



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

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

In Re: 24133820

Date: FEB. 7, 2023

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). On appeal, the Petitioner asserts his eligibility for VAWA classification. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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**

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 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 . . . ."

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).

## II. ANALYSIS

The Petitioner, a native and citizen of Macedonia entered the United States with a J-1 visa in May 2010. He filed the instant VAWA petition in May 2019 based on his marriage to S-D-,<sup>1</sup> a U.S. citizen.

As evidence of his good moral character, the Petitioner provided a criminal history check from the [redacted] Sheriff's Department and court documents regarding his domestic violence arrests and traffic citations in 2012, 2015, and 2018, and temporary injunctions for stalking and dating violence in 2013 and 2019. Regarding his arrests and temporary injunctions for domestic violence, the record reflects that the Petitioner was arrested in [redacted] 2012 in [redacted] Florida for domestic battery in violation of section 784.03.(1)(a)(1) of the Florida Statutes Annotated (Fl. Stat. Ann.) The *Probable Cause Affidavit* states that the Petitioner and the L-M- were living together and involved in a dating relationship for eight month. They had an argument regarding the L-M-'s desire to no longer with the Petitioner. The argument turned violent when the Petitioner "grabbed the victim by her face, in the mouth area." L-M- then bit the Petitioner on the hand in self-defense. She told the responding officer that she bit the Petitioner because she thought he was attempting to choke her. When the responding officer interviewed the Petitioner, he stated that "nothing physical took place and it was only a verbal argument." However, the responding officer observed a torn shirt that belonged to the Petitioner in the apartment and noted "a dark red mark on [the Petitioner's] right hand, between his thumb and pointer finger." The Petitioner was arrested and transported to the [redacted] [redacted] He submitted a *Notice of Case Action* from August 2012 from the County Court of the Twelfth Judicial Circuit In and For [redacted] indicating that the Assistant State Attorney declined to file criminal charges for domestic battery.

In October 2013, N-E- filed a *Petition for Injunction for Protection Against Stalking* in the circuit Court of the Thirteenth Judicial Circuit, In and [redacted] Florida. In her petition, she recounted that the Petitioner came to her house on October 15<sup>th</sup> and October 28<sup>th</sup> after they had a verbal disagreement. She stated that the Petitioner looked through her apartment windows, knocked on the door, left notes, and contacted her leasing office to complain about her. She further stated that the Petitioner repeatedly texted and called her, threatening to come to her house every Monday and "make her pay." She emphasized that she feared for her and her children's safety as she believed that the Petitioner's behavior was unpredictable. In [redacted] 2013, a Circuit Court judge granted an *Amended Temporary Injunction for Protection Against Stalking* (temporary injunction), prohibiting the Petitioner from being within 300 feet of N-E-. However, the temporary injunction was later dismissed after N-E- failed to appear at a scheduled hearing.

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<sup>1</sup> Initials are used to protect the individual's privacy.

Furthermore, in February 2019, A-M- filed a *Petition for Injunction for Protection Against Dating Violence* against the Petitioner in the Circuit Court of the Twelfth Judicial Circuit, In and For [REDACTED] Florida. The Petitioner submitted an *Order of Dismissal of Petition for Protection Against Dating Violence*, indicating that, “the evidence presented [wa]s insufficient under Florida law . . . to allow the Court to issued an injunction for protection against domestic, repeat, dating, or sexual violence; or stalking.”

The Director found this evidence insufficient and issued a request for evidence seeking a detailed statement explaining the circumstances surrounding the Petitioner’s arrests and additional evidence of his good moral character.<sup>2</sup> The Director subsequently denied the VAWA petition, explaining that, although the Petitioner did not fall within any of the grounds at section 101(f) of the Act that automatically preclude a finding of good moral character, his documented criminal history of domestic violence involving charges of stalking and physical aggression towards women fell below the standards of the average citizen of the community. The Director acknowledged that these arrests did not result in convictions, but noted that the Petitioner did not provide an explanation regarding the circumstances leading to his arrests or a complete criminal history check under multiple aliases and dates of birth that he had used in the past. Additionally, the Petitioner has a conviction for possession of a controlled substance, which he failed to disclose to the Director while his VAWA petition was pending. The Director then concluded that, without a complete picture of the Petitioner’s criminal history, she was unable to make a determination that he was a person of good moral character.

On appeal, the Petitioner contends that the Director failed to consider his personal statement—“the most direct form of primary evidence of a VAWA self-petitioner.” The Petitioner further contends that the Director failed to consider his rehabilitation, that he was never convicted any of the acts referred to in the denial, that his last “act” occurred in 2019 when a temporary injunction was issued against him, and that he had no contact with law enforcement between 2019 and the Director’s decision in April 2022.

We acknowledge that the Director did not discuss the Petitioner’s personal statement in her decision. We note however, that the error was harmless as the Petitioner’s personal statement did not address the circumstances that led to his 2012, 2015 and 2018 arrests—a deficiency the Director specifically noted in her decision. Further, although the Petitioner contends that his domestic violence arrests did not result in convictions and he has had no contact with law enforcement since the temporary injunction in 2019, the record indicates he was arrested in [REDACTED] 2019 in [REDACTED] for possession of a controlled substance (crystal methamphetamine) and DUI, and was convicted of these charges in [REDACTED] 2020.

A petitioner’s “claim of good moral character will be evaluated on a case-by-case basis, taking into account 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). In this case, the Petitioner was convicted after his petition was filed for possession of a controlled substance, a third-degree felony, as well as driving under the influence of alcohol or drugs. He was arrested for domestic battery in 2012 and had two temporary

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<sup>2</sup> In response to the RFE, the Petitioner resubmitted his personal statement, copies of 2018, 2019 and 2020 U.S. Individual Income Tax Returns, financial documentation including paychecks and Wells Fargo bank statements, and a copy of a medical record regarding a leg injury he suffered in 2020.

injunctions issued against him in 2013 and 2019 for stalking and dating violence. Although the *Notice of Case Action* indicates that the domestic battery charge against the Applicant was ultimately dismissed, the fact that the prosecutor declined to file charges, does not equate with a finding that the underlying conduct or behavior leading to that charge did not occur. We note that the *Notice of Case Action* did not vindicate the Petitioner. Rather, the Assistant State Prosecutor stated that “[the] action [wa]s taken without prejudice to the right of the State of Florida to resume prosecution on this matter at a future date.” We further note that the Circuit Court judge could have dismissed the *Temporary Injunction for Protection Against Stalking* because “the evidence presented [wa]s insufficient under Florida law (section 741.30 or 784.046, Florida Statutes) to allow the Court to issue an injunction for protection against domestic, repeat, dating, or sexual violence.” Instead, the Circuit Court Judge dismissed the temporary injunction because N-E- failed to appear for the scheduled hearing. Additionally, the Petitioner has a controlled substance violation, other than for simple possession of 30 grams or less of marijuana— a conditional bar to establishing GMC under section 101(f)(3) of the Act. Moreover, he failed to submit court disposition records regarding this arrest and subsequent conviction after he responded to the Director’s RFE. Accordingly, the arrests and conviction adversely reflect upon the Petitioner’s moral character and indicate his conduct falls below the standards of the average citizen in the community. Finally, the Petitioner has not established extenuating circumstances that would mitigate the adverse impact of his arrests and conviction on his good moral character determination. 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.