



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 27035106

JUNE 9, 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), 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. On appeal, the Petitioner contends that he has established eligibility for the benefit sought.

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). 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.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, 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). A VAWA self-petitioner's good moral character is assessed under section 101(f) of the Act. Section 101(f) of the Act enumerates grounds that will automatically preclude a finding of good moral character, and additionally states that the "fact that any person is not within any of the foregoing classes should not preclude a finding that for other reasons such person is or was not of good moral character" Section 101(f) of the Act applies "during the period for which good moral character is required to be established"

The 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). 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 under 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>. 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 record reflects that the Petitioner was arrested in 2005 and charged with the following: (1) assault in the third degree under section 120.00(1) of the New York Penal Law (N.Y. Penal Law); (2) endangering the welfare of a child under section 260.10 of the N.Y. Penal Law; (3) robbery under section 160.05 of the N.Y. Penal Law; (4) burglary in the first degree under section 140.30 of the N.Y. Penal Law; and (5) criminal contempt under section 215.51 of the N.Y. Penal Law. In March 2006, all charges levied against the Petitioner were dismissed.

Prior to issuing a decision, the Director issued a request for evidence (RFE) seeking the arrest report and related court documentation relating to the Petitioner's arrest. In response to the RFE, the Petitioner submitted an updated personal statement, additional affidavits of support, and a police clearance from the Dominican Republic. In denying the petition, the Director determined that the record did not contain sufficient evidence of good moral character, noting that while the Petitioner submitted documentation indicating that the 2005 charges levied against him were dismissed, the basis for the dismissal was not provided, and therefore, the certificate of disposition could only be afforded limited favorable evidentiary weight.

On appeal, the Petitioner highlights that his arrest was in 2005 and asserts that the Director erred by looking beyond the three-year period for which he is required to demonstrate good moral character.

Here, the Petitioner was arrested and charged with notably serious crimes—assault and robbery as well as endangering the welfare of a child—and although the Petitioner's arrest was outside of the three year period for which he is required to demonstrate good moral character, as noted above, U.S. Citizenship and Immigration Services (USCIS) is not precluded from considering and may take into account a pattern of unlawful behavior that is contrary to the standards of an average citizen in the community. See 3 USCIS Policy Manual, supra, at D.2(G)(1). We acknowledge that the Petitioner's charges were dismissed; however, the Petitioner has not submitted documentation, either below or on appeal, regarding the circumstances of his arrest or indicating why the charges were dismissed aside from his statement. In the absence of additional information or documentation which would allow us to properly and fully consider the basis for and specific facts surrounding the Petitioner's arrest, such as the underlying arrest report and records or transcripts documenting his subsequent criminal proceedings, we are unable to assess the impact of his behavior with respect to his claim of good moral character. Consequently, 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 has not demonstrated his eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.