U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26876851

Date: JUN. 1, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident of the United States. See Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification rather than remain with or rely upon an abuser to secure immigration benefits. The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish his good moral character. The matter is now before us on appeal. 8 C.F.R. § 103.3. 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

A VAWA self-petitioner who is the spouse or ex-spouse of an LPR may self-petition for immigrant classification if the petitioner shows they entered into marriage with their LPR spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(B)(ii)(I)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(E). In addition, the petitioner must show they are a person of good moral character. Section 204(a)(1)(B)(ii)(II)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(F).

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 . . . ." Section 101(f) of the Act. 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)(3),

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).

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). USCIS shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight that USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner, a native and citizen of Mexico, filed his VAWA petition in April 2020 based on his marriage to an LPR. In support of his VAWA petition, the Petitioner initially provided, as relevant to his claim of good moral character, seven letters of support from members of his community, a professional certificate, and a background check from the state of Minnesota. The Director issued a request for evidence (RFE) informing the Petitioner that he had not established his good moral character and discussing the Petitioner's [redacted] 2011 arrest in relation to an argument with his spouse. In response, the Petitioner submitted a personal statement, additional supporting affidavits, documentation about his [redacted] 2011 arrest, a letter from the police in [redacted] Minnesota, professional certificates, and a psychological evaluation. The Director subsequently denied the VAWA petition based on a determination that the Petitioner had not met his burden to show that he is a person of good moral character. The Director noted the Petitioner's criminal history, noting in particular that the Petitioner's [redacted] 2011 arrest involved information that he threatened to kill his spouse with a potato peeler in front of their children, and concluded that the Petitioner's conduct fell below the standards of an average citizen in the community.

The record reflects that the Petitioner's history of arrests and convictions includes the following:

- In [redacted] 2003, he was arrested for fourth degree driving while intoxicated (DWI) in violation of Minnesota Statutes Annotated section 169A.20. He was convicted of misdemeanor careless driving in violation of Minnesota Statutes Annotated section 169.13.2 and sentenced to 30 days of confinement with execution stayed, supervised probation for one year, and fines.

- In [redacted] 2011, he was arrested after an argument with his spouse and charged with threats of violence (terroristic threats) under Minnesota Statutes Annotated section 609.713 and an offense relating to emergency telephone calls and communications in violation of Minnesota Statutes Annotated section 609.78. The disposition of these charges was "Decline to Prosecute." In relation to the same arrest, the Petitioner was subsequently charged before the District Court for interference with a 911 call, a gross misdemeanor, in violation of Minnesota Statutes Annotated section 609.78.2 and misdemeanor fifth degree domestic assault in

violation of Minnesota Statutes Annotated section 609.2242. Pursuant to a plea agreement, he pled guilty to misdemeanor disorderly conduct.

- He has four convictions for petty misdemeanors relating to parking violations between [redacted] 2017 and [redacted] 2018.

B. Good Moral Character

On de novo review, we agree with the Director that the Petitioner has not submitted sufficient evidence to meet his burden of showing by a preponderance of the evidence that he is a person of good moral character, as section 204(a)(1)(B)(ii)(II)(bb) of the Act and 8 C.F.R. § 204.2(c)(1)(i)(F) require.

The record reflects that the Petitioner and his spouse had an argument at their home in [redacted] 2011. The report from the [redacted] Police Department in Minnesota states that the Petitioner's spouse informed officers that the Petitioner grabbed her by the hair and pulled her down toward the bed, and when she told him she was going to call the police, the Petitioner threw the phone and broke it. His spouse stated that she then slapped him and "went into the kitchen and grabbed a potato peeler." According to the Petitioner's spouse, he then held the potato peeler toward her, stated, "I am going to kill you in front of the kids," and "placed it on [her] left abdominal side . . . ." The police report shows that officers later located and arrested the Petitioner in the parking lot of his apartment. During an interview at the jail, the Petitioner stated that his spouse slapped him and broke the phone during the argument and then he left the apartment. When asked whether he told his spouse he was going to kill her, he responded, "no, just play, no kill." He stated that he did have the potato peeler in his hand, but was in the kitchen while his spouse was in the living room and although he waved the potato peeler, "it was not in a threatening manner." In a subsequent interview with a detective the following day, the Petitioner's spouse provided a report consistent with her prior statements. In his second interview, the Petitioner told the detective that he did push his spouse down onto the bed and took the battery out of the phone when she said she would call the police. Also, he stated "he did pick up a potato peeler and pointed it at [his spouse] and said he was going to kill her. [H]e said he was going to kill her just for play and he did not mean it," and he did not put it against her body. The police report also notes that the police collected the potato peeler as evidence, recording that it "had a 3 [inch] blade with one dull edge and one serrated edge and a pointed end."

On appeal, the Petitioner provides copies of previously submitted evidence. He argues that the police report relating to his [redacted] 2011 arrest cannot be used to deny him a benefit because it is unreliable and uncorroborated, the involved parties did not testify under oath, and the arrest did not lead to a conviction. He cites *Matter of Arreguin*, 21 I&N Dec. 38 (BIA 1995), in alleging that arrest reports cannot form the basis for a denial. Although we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may consider them in our exercise of discretion. *Matter of Arreguin* at 42 (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports); *see also Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing to *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988) *and Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995)) (finding that we may look to police records and arrests in making a determination as to whether discretion should be exercised). The Petitioner also cites to *Billeke-Tolosa v. Ashcroft*, 385 F.3d 708, 710 (6th Cir. 2004) in arguing that "police and arrest reports may not be used as a basis to determine eligibility for relief." But

Billeke-Tolosa v. Ashcroft is a case from the Sixth Circuit Court of Appeals and is not binding in this case, which falls under the jurisdiction of the Eighth Circuit. We also note that although he claims the police report is unreliable because it is unknown whether he was read his Miranda rights, the police report indicates that officers read him the Miranda warning before his interview at the [redacted] jail on the day of his arrest and that during his subsequent interview the next day he also gave "a post Miranda statement."

Further, although the Petitioner asserts on appeal that "[t]here is no conviction for this citation/arrest," the record does not support his claim. Although the documentation he submitted shows that prosecution was declined for the charges initially entered on the date of his arrest in [redacted] 2011, the Petitioner was summoned for other charges related to the same incident and did plead guilty to disorderly conduct pursuant to a plea agreement. The Summons lists the date of offense as [redacted] 2011 in relation to charges for interference with a 911 call in violation of Minnesota Statutes Annotated section 609.78.2 and fifth degree domestic assault in violation of Minnesota Statutes Annotated section 609.2242. Additionally, the related Petition to Enter Plea of Guilty – Misdemeanor (pleading document), which was entered in [redacted] 2011, reflects those same charges and states that the Petitioner pled guilty to disorderly conduct because in [redacted] 2011 he "[a]rgued with [his] wife and caused disturbance in the apartment." The related sentencing document states he was sentenced to 30 days in an adult corrections facility ("workhouse") with the execution of 26 days stayed for one year; four days of service in the workhouse with credit for four days served; a fine of $200; and supervised probation for one year with the conditions that he complete anger management and domestic violence programs and not commit any offenses involving assault, disorderly conduct, harassment, violation of a protection order, or interference with emergency 911 calls. As a letter from his probation officer reflects, the Petitioner timely completed the conditions of his probation. As such, the probation was discharged in July 2012 and he was discharged from all probation and monitoring in October 2014.

He also argues on appeal that "[a] 'rap sheet' alone is insufficient to establish a crime involving moral turpitude" (CIMT), and that we can only rely on facts to which he "necessarily pleaded." In support of his argument, he cites *Wala v. Mukasey*, 511 F.3d 102, 108 (2d Cir. 2007) and *Lozano-Arredondo v. Sessions*, 866 F.3d 1082, 1087 (9th Cir. 2017). However, both cases relate to whether an individual had committed or been convicted of a CIMT, which is not at issue here. For immigrant classification under the VAWA provisions, a good moral character determination is both a statutory and discretionary matter. *See* 8 C.F.R. § 204.2(c)(1)(vii) (stating that good moral character is "evaluated on a case-by-case basis" and listing non-statutory factors such as "extenuating circumstances" and the "standards of the average citizen in the community"). The Petitioner has not established his good moral character under the regulatory standards of 8 C.F.R. § 204.2(c)(1)(vii) because his conduct falls below the standards of the average citizen in the community, regardless of whether he has committed or been convicted of a CIMT.

The Petitioner further contends that the Director focused only on some language in the police reports and used "his accuser's speech against him." He alleges that the Director incorrectly determined that the Petitioner "did not deny threatening to kill [his] spouse in front of the kids, only that [he was] just playing." Instead, he states that the police report and statement of probable cause both indicate that he informed police he did not threaten his spouse with the potato peeler, and that the incident report also stated his spouse was the one who grabbed the potato peeler. But the record does not support the Petitioner's claim that he never admitted to threatening his spouse. The police report narrative from

the date of the incident reflects that during statements to police at the [redacted] jail, the Petitioner claimed that although he did have a potato peeler in his hand and "was waving the potato peeler at" his spouse, "it was not in a threatening manner" and he was not in close proximity to her. When police asked whether he threatened to kill his spouse, the Petitioner responded, "just play, no kill." The statement of probable cause also indicates that the Petitioner admitted to having a potato peeler in his hand but "that he did not threaten [his spouse] with it," and that when asked if he threatened to kill his spouse he "stated he was just playing." In a personal statement submitted with his RFE response, he offered a different timeline, stating that during a conversation in the kitchen, he "jokingly had a potato peeler in [his] hand and [he] jokingly held it up and said be quiet," after which the argument began. However, during a second interview with a detective the day after his arrest, the Petitioner said "he did pick up a potato peeler and pointed it at [his spouse] and said he was going to kill her. [H]e said he was going to kill her just for play and he did not mean it," and he "did not put the potato peeler up against [his spouse] or to her stomach." Accordingly, the Petitioner's claims on appeal do not acknowledge or explain his full statements as reflected in the police reports, which conflict with his assertion that he never told police he threatened to kill his spouse and "[t]here is no factual basis to any threat."

As the Petitioner notes on appeal, the Director did not discuss the psychological evaluation he submitted in response to the RFE. However, although the psychological evaluation notes the Petitioner's DWI arrest, it does not mention the Petitioner's [redacted] 2011 arrest or indicate that the psychologist was informed of that portion of the Petitioner's criminal history. The evaluation notes the Petitioner's strong ties to his family and community, stable work history, and long residence in the United States and he has a strong work ethic, supports his family, and values loyalty and integrity. Additionally, the evaluation focuses on the Petitioner's difficulties with his spouse. Because the psychological evaluation does not address the arrest history at issue in this case, it is insufficient to support his claim of good moral character. The Petitioner has also submitted multiple letters from members of his community attesting to his character and work ethic. We have considered those statements, but none of the writers indicate any knowledge of the Petitioner's criminal history.

We acknowledge the Petitioner's long residence and work history in the United States; his close ties to friends, family, and colleagues who attest to his good character; and that his probation relating to his [redacted] 2011 arrest ended in 2012. However, the Petitioner's arrests and convictions adversely reflect upon his moral character and indicate his conduct falls below the standards of the average citizen in the community. The record reflects that the Petitioner told police that he pushed his spouse onto the bed, removed the battery from the phone so that she could not call 911, and pointed a potato peeler at her while stating that he was going to kill her, although it was only for play and he did not mean it. The Petitioner has not acknowledged or explained this portion of his statement as recorded in the police report, instead denying that he ever admitted to threatening his spouse, and incorrectly claims on appeal that no conviction resulted from the [redacted] 2011 arrest. Therefore, the record does not reflect that the Petitioner has provided a complete picture of his conduct. Moreover, he has not established extenuating circumstances that would mitigate the adverse impact of his criminal history on his good moral character determination. Therefore, the Petitioner has not met his burden of establishing by a preponderance of the evidence that he is a person of good moral character, and he cannot show his eligibility for immigrant classification as the abused spouse of an LPR under VAWA.

ORDER: The appeal is dismissed.