



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

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

In Re: 20964919

Date: SEP. 09, 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 Petitioner appealed this decision to us and submitted a brief and additional evidence. We then issued a notice of intent to dismiss (NOID) based upon our review of the record, and the Petitioner timely filed a response. 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. *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 Petitioner, a native and citizen of the Dominican Republic, first entered the United States in 2016 on a visitor visa. He filed the instant VAWA petition in August 2019 based on a claim of battery and extreme cruelty by his U.S. citizen spouse. The record reflects that the Petitioner was subsequently arrested in [REDACTED] 2019 for multiple gambling-related offenses in Florida, including: Establishing a Gambling Place and Setting Up/Promoting/Conducting Lottery for Money. In 2021, the Petitioner was ultimately convicted of the related misdemeanor offenses of: Principal Possess Lottery Tally Sheet, Record, Paraphernalia for Use in Violation of Lottery, Gambling Law in violation of section 849.09(1)(k) of the Florida Statutes; Multiple Principal Sell, Offer for Sale, Transmit Lottery Ticket, Coupon, Share in violation of section 849.09(1)(g) of the Florida Statutes; and Multiple Principal Possess Ticket, Share, Right in Lottery, Scheme, Device in violation of 849.09(1)(h) of the Florida Statutes. The record also indicates that the Petitioner was sentenced to 12 months of probation and ordered to pay fines.

Among other items he submitted before the Director, the Petitioner submitted a police report regarding his [REDACTED] 2019 arrest and a self-affidavit explaining his criminal history. The affidavit indicated that the Petitioner owned transport and delivery business that transported materials between companies. The Petitioner described making deliveries to a printing business, [REDACTED] that shared commercial premises with another multi-service business that sold lottery tickets. He stated that he “helped with the multi-service business” and that the day he was arrested, he was “attending the business”. He asserted that he did not know the lottery tickets were illegal and that “it was determined that I was used as a puppet by the business owners.”

The Director denied the petition, determining that the Petitioner had not established that he was a person of good moral character as section 204(a)(1)(A)(iii)(II)(bb) of the Act requires. Specifically, the Director found that the Petitioner had been convicted of an aggravated felony as described in section 101(a)(43)(J) of the Act (gambling related offenses) and was therefore permanently barred from establishing good moral character under section 101(f)(8) of the Act, 8 U.S.C. § 1101(f)(8). The Petitioner appealed this decision to us, contending that his convictions are not aggravated felonies, and he is therefore not barred from establishing good moral character.

We subsequently issued the Petitioner a NOID, advising him that while our *de novo* review of the record did not support the Director’s determination that he had been convicted of an aggravated felony, we found that he had not otherwise established his good moral character, as required. Section 204(a)(1)(A)(iii)(II)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(F). In his timely response to our NOID, the Applicant supplements the record with third-party letters in support of his petition and a tax return transcript.

A VAWA self-petitioner is required to maintain good moral character through final adjudication of both the self-petition and the adjustment of status application or admission as an immigrant. 8 C.F.R. § 204.2(c)(v)(ii). Unless a VAWA petitioner establishes extenuating circumstances, they will

generally 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).¹ Upon *de novo* review of the record, including as supplemented on appeal and in the NOID response, we do not find that the Petitioner has established that he is a person of good moral character by a preponderance of the evidence, as required.

The Petitioner was arrested, after he filed his VAWA petition, and convicted of crimes that reflect adversely upon his moral character and are contrary to standards of the average citizen in the community. We acknowledge the relevant evidence of good moral character in the record as a whole, including the support letters from friends and associates in the NOID response, the Petitioner's personal statement, and police clearances evincing a lack of any criminal history prior to 2019. We also acknowledge the documentation submitted on appeal that he has paid the fine resulting from his 2021 conviction and that his probation was terminated early. However, this evidence is not sufficient to establish that the Petitioner has maintained good moral character through final adjudication of the self-petition as required by 8 C.F.R. § 204.2(c)(v)(ii).

On appeal, the Petitioner reiterates his arguments that he did not know illegal activity was taking place prior to his arrest. 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 record establishes that the Petitioner was found guilty of selling illegal lottery tickets. We further note that the Petitioner's statement is not completely clear about his actions and arrangements that led to his arrest and convictions. In a statement before the Director, he contended that when he was arrested, he was "attending" a business that shared a location with the business selling the lottery tickets and that "it was determined that I was used as a puppet by the business owners". On appeal, the Petitioner asserts that the Director mischaracterized the work performed by the business the Petitioner owned and provides new documents in support of his assertion that he did not own the printing business that "shared its location" with a multi-service business that sold lottery tickets.² These explanations do not clarify the Petitioner's own actions or explain how he did not break the law. Further, the Petitioner's explanations and documentary submissions do not show that he was "used as a puppet" or that he was otherwise misled into committing unlawful acts, as he claims. 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 used information from the police report to support the denial. To support this statement, the Petitioner cites case law regarding the use of a police report to determine the existence of a conviction.³ However, the record is otherwise clear, nor does the Petitioner dispute, that he was in fact convicted of the offenses for which he was

¹ The Petitioner has not alleged, nor does the record show, the specific extenuating circumstances as contemplated in 8 C.F.R. § 204.2(c)(1)(vii).

² The submitted document relates to articles of organization for a company called [REDACTED] indicating the name of the company's registered agent and manager.

³ The Petitioner also cites case law regarding the use of a police report to determine whether a noncitizen is eligible for relief from deportation as a matter of discretion. As such a determination is not required for VAWA self-petitioners, we do not reach this issue.

arrested as outlined in the police report. The Petitioner does not specify what information from the police report was 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. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). 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. Here, the Petitioner has not satisfied his burden due to his recent arrest and convictions during the pendency of this petition, conduct that falls below the standards of the average person in the community. Consequently, the Petitioner has not established that he is a person of good moral character, as required to establish eligibility for immigrant classification under VAWA. Accordingly, he has not established that he is eligible for immigrant classification under VAWA.

ORDER: The appeal is dismissed.