



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

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

In Re: 16897378

Date: FEB. 02, 2022

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 that he was a person of good moral character. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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)(II)(bb) of the Act. 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). 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." *Id.* 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). However, USCIS may investigate a VAWA self-petitioner's character beyond that three-year period when there is reason to believe they have not been a person of good moral character in the past. *See* USCIS Policy Memorandum, HQOPRD 70/8.1/8.2, *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, 1-2 (Jan. 19, 2005), <http://www.uscis.gov/laws/policy-memoranda> (explaining that although the inquiry into good moral character focuses on the three years preceding filing, USCIS may extend the inquiry when warranted); *see also* Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996) (explaining that adjudicating officers may investigate a VAWA self-petitioner's character beyond the three-year period when there is reason to believe they lacked good moral character in the past).

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). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). While we must consider any credible evidence relevant to the VAWA self-petition, we determine, 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).

II. ANALYSIS

The Petitioner is a native and citizen of Mexico who married his U.S. citizen spouse, A-E-G-,¹ in [] 2012, claims to have resided with her from 2010 until August 2016, and filed his VAWA petition in August 2018. In support of the petition he submitted personal affidavits, an FBI records search, a letter from a county assistant district attorney,² a temporary restraining order against A-E-G-, an arrest warrant for A-E-G-, letters of support, his daughter's school records, and civil documents. The Director denied the petition, finding that the Petitioner did not establish he was a person of good moral character. On appeal the Petitioner supplements the record with a local sheriff's office arrest record summary and criminal court records search results for him and for his spouse.

The record reflects that the Petitioner was arrested in [] 2014 and [] 2015 for battery on a spouse. In denying the VAWA petition, the Director determined that the record did not contain police or court documents about the arrests or evidence that the Petitioner complied with the requirements of any dispositions, and that his personal accounts of the arrests had discrepancies. The Director acknowledged the Petitioner's explanation that in 2014 A-E-G- tried to hit him, he put up his hands in defense, but when police responded to report of a fight, she had already left so they arrested him. The Director also acknowledged the Petitioner's description of the 2015 incident as A-E-G- hitting him for not giving her money, that he tried to protect himself, and that his spouse's daughter called police who then arrested him for battery. The Director noted the Petitioner's claim in both cases that charges were dropped. The Director pointed out that the Petitioner alleged the 2015 incident began with A-E-G- hitting him and that her daughter called police, while in his request for a restraining order he stated that he confronted A-E-G- about her drug use and that he called police when she started to beat him.³ The Director surmised that although the Petitioner made positive contributions to his family it was not sufficient to mitigate the seriousness of battery charges in the VAWA context.

On appeal the Petitioner submits an arrest record summary from the [] California, Sheriff's Office showing that his 2014 and 2015 arrests each resulted in misdemeanor charges of battery of a non-cohabitant, punished under California penal code section 243. The form indicates: Disposition: citation. The Petitioner also submits criminal court records searches showing multiple charges and convictions against A-E-G- from 2004 to 2019, however he does assert that these activities directly related to his arrests.

¹ We use initials to protect individual identities.

² The letter listed two case numbers for which no criminal charges were filed but provided no additional information or clarification.

³ The Director indicated that the Petitioner submitted A-E-G-'s arrest warrant for possession of a controlled substance but observed it was issued in [] 2016 and appeared unrelated to the Petitioner's arrests.

As noted, a 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). It is a petitioner's burden to establish eligibility. Here the record shows that the Petitioner was twice charged with battery in connection to incidents involving his spouse. On appeal the Petitioner does not offer further detail or explanation of the events leading to his two arrests, the documentary evidence he submits does not provide support for his account of the incidents or show charges were dropped, and he does not submit additional evidence to mitigate their seriousness.

While we consider any credible evidence relevant to the VAWA self-petition, the evidence submitted on appeal is not sufficient to overcome the Director's finding that he did not establish he is a person of good moral character as section 204(a)(1)(A)(iii)(II)(bb) of the Act and 8 C.F.R. § 204.2(c)(1)(vii) require. The petition remains denied.

ORDER: The appeal is dismissed.