



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

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

In Re: 26876867

Date: JUN. 6, 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 U.S. citizen. See Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative 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 that he is a person of 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

A petitioner who is the spouse or ex-spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in relevant part, 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). 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

The Petitioner, a native and citizen of Colombia, filed his VAWA petition in February 2020 based on his marriage to a U.S. citizen. After considering the Petitioner's response to a request for evidence, the Director denied the VAWA petition, concluding that the Petitioner had not established that he is a person of good moral character. The Director noted the Petitioner's history of arrests, charges, and convictions, which includes the following:

- A 2013 conviction for Operate Motor Vehicle – Alcohol Concentration 0.08 Within 2 Hours, a gross misdemeanor in violation of Minnesota Statutes Annotated section 169A.20.1(5);
- A 2018 charge, stemming from an argument with his spouse, for misdemeanor Domestic Assault – Commits Act to Cause Fear of Immediate Bodily Harm or Death in violation of Minnesota Statutes Annotated section 609.2242.1(1), for which the Petitioner pled not guilty and completed a diversion program, resulting in eventual dismissal of the charge; and
- A 2019 charge for Falsely Reporting a Crime, leading to a conviction for misdemeanor Disorderly Conduct – Offensive/Abusive/Boisterous/Noisy/Obscene, in violation of Minnesota Statutes Annotated section 609.72(1)(3) pursuant to a plea agreement.

The Director concluded that the Petitioner's conduct in relation to his 2018 charge for domestic assault fell below the standards of an average citizen in the community and that he therefore could not establish his good moral character under section 101(f) of the Act. The Director acknowledged that the record shows the Petitioner was the victim of abuse by his spouse, who was placed on probation for domestic assault, and that the police arrested his spouse after they found her description of the events relating to their 2018 argument "not feasible." However, the Director stated that the information in the related police report also included allegations from the Petitioner's spouse and her sons that the Petitioner hit his spouse, "grazed" and "elbowed" his spouse's son, and had "gotten angry in the past and . . . grabbed kni[v]es before and that [he had] also hit his head against a wall." Accordingly, the Director concluded that in addition to being the victim of battery and extreme cruelty by his spouse, the Petitioner had "created a victim(s) of battery and/or extreme cruelty as well," and the affidavits and other evidence in the record did not sufficiently address his criminal history.

On appeal, the Petitioner argues that the evidence about the 2018 incident, for which he was not initially charged and which did not lead to a conviction, should be considered in the context of the abuse he experienced at the hands of his spouse. He submits on appeal an article about the prevalence of false allegations made by female perpetrators of abuse against their male partners. Additionally, he submits a letter from his current employer, who states in part that he learned of the Petitioner's criminal

history through an employment background check but was “satisfied with the explanation and context that he provided” and noted the last incident occurred in 2019; a letter of support from another person at his place of employment; and his most recent income tax returns.

The record reflects that the Petitioner has submitted relevant evidence that the Director has not had the opportunity to consider. As such, we will remand the matter to the Director to consider this evidence in the first instance and determine whether the Petitioner has established that he is a person of good moral character and satisfied the remaining eligibility requirements for immigrant classification under VAWA.

ORDER: The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.