the result of an accident, thereby marginalizing the incident and again failing to take responsibility.

Lastly, the Director mentioned the tax return copies for 2014 to 2018 and third-party affidavits as positive factors, but listed issues with these pieces of evidence. The Director stated that the tax returns were not certified transcripts from the Internal Revenue Service (IRS) and therefore did not establish that they were filed with the IRS, and the third-party affiants did not indicate their knowledge of the Petitioner's criminal history. The Director concluded, upon review of the evidence in the record, that the Petitioner's conduct falls below the standards of the average citizen. The Director considered the Petitioner's charges for lewd, lascivious act with a child under 14 and sexual battery to be severely negative factors in the determination of good moral character, and that they were not outweighed by his positive factors. Therefore, the Director determined that the Petitioner did not establish he is a person of good moral character.

On appeal, the Petitioner states that his single criminal activity occurred when he was 16 years old, it was over 29 years ago, and he has not committed a crime since then. He asserts that he has received counseling and takes full responsibility for his criminal conduct. The Petitioner further references his involvement in a men's ministry dealing with various forms of addiction and his attendance of church programs. The Petitioner provides an updated letter from the director of his men's ministry reflecting that the Petitioner "has spoken to me with all transparency regarding his juvenile offense involving a 9-year-old girl." Furthermore, the Petitioner states he is enrolled in a sex offender treatment program. The therapist for the program mentions that the Petitioner has not had any criminal or sexual offenses since his original offense, and his risk of reoffending is extremely low based on his age, business ownership, obtaining a college degree, being married, and having four children. Lastly, the Petitioner submits certified IRS tax transcripts from 2014 to 2019.

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. While the letter from the director of the men's ministry indicates some knowledge of the Petitioner's criminal behavior, albeit not in detail, there is no evidence that the

Petitioner has been provided rehabilitative services by the organization. In addition, the therapist's letter does provide information on how many times she met with the Petitioner or the nature of their meetings. Rather, the therapist only asserts that the Petitioner has a low risk of re-offending based on his life accomplishments. As the Director correctly determined that the Petitioner has not established he is a person of good moral character, and the Petitioner has not provided sufficient new evidence on appeal to overcome this finding, he has not established by a preponderance of the evidence that he is a person of good moral character. Therefore, the Petitioner has not established his eligibility for immigrant classification as an abused spouse of a U.S. citizen under the VAWA.

ORDER: The appeal is dismissed.