



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

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

In Re: 27062031

JUNE 20, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 Amerasian, Widow(er), or Special Immigrant (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 Petitioner filed the instant VAWA petition in May 2020. The Petitioner's criminal history includes the following: (1) a 2003 conviction for battery under section 784.03 of the Florida Statutes Annotated (Fla. Stat. Ann.); (2) a 2005 arrest for battery under section 784.03 of the Fla. Stat. Ann.; (3) a 2019 arrest for battery under section 784.03 of the Fla. Stat. Ann.; and (4) a 2020 arrest for domestic battery by strangulation under section 784.041(3) of the Fla. Stat. Ann. and aggravated battery with a deadly weapon (knife) under section 784.05(a)(2) of the Fla. Stat. Ann.

In denying the petition, the Director highlighted that the Petitioner's description of the circumstances leading to his arrests was inconsistent with the arrest reports and concluded that the Petitioner's multiple domestic violence and battery charges show an ongoing pattern of behavior which raises concern about the well-being of others, disregard for the laws of the United States, and conduct that falls below the standards of the average citizen of the community.

On appeal, the Petitioner asserts that the Director erred by focusing on charges that were dismissed as well as on the content of police reports without assessing the evidence regarding his spouse's mental health which calls into question the veracity of her statements. He also contends that the police reports may be relevant in answering the question of whether he warrants a favorable exercise of discretion because the reports show that during his arrests, he was always compliant. He also argues that simple battery is not a crime involving moral turpitude and it does not form the basis for a finding of one's lack of good moral character.

Upon de novo review, we adopt and affirm the Director's decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

We acknowledge that the charges levied against the Petitioner in 2005, 2019, and 2020 were dismissed. We also take notice of the *Declination of Prosecution Affidavit*, signed by the Petitioner's spouse following the Petitioner's 2020 arrest, wherein she requested that the Petitioner not be prosecuted and she stated that she and the Petitioner "got into a verbal argument." Although we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may properly consider them in our exercise of discretion. *See 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); *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports).

Here, the Petitioner was arrested for and charged with notably serious crimes—domestic battery by strangulation and aggravated battery with a deadly weapon—during the three-year period immediately preceding his filing of the VAWA petition. Further, while the Petitioner asserted that he did not touch his spouse, relevant police reports from his 2020 arrest state that when the responding officer arrived, he observed “bruising and swelling above [the Petitioner’s spouse’s] eye, blood on her lips, redness on her neck and blood coming from her ear” and “the video (the Petitioner’s spouse) posted on Facebook Live showing the argument and [Petitioner] coming towards [his spouse] while she was screaming for help and for him to stop. The video stopped when [the Petitioner’s spouse] said ‘don’t hit me!’”

USCIS evaluates a VAWA 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). Unless a VAWA 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. *Id.* Here, the Petitioner has one conviction for battery and three additional arrests for domestic battery between 2005 and 2020. Of particular significance is the fact that the evidence in the record indicates that the victim in each instance, including those immediately preceding the filing of the Petitioner’s VAWA petition, was his partner, and his conduct concerns the very type of behavior that the VAWA legislation seeks to protect against. Here, the conviction and arrests indicate a continuing pattern of conduct up until the filing of the VAWA petition, adversely reflect upon the Petitioner’s moral character, and indicate his conduct falls below the standards of the average citizen in the community. Moreover, he has not established extenuating circumstances that would mitigate their adverse impact on his good moral character determination. 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.