



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

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

In Re: 18347262

Date: SEPT. 20, 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 revoked the approval of the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish that she was a person of good moral character, as required. 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) of the Act. Primary evidence of good moral character is the VAWA self-petitioner's affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from where the petitioner resided during the three years before filing the VAWA petition. 8 C.F.R. § 204.2(c)(2)(v).

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). Section 101(f) of the Act enumerates grounds that will automatically preclude a finding of good moral character including, as relevant here, where the petitioner has been convicted at any time of an aggravated felony. Section 101(f)(8) of the Act. In addition, it provides a "catch-all" provision stating 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" Section 101(f) of the Act.

Section 101(f) of the Act applies "during the period for which good moral character is required to be established" The VAWA self-petitioning provisions of section 204(a)(1) of the Act do not specify a time period during which a VAWA self-petitioner must demonstrate his or her good moral character under section 101(f) of the Act. Section 204(a)(1)(A)(iii)(II)(bb), (a)(1)(A)(iv), (a)(1)(A)(vii)(II), (a)(1)(B)(ii)(II)(bb), (a)(1)(B)(iii) of the Act. U.S. Citizenship and Immigration Services (USCIS) generally focuses on the three years preceding filing as the time period during which a VAWA self-petitioner must establish their good moral character because the regulation at 8 C.F.R. § 204.2(c)(2)(v)

specifies a three-year period prior to filing for which petitioners should submit police clearances or criminal background checks as evidence of their good moral character. 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).

USCIS evaluates a VAWA self-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 self-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.* Extenuating circumstances may also be considered if the self-petitioner has not been convicted of an offense but admits to the commission of an act that could show a lack of good moral character under section 101(f) of the Act. *Id.*

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). 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). 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 Petitioner is a native and citizen of Liberia who filed her VAWA petition in February 2017 based on her marriage to her U.S. citizen spouse. In February 2019, the Director approved the VAWA petition, but subsequently revoked the petition after issuing a notice of intent to revoke (NOIR). The Director noted in the revocation that during the Petitioner's nonimmigrant visa interview in November 2014, she told the consular officer that she had two children; however, during the Petitioner's oral testimony in regard to her Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), in February 2016, she indicated she had only one child. The Director also noted during her Form I-485 interview that the Petitioner confirmed she provided false testimony to the consular officer at her nonimmigrant visa interview as she "did not want to lose the opportunity of visiting family members and friends." The Director therefore concluded the Petitioner provided false testimony in order to procure an immigration benefit, which barred her from a finding of good moral character as indicated in section 101(f)(6) of the Immigration and Nationality Act (the Act) (providing that "[n]o person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was . . . one who has given false testimony for the purpose of obtaining any benefits under" the Act).

On appeal and in response to the Director's NOIR, the Petitioner explains that the two children listed on her nonimmigrant visa application are not her biological children but that she took care of them after her uncle passed away and treated them as her own. The Petitioner further explains that she was not made aware until after she entered the United States that she could not claim the children as her own as she did not have any legal documents. Upon *de novo* review, we conclude that the Petitioner's explanation regarding the two children is reasonable and, accordingly, not false testimony as contemplated by section 101(f)(6) of the Act.

However, we issued a notice of intent to deny (NOID) because the administrative record indicates that, also during the Petitioner's November 2014 nonimmigrant visa interview, the Petitioner was expressly asked if she was currently pregnant, and she stated that she was not. Notably, the birth certificate for her child in the record indicates that he was born in [REDACTED] 2015, meaning the Petitioner was approximately six months pregnant at the time of her visa interview. We further noted in the NOID that when the Petitioner was confronted with this discrepancy in the Director's NOIR, she acknowledged that she denied her pregnancy because she "did not want to lose the opportunity of visiting family members and friends" during her vacation. The Petitioner was seeking a benefit under the immigration law, namely her admission to the United States as a nonimmigrant. Accordingly, her testimony in denying her pregnancy constitutes false testimony within the meaning of section 101(f)(6) of the Act. *See Matter of Ngan*, 10 I&N Dec. 725, 729 (BIA 1964) (concluding that oral false statements under oath before an immigration officer in connection with a visa petition constituted false testimony within the meaning of section 101(f)(6) of the Act).

In response to our NOID, the Petitioner asserts that she did not provide a false statement to obtain an immigration benefit during her November 2014 nonimmigrant visa interview. She further states that she "did not know or believe that the immigration officer would deny her application if she were pregnant." The Petitioner asserts that she is a person of good moral character and provides letters of support speaking of her good moral character from friends, her children's school and counselors, her employer, and church.

We acknowledge the Petitioner's assertions; however, her assertions are contradicted by her previous statements that she denied her pregnancy because she "did not want to lose the opportunity of visiting family members and friends" during her vacation. The Petitioner has not sufficiently explained this discrepancy, and the record supports the finding that she gave false testimony for the purpose of obtaining admission as a nonimmigrant, a benefit under the Act.

On appeal, the Petitioner contends that if a false statement did in fact occur during her nonimmigrant visa interview, we should find her eligible for a waiver under 212(i)(I) of the Act, due to the hardship her U.S. citizen children would face if she were removed from the United States.

Pursuant to section 204(a)(1)(C) of the Act, there is an exception for VAWA self-petitioners subject to the statutory bars to good moral character listed under INA § 101(f), if a waiver of inadmissibility or deportability would be available for the act or conviction. However, this exception only applies if the act or conviction was connected to the abuse suffered by the self-petitioner. 3 USCIS-PM D.2(G)(3); See also 3 USCIS-PM D.2(G)(4). Although a waiver of inadmissibility is available under section 212(i) of the Act for false misrepresentations made to obtain an immigration benefit, the Petitioner has not claimed, and the record does not establish, that the false testimony she provided was

connected to the abuse she suffered. Therefore, the exception at section 204(a)(1)(C) does not apply to the Petitioner's false testimony, and she is subject to the statutory bar at section 101(f)(6) of the Act.

The Petitioner has not established that she is a person of good moral character, as section 204(a)(1)(A)(iii)(II)(bb) of the Act requires, and the Director properly revoked approval of the VAWA petition.

III. CONCLUSION

The Petitioner did not overcome the Director's ground for revocation that she did not establish that she is a person of good moral character. Accordingly, the appeal will be dismissed and approval of the VAWA petition will remain revoked.

ORDER: The appeal is dismissed.