



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

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

In Re: 25215681

Date: MAR. 13, 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 eligibility for the benefit sought. The matter is now before us on appeal. 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, in part, that they entered into the marriage in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, the petitioner must establish their good moral character. Section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). Primary evidence of good moral character is the petitioner's affidavit which should be accompanied by a local police clearance or a state-issued criminal background check from each location where the petitioner has resided for at least six months during the 3 years immediately preceding the filing of the VAWA petition. 8 C.F.R. § 204.2(c)(2)(v). If police clearances, criminal background checks, or similar reports are unavailable for some or all locations, the petitioner may include an explanation and submit other evidence with their affidavit. *Id.* U.S. Citizenship and Immigration Services (USCIS) will also consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the petitioner's good moral character. *Id.* USCIS determines, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

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. Illicit trafficking in a controlled substance is an aggravated felony. Section 101(a)(43)(B) of the Act.

The record reflects that the Petitioner entered the United States in 1988.<sup>1</sup> In [ ] 1990, the Petitioner married S-S-,<sup>2</sup> a U.S. citizen. The Petitioner filed a VAWA petition in 2019. The Director denied the petition, concluding that the Petitioner had not established that he was a person of good moral character.<sup>3</sup> The Director detailed that the Petitioner had been arrested and convicted on four separate occasions of possessing or selling drugs between 1990 and 2000. While the Petitioner submitted an affidavit expressing regret for his actions and third-party affidavits in support of his application, the Director found that such documentation did not outweigh the severity of his criminal record. The Director also found that the Petitioner's 2000 felony conviction for conspiracy to distribute cocaine was an aggravated felony pursuant to section 101(a)(43)(B) of the Act that permanently barred him from establishing his good moral character under section 101(f)(8) of the Act.

On appeal, the Petitioner submits court records establishing his convictions.<sup>4</sup> The Petitioner also submits a letter of support from a friend attesting to the Petitioner's devotion to his family, friends, and community. The Petitioner also submits a statement where he acknowledges the "mistakes" he made "while I was young" and provides additional details and documentation about his marriage to S-S-. In his statement he also asserts that he is a primary caregiver to his three grandchildren and ever since his last charge, he has not had any police contact.

As detailed by the Director and supported by the documentation submitted on appeal, in 1990 and again in 1991, the Petitioner was convicted by the [ ] Criminal Court in New York of attempted criminal sale of a controlled substance in the third degree. In [ ] 1995, the Petitioner was arrested for criminal possession of a controlled substance in the fourth degree; he was ultimately convicted in the [ ] City Court in New York of criminal possession of a controlled substance in the seventh degree. The Petitioner also states that he was charged with possession and distribution of controlled substance- 5 kilograms or more in 1996; documentation submitted on appeal establishes that the Petitioner was convicted in [ ] 2000 in the U.S. District Court, [ ] of New York, of conspiracy to distribute cocaine and produce/traffic in counterfeit device.

We adopt and affirm the Director's decision. *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 F3d 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.")

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<sup>1</sup> The record does not contain documentation to establish that the Petitioner entered the United States legally.

<sup>2</sup> We use initials to protect the privacy of individuals.

<sup>3</sup> The Director also found that the Petitioner had not provided sufficient evidence to establish joint residence with S-S-, abuse by S-S-, and that his marriage to S-S- was entered into in good faith. However, the Director did not discuss these deficiencies in detail because they would not overcome the finding concerning the Petitioner's moral character.

<sup>4</sup> As noted by the Director in the decision to deny the petition, the record establishes that the Petitioner has used multiple aliases while in the United States. The conviction records provided on appeal support the Director's finding, as all four documents contain separate aliases for the Petitioner. The Petitioner does not explain his use of aliases on appeal.

The record supports the finding that the Petitioner is permanently barred from establishing good moral character as a result of his 2000 felony conviction for conspiracy to distribute cocaine, an aggravated felony under section 101(a)(43)(B) of the Act. Consequently, he has not established that he is eligible for immigrant classification under VAWA.

**ORDER:** The appeal is dismissed.