



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

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

In Re: 22739361

Date: NOV. 23, 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 a spouse of an abusive U.S. citizen under the Violence Against Women Act (VAWA) (VAWA self-petition) 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 Spouse or Child of Abusive U.S. Citizen (VAWA petition), and the matter is before us on appeal. On appeal, the Petitioner submits a brief and additional evidence and asserts his eligibility for the VAWA self-petition. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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). 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). 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.* 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 at 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 bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537

n.2 (AAO 2015). Although USCIS must consider “any credible evidence” relevant to the VAWA petition, we determine, in our sole discretion, the credibility of and the weight to give to that evidence. See 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, entered the United States without inspection in January 2005 and began a common-law marriage to A-¹, a U.S. citizen, in 2014. He filed the instant VAWA self-petition May 2019. With the self-petition, the Petitioner submitted a self-affidavit and third party affidavits.

In July 2020, the Director issued a request for evidence (RFE) regarding the Petitioner’s arrest history, as the record indicated that the Petitioner had been arrested once in [] 2015 and once in [] 2017. Regarding the arrest in [] 2015, the Director noted that the Petitioner had been charged with aggravated assault with a deadly weapon, terroristic threat of family or household member, interfering with an emergency request for assistance, and evading arrest and detention. The Director additional evidence regarding the circumstances and outcomes of each of his criminal charges. The Petitioner timely responded to the RFE with an additional self-affidavit (RFE affidavit), copies of law enforcement and court documents related to his arrest, and an additional third-party affidavit.

The Director denied the petition, determining that the Petitioner had not demonstrated that he was a person of good moral character, as required, because his conduct fell below the standards of the average citizen in the community. Specifically, the Director determined that the Petitioner’s arrest in [] 2015 and subsequent conviction for Assault Causes Bodily Injury to Family Member indicated that the Petitioner had acted as an aggressor toward his spouse. The Director further noted that the record lacked copies of the arrest reports, certified copies of the court dispositions, and information regarding the completion of terms of the Petitioner’s sentence. The Director explained that although the Petitioner was not specifically barred from establishing good moral character based on the specific categories outlined in section 101(f) of the Act, the Petitioner’s two arrests showed a pattern of criminal history and the evidence submitted by the Petitioner contained inconsistencies regarding the Petitioner’s behavior leading to his arrests, which cast doubt upon the credibility on the Petitioner’s claim that he was not the aggressor in this incident.

On appeal, the Petitioner claims that the Director improperly requested copies of the Petitioner’s arrest reports according to 61 Fed. Reg. 13066 (internal citations omitted) to the unpublished *Noe Cesar Hernandez-Avila*, AXXX XXX XXX-LOS, 2013 WL 416253 (BIA Jan. 18, 2013). In response to the Director’s finding that the Petitioner had not submitted sufficient evidence to show that he was not the aggressor in his [] 2015 arrest, the Petitioner submits arrest reports from a different incident in [] 2016 which indicate that A- physically harmed the Petitioner during that incident. He asserts that this demonstrates that she, not the Petitioner, was also likely the aggressor during his [] 2015 arrest. The Petitioner further contends that no charges arose out of his other arrest in [] 2017 and that his [] 2015 arrest leading to a plea agreement was an isolated incident.

¹ We use initials to protect the privacy of individuals.

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. 8 C.F.R. § 204.2(c)(1)(vii). As previously stated, 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.

In the instant case, the Petitioner was arrested and convicted of a crime that reflects adversely upon his moral character and are contrary to the standards of the average citizen in the community. The Petitioner reiterates his arguments on appeal that he did not act as the aggressor leading to his [REDACTED] 2015 arrest for assault and that he is innocent of the acts for which he was convicted, specifically that he did not physically harm A-. Generally, we cannot look behind the Petitioner's conviction to reassess his innocence or guilt. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its fact, an administrative agency cannot go behind the judicial record to determine a foreign national's guilt or innocence). The complaint documents, which were submitted by the Petitioner, regarding the arrest indicate that the Petitioner intentionally fled from a police officer attempting to arrest or detain him, that he impeded A-'s ability to "place an emergency phone call or to request assistance in an emergency from a law enforcement agency", and that he "intentionally, knowingly or recklessly cause[d] bodily injury" to A- by "striking her with his hand". The court documents stated that the Petitioner pled guilty to the charge of Assault Causes Bodily Injury to Family Member and was sentenced to nine months in prison.

The record, including as supplemented on appeal, does not contain a sufficiently clear and detailed explanation of the apparent discrepancy between the charges in the complaint documents and the Petitioner's own accounts and claim of innocence. The Petitioner has not demonstrated by a preponderance of the evidence that the allegations implicated in his conviction and other records are inaccurate. We therefore cannot conclude that the Petitioner has met his burden to demonstrate that he has *not* committed unlawful acts that adversely reflect upon his moral character, as required by 8 C.F.R. § 204.2(c)(1)(vii), such that he meets the good moral character requirement for VAWA self-petitioners.

The Petitioner additionally argues on appeal that the Director improperly requested information from the police report to support the denial. We agree that the Petitioner was not specifically required to submit police reports and to the extent that the Director's decision indicates otherwise, we withdraw that determination.² However, as discussed here, the Petitioner has not otherwise met his burden to show that he is innocent of committing lawful acts. The Petitioner does not specify what information from the police report would be inaccurate or otherwise improper for the Director to have considered.

A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, petitioners must show their claims are "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence.

² A VAWA self-petition may not be denied for failure to submit particular evidence. The petition may only be denied on evidentiary grounds if the evidence submitted is not credible or otherwise does not establish eligibility. *See* 3 *USCIS Policy Manual* D.2(A)(1), <https://www.uscis.gov/policy-manual>.

Id. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner has not satisfied his burden due to discrepancies in the record regarding his arrest for assault in 2015. The record, in its totality, suggests that the Petitioner's conduct falls below the standard of the average person in the community. Consequently, the Petitioner has not established 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.