



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

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

In Re: 24484154

Date: JAN. 30, 2023

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 in 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), determining the Petitioner had not established good moral character. We dismissed the subsequent appeal. The matter is now before us as a combined motion to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2), (3).

Petitioners bear the burden of proof to demonstrate eligibility by a preponderance of evidence. Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

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

A VAWA 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, 8 U.S.C. § 1101(f), and the standards of the average citizen in the community. 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act describes classes of persons who shall not be regarded as having good moral character and the final paragraph adds, in relevant part, "[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" Petitioners will be found to lack good moral character if they committed unlawful acts that adversely reflect upon their moral character, or were convicted or imprisoned for such acts, unless they establish extenuating circumstances. 8 C.F.R. § 204.2(c)(1)(vii). However, the acts do not require an automatic finding of lack of good moral character. *Id.* The evidentiary requirements for good moral character focus on the 3-year period preceding the filing of the VAWA petition. See 8 C.F.R. § 204.2(c)(2)(v) (explaining that the petitioner's affidavit is primary evidence of their good moral character and 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).

Petitioners may submit any credible evidence relevant to the VAWA petition for U.S. Citizenship and Immigration Services (USCIS) to consider; however, we determine, in our sole discretion, the credibility of and the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

Our decision on appeal discussed the relevant background and procedural history of this case, and, after reviewing the record in its entirety, concluded that the Petitioner had not established her good moral character by a preponderance of the evidence. We hereby incorporate by reference our decision on appeal and discuss below the facts as relevant to the issues contested on motion.

A. Motion to Reopen

The Petitioner asserts she filed her VAWA petition, despite knowing she had criminal history within the three years of her filing date, because she otherwise faced deportation; and she would now be able to demonstrate good moral character if she were to re-file today, as she has had no arrests within the last four years. The Petitioner further asserts that her second driving while intoxicated (DWI) charge from [] 2018 was dismissed because the "arrest was unwarranted." Included with the motion are previously submitted documents and the Petitioner's order of release dated [] 2018, a notice to appear, and a [] 2021 order dismissing the charge for DWI.

While we acknowledge the Petitioner's assertions that she has remained arrest free for the previous four years, it is her burden to establish that at the time of filing of her VAWA petition, she was eligible for the benefit and she maintained good moral character through the time of final adjudication of both the self-petition and the adjustment of status application. See 8 C.F.R. § 103.2(b)(1) (requiring a petitioner establish eligibility at the time of filing a benefit request); 8 C.F.R. § 204.2(c)(1)(vii) (requiring a petition be denied if record checks disclose that the self-petitioner is no longer a person of good moral character prior to the issuance of an immigrant visa or approval of an application for adjustment of status). The circumstances surrounding the Petitioner's filing of her VAWA petition and arguments regarding her eligibility with respect to any future application are not relevant to our analysis of her good moral character. See 8 C.F.R. § 204.2(c)(1)(vii) (explaining our case-by-case analysis of good moral character takes into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community).¹

The Petitioner provides a document evidencing that her DWI charge from [] 2018 was dismissed "in the interest of justice." While counsel represents that the arrest was not warranted, representations

¹ To the extent the Petitioner does file another VAWA petition, we note that USCIS may review and request any evidence of good moral character or a lack of good moral character for any time period before or after the filing of the self-petition if we have reason to believe the self-petitioner lacks good moral character. See generally 3 USCIS Policy Manual D.2(G)(3), <https://www.uscis.gov/policy-manual> (citing cases in support and explaining, as guidance, while the regulations require evidence of good moral character three years preceding the filing of the Petition, the statutory eligibility requirements do not specify the period for which good moral character must be established).

of counsel are not evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (“We note statements or assertions by counsel are not evidence.”). And the Petitioner did not provide additional information, e.g., the transcript of proceedings, to independently corroborate why the charges were dismissed.² Further, our decision on appeal, which noted that the disposition documents for the [] 2018 arrest were not provided, also explained that even if they had been included, “the dismissal of the Petitioner’s second DWI would not negate the seriousness of her first DWI conviction.” We concluded that the Petitioner’s arrests in [] 2018 and [] 2018, close in proximity to each other and to the time of filing her VAWA petition in November 2018, indicated that the Petitioner lacked good moral character under the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii) as they reflected unlawful behavior that falls below the standards of the average citizen of the community. As we explained in the decision dismissing the appeal, and note again because the evidence submitted on motion does not cure the issues we raised, the Petitioner has not provided documents establishing extenuating circumstances that would mitigate the negative impact of the DWI arrests and conviction on her moral character, nor has she submitted probative evidence providing better context to evaluate the severity of her conduct and whether the conduct is contrary to the standards of the average citizen in the community. See generally 3 USCIS Policy Manual, *supra*, at D.2(G)(3) (providing, as guidance, that the severity of the petitioner’s conduct or act and whether the petitioner has demonstrated rehabilitation of character are relevant considerations in determining if a petitioner’s conduct is contrary to the standards of the average citizen of the community).³

As a result, the Petitioner has not stated new facts supported by affidavits or other documentary evidence determinative to the issue of her good moral character and has therefore not met the requirements of a motion to reopen. 8 C.F.R. § 103.5(a)(2).

B. Motion to Reconsider

The Petitioner states her case is the type that prompted the Victims Against Violence Act to be established. She asserts when applying a case-by-case analysis of her good moral character we should not have compared her to the average citizen; she has one conviction for DWI in [] 2018 but her arrest for DWI in [] 2018 was dismissed and should not be considered in our good moral character analysis. The Petitioner also asserts that we erred in our analysis of her extenuating circumstances.

We acknowledge the Petitioner’s statements that her case is the type that prompted the Victims Against Violence Act to be established and we agree that the Petitioner has established she was subjected to battery or extreme cruelty by her U.S. citizen spouse. However, establishing her abuse is one of the eligibility requirements, while establishing her good moral character is a separate eligibility requirement. Section 204(a)(1)(A)(iii)(I)-(II) of the Act.

² We note that the document, entitled Motion to Dismiss, was submitted by the prosecutor and ordered by the judge. The motion has several boxes that the prosecutor can check, including “evidence is insufficient.” This box was not selected.

³ While conceding that her current health issues stem from an assault by an individual that was not her spouse, the Petitioner’s counsel provides some health detail, including that the Petitioner is unable to cognitively write. Counsel’s statement is not corroborated with documents or references to the record. However, we will accept and appropriately weigh any credible evidence of the Petitioner’s good moral character. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). This includes affidavits from responsible persons who can knowledgeably attest to the Petitioner’s good moral character. 8 C.F.R. § 204.2(c)(2)(v).

The regulations provide that 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) (emphasis added). While we acknowledge the Petitioner's statement that the average citizen has not gone through the trauma that she endured, she has not cited to relevant and controlling authority supporting her assertion that we should disregard regulatory guidance and forego weighing her conduct by the standards of the average citizen of the community. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations have "the force of law" and must be adhered to by government officials). Similarly, the Petitioner has not cited to relevant and binding authority in support of her assertion that we erred in considering her dismissed DWI charge in our good moral character analysis.⁴ The regulations guide us to review acts, behavior, and conduct, not just convictions in assessing good moral character. See 8 C.F.R. § 204.2(c)(1)(vii) (explaining circumstances when we consider unlawful acts and behavior in assessing good moral character) and 8 C.F.R. § 316.10(a)(2) (explaining we may take into consideration the petitioner's conduct and acts in evaluating claims of good moral character); see generally 3 USCIS Policy Manual D.2(G)(3) (citing to 8 C.F.R. § 204.2(c)(1)(vii) and 8 C.F.R. § 316.10(a)(2) and summarizing, as guidance, that we may consider any conduct, behavior, acts, or convictions in evaluating good moral character).

The Petitioner asserts that our analysis of her extenuating circumstances unjustly placed a time limit on when a person should recover from abuse. In our prior decision, we stated that "the Petitioner's first DWI arrest in [REDACTED] 2018 was over one year after her escape from her alleged abuser and she has not otherwise explained the relationship between the alleged abuse and her unlawful conduct to establish extenuating circumstances for her DWI history." We do not interpret our statement as incorrectly applying law or policy. To the extent our statement was unclear, we supplement our explanation. Even had her arrest been contemporaneous with her abuse, it would be the Petitioner's burden to establish how her acts, resulting in her arrests, were precipitated by the abuse to establish extenuating circumstances. Here, the arrests and conviction occurred after the Petitioner had escaped her abuser, the circumstances surrounding the DWI arrests and conviction were not provided to us, nor was probative evidence submitted to connect the abuse as an extenuating circumstance to her conduct. Further, the Petitioner does not identify extenuating circumstances in the record at the time of the decision that we did not consider. Rather, counsel states the Petitioner turned to alcohol to deal with the abuse she endured. As we discussed earlier, uncorroborated representations by counsel are not evidence. See *Matter of Obaigbena*, at 534 n.2. Without more, the Petitioner has not established that we erred in concluding she did not establish extenuating circumstances surrounding her unlawful acts, which adversely reflect upon her moral character.

The Petitioner has not cited binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy, pursuant to 8 C.F.R. § 103.5(a)(3). The Petitioner therefore has not established that our prior decision was incorrect based on the evidence of record at the time of our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

⁴ The Petitioner cites to a Board of Immigration Appeals decision. However, the case is neither relevant to nor stands for the proposition she cites.