



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

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

In Re: 27176806

Date: JUN. 13, 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 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 petition, concluding that the Petitioner did not establish that he was a person of good moral character. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

Immigrant classification under the VAWA provisions may be granted to an individual subjected to battery or extreme cruelty by their 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 including, as relevant here, where the petitioner has been convicted at any time of an aggravated felony. Section 101(f)(8) of the Act.

The Petitioner, a native and citizen of Mexico, filed the instant VAWA petition in February 2020. In April 2022, the Director issued a request for evidence (RFE) informing the Petitioner that he had not provided sufficient evidence to establish his good moral character, as it appeared that the Petitioner had been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, due to his  2019 arrest for possession of a weapon, fraud – false statement, and unlawful transportation

of firearms. The Petitioner responded to the RFE and provided a disposition which indicated that he plead guilty in [REDACTED] 2019 to one count in violation of 18 U.S.C. § 922(g)(5), illegal alien in possession of a firearm, in the United States District Court, District of Colorado, and was sentenced to time served and two years of supervised release. As a result, the Director determined that the Petitioner was barred from establishing his good moral character, as required by section 101(f)(8) of the Act, as his conviction is considered an aggravated felony found at section 101(a)(43)(E)(ii) of the Act.

On appeal, the Petitioner submits a brief. In his brief, he concedes that his conviction under 18 U.S.C. § 922(g)(5) is an aggravated felony. The Petitioner cites section 204(a)(1)(C) of the Act and contends that this section of the Act allows for a waiver for an individual seeking recognition as a battered spouse who is otherwise barred from establishing good moral character by operation of section 101(f) of the Act. However, section 204(a)(1)(C) of the Act allows for a finding of good moral character if the act or conviction barring the self-petitioner from establishing good moral character under section 101(f) is “waivable for purposes of a determination of the petitioner’s admissibility under section 212(a) or deportability under section 237(a)” of the Act and “connected to the alien’s having been battered or subjected to extreme cruelty.” This section does not apply to the Petitioner as his conviction is an aggravated felony under section 101(a)(43) of the Act, which is not waivable.

The Petitioner further claims that he provided evidence that his conviction was connected to the abuse he experienced. The Director acknowledged this claim; however, as noted, the Petitioner was convicted of an aggravated felony, and we cannot consider any extenuating circumstances as the arrest resulted in a conviction. *See* 8 C.F.R. § 204.2(c)(1)(vii), explaining that “extenuating circumstances may be taken into account if the person *has not been convicted* of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act” (emphasis added). As a result, we determine that there was no error in the Director’s decision and agree that pursuant to section 101(f)(8) of the Act, the Petitioner is unable to establish his good moral character, as he was convicted of an aggravated felony.

The Petitioner has not established that he is a person of good moral character under section 101(f) of the Act. Consequently, he has not established that he is eligible for immigrant classification under VAWA.

**ORDER:** The appeal is dismissed.