



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

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

In Re: 16773405

Date: FEB. 03, 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). The matter is now before us on appeal. Upon *de novo* review, we will remand the matter for entry of a new decision.

I. LAW

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with a United States citizen 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)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, petitioners must show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

Section 101(f) of the Act, 8 U.S.C. § 1101(f), which defines the term "good moral character," states, in relevant part, that "[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character" A petitioner who has "committed unlawful acts that adversely reflect upon [their] moral character," regardless of whether the petitioner was convicted of those acts, will be found to lack good moral character "unless [the petitioner] establishes extenuating circumstances[.]" 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).

Petitioners bear the burden of proof to demonstrate eligibility by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). They may submit any credible evidence relevant to the VAWA petition for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). 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).

II. ANALYSIS

The record reflects that the Petitioner entered the United States in 2012 with a F-1 student visa. In [REDACTED] 2016 she married a U.S. citizen with whom she claims she resided from [REDACTED] 2016 until August 2017 and filed her VAWA petition in December 2017. With the petition she submitted a personal statement, police reports, a restraining order against her spouse, a psychological evaluation, third-party affidavits, medical records, financial records, civil documents, and photos.

In response to a request for evidence where the Director notified the Petitioner that records revealed a 2019 arrest, the Petitioner submitted a police report of her arrest under a charge of simple assault following an [REDACTED] 2019, incident. The reporting officer stated that the Petitioner caused bodily injury to a person with whom she was in a dating relationship, summarized the victim's allegations, and stated that the victim requested an emergency protection order against the Petitioner. With the report the Petitioner submitted a letter from a criminal attorney stating that no case had yet been filed. The Petitioner's previous counsel described the incident as violence against her by her ex-boyfriend and father of her then unborn child, but the Petitioner did not provide an account of the incident.

The Director denied the petition, finding that the Petitioner did not establish she was a person of good moral character. The Director found that the record indicated that in [REDACTED] 2019 the Petitioner was charged under Texas Penal Code section 22.01(A)(1) with assault causing bodily injury to a family member. The Director determined that while there was no final disposition of the case, the Petitioner was arrested, charged with a serious crime, and an emergency protection order issued against her. 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 fell below the standards of the average citizen of the community, so she did not demonstrate she was a person of good moral character pursuant to 8 C.F.R. § 204.2(c)(1)(vii).

The Director acknowledged that prior to [REDACTED] 2019 the Petitioner did not appear to have committed any crimes and listed positive factors including W-2s showing the Petitioner's gainful employment in 2018, an employer letter indicating her full-time employment since February 2019, contributions to the New York [REDACTED] International, and her intention to further her education and help women who suffer. The Director determined that although third-party affidavits indicated the Petitioner had excellent moral character, they provided little detail regarding her criminal history.

On appeal the Petitioner submits a personal affidavit addressing the Texas incident, affidavits from third parties claiming awareness of the incident, an affidavit from an individual identifying herself as the police station booking officer the night of the incident, and a motion to dismiss charges from a [REDACTED] Texas, district attorney stating that the state could not present a *prima facie* case to the

court. The Petitioner submits photos of her newborn daughter and a letter from a medical doctor confirming the Petitioner is under care, having had a stressful pregnancy and being diagnosed with gestational diabetes in October 2019. She also provides previously submitted medical evidence.

In an appeal brief from her counsel the Petitioner points out that she had no criminal history prior to [REDACTED] 2019 and that the Director found other positive equities. The Petitioner asserts that the Director abused discretion by evaluating this incident against the standards of the average citizen and contends there were otherwise extenuating circumstances where she was attacked by the father of her then-unborn child. The Petitioner further argues that the case being dismissed at the request of the district attorney raises questions about the validity of the charges and refers to her claim that charges were fabricated by her ex-boyfriend.¹

On appeal, the Petitioner submits relevant evidence that the Director has not had the opportunity to review. As such, we will remand the matter to the Director to consider this evidence in the first instance and to determine whether the Petitioner has otherwise met requirements to establish her eligibility for immigrant classification under VAWA.

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

¹ Counsel maintains that the Director gave no weight to the Petitioner's account of the Texas incident but review of the record does not indicate that the Petitioner addressed the incident prior to her personal affidavit submitted on appeal.