



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

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

In Re: 26807987

Date: MAY 30, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a lawful permanent resident (LPR) of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification rather than remain with or rely upon an abuser to secure immigration benefits. The Director of the Vermont Service Center denied the VAWA petition, concluding that the record did not establish that the Petitioner 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 VAWA petitioner who is the spouse or ex-spouse of an LPR may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with an LPR spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(B)(ii)(I)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(E). In addition, petitioners must show that they are a person of good moral character. Section 204(a)(1)(B)(ii)(II)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(F). U.S. Citizenship and Immigration Services (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). As explained in policy guidance, USCIS generally examines the three-year period immediately preceding the date the VAWA petition is filed. *See* 3 *USCIS Policy Manual* D.2(G)(1), <https://www.uscis.gov/policy-manual>. Primary evidence of a 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 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 record reflects that the Petitioner, a native and citizen of Mexico, last entered the United States without inspection, admission, or parole in December 1989, and married her LPR spouse, J-H-,¹ in California in [] 1999. She filed the instant VAWA petition in November 2019 based on a claim of battery and extreme cruelty by J-H-.

The Petitioner submitted a fingerprint-based criminal history report from the Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI) indicating that she had been arrested in [] 2018 for a single charge of possession of drug paraphernalia, which was dismissed in court in [] 2018, and in [] 2018 for a single charge of an animal violation. The Petitioner also submitted a list of six traffic violations and nine additional animal violations, for which she paid monetary fines and removed the dogs from her home.

In denying the petition, the Director noted that the Petitioner's arrests for possession of drug paraphernalia and animal violations, along with the additional 14 counts² of control off premises (animal) violations, raise concerns about the safety of the public, well-being of others, and the Petitioner's disregard for the laws of the United States. The Director concluded that although the Petitioner was not specifically barred from establishing good moral character under section 101(f) of the Act, her conduct must be evaluated on a case-by-case basis, taking into account the standards of the average citizen of the community and the totality of the evidence in each case. 8 C.F.R. § 204.2(c)(1)(vii). The Director then indicated that the negative factors, the Petitioner's arrests and animal violations, must be weighed against the positive factors in her case in order to determine whether she had established that she is a person of good moral character. The Director noted that the Petitioner's sole positive factor was that she provided the incident report for the animal violation, and reiterated that the charge for possession of drug paraphernalia was dismissed but the Petitioner had multiple animal violations. Finally, the Director determined that the Petitioner's conduct falls below the standards of the average citizen of the community, the record lacks evidence to clearly demonstrate that she complied with the court orders (if any), specifically for the animal violations, and that the Petitioner did not establish that she is a person of good moral character.

On appeal, the Petitioner argues that the Director's focus on animal violations is misplaced and that the Director did not fairly consider the favorable factors in her case. The Petitioner submits a brief from Counsel, a new statement, letters of support from two of her sisters, letters of support from three of her children, and family photos. The Petitioner contends that the record shows no people were harmed by the family dogs who were unfortunately able to escape the backyard. While the dogs did cause harm to a neighbor's chickens, the Petitioner asserts that section 101(f) of the Act does not

¹ We use initials to protect the privacy of individuals.

² The Director observed that the Incident Report for the Petitioner's [] 2018 arrest for animal violations indicated that she had an additional 14 counts of control off premises (animal) violations filed with the [] Prosecutors Office. However, on appeal, the Petitioner corrects the record to indicate that there were only nine additional animal violations and she previously submitted court dispositions for each.

extend guilt to a person as a consequence of another actor's conduct, let alone the conduct of a pet, such that the person can be found to lack good moral character. In her statement on appeal, the Petitioner explains that she had adopted five rescue dogs, one for each of her children, to help her children deal with the trauma they suffered at the hands of her abusive husband, J-H-, and from the sadness and loss they suffered when the father of her two youngest children left the family in 2016. The Petitioner further explains that at the time of the animal violations, she was raising her five children on her own and sometimes she or the children would forget to chain the dogs in the backyard. She indicates that the backyard is fenced in, but the dogs continued to escape no matter how hard the family tried to block the exits, and the landlord refused to spend money to make the perimeter fence escape proof. She indicates that she could not afford to get the fence repaired on her own and the dogs occasionally escaped the backyard because of this, but they never caused any harm to any person. Finally, the Petitioner specifically states that she is sorry her dogs attacked the neighbor's chickens, she is sorry the neighbor had to shoot her dog, she agrees that it is not okay for her dogs to be loose in the neighborhood, she would have repaired the fence if she had the money to do so in order to prevent these animal violations, and she is relieved that her dogs did not hurt any people.

Upon de novo review, based on the evidence in the record before the Director and on appeal, the Petitioner has demonstrated, by a preponderance of the evidence, that she is a person of good moral character. First, the Petitioner's explanation for the animal violations is reasonable and such violations do not bar her from establishing good moral character under section 101(f) of the Act. In evaluating the Petitioner's conduct and her explanations concerning the circumstances surrounding the animal violations, and considering that she complied with court orders to remove the dogs from her home, the totality of the evidence indicates that she is a person of good moral character. Second, the Petitioner's sole support of her five U.S. citizen children, two of which have special needs, the letters of support from family describing her good moral character, and her expression of remorse in her statement on appeal, further strengthen this determination. Based on the foregoing, the Petitioner has submitted sufficient evidence to establish her good moral character by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. *See also Matter of Chawathe*, 25 I&N Dec. 369 at 375-76. Because the sole ground for denial of the VAWA petition has been overcome on appeal, we remand the matter to the Director to consider whether the Petitioner has satisfied the remaining eligibility requirements for immigrant classification under VAWA.³

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

³ Although not a ground for denial of the VAWA petition, the Director's decision specifically notes that the record lacks a marriage certificate for the Petitioner's marriage to J-H-.