



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

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

In Re: 17257140

Date: JAN. 4, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the Petitioner was subjected to battery or extreme cruelty by their U.S. Citizen spouse, that the Petitioner entered the marriage with the U.S. citizen in good faith, and that the Petitioner is a person of good moral character. The Petitioner filed a motion to reopen and reconsider the original denial. The motion was dismissed and the grounds for denial reaffirmed. The matter is now before us on appeal. 8 C.F.R. § 103.3. Upon de novo review, we will dismiss the appeal.

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, and that they entered the marriage in good faith. Section 204(a)(1)(A)(iii) of the Act.

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). 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).

The Petitioner, a native and citizen of El Salvador, married T-R-C-¹, a U.S. citizen, in 2015. In June 2018, the Petitioner filed the instant VAWA petition based on this marriage.²

¹ We use initials to protect the privacy of individuals.

² The record reflects that the Petitioner filed a second VAWA petition in June 2020 and a third in February 2021. Those petitions remain pending and are not currently on appeal.

The Director denied the VAWA petition, determining that the Petitioner had not established that they were subjected to battery or extreme cruelty by T-R-C- and that they entered the marriage with T-R-C- in good faith. In addition, the Director determined the Petitioner did not satisfy the good moral character requirements for VAWA under section 101(f) of the Act, 8 U.S.C. § 1101(f), because the Petitioner was convicted of Rape in the Second Degree under New York Penal Law (N.Y. Penal Law) section 130.30(1) in [] 2016. The Director determined that a conviction under N.Y. Penal Law section 130.30(1) is an aggravated felony as defined under section 101(a)(43) of the Act, 8 U.S.C. § 1101(a)(43), that permanently bars the Petitioner from establishing good moral character under section 101(f)(8) of the Act, which states that any person convicted of an aggravated felony *at any time* lacks good moral character.

On appeal, the Petitioner claims that the conviction for Rape in the Second Degree is not categorically an aggravated felony.³ Contrary to the Petitioner's assertions on appeal, the Director correctly determined that rape under N.Y. Penal Law section 130.30(1) is an aggravated felony under section 101(a)(43)(A) of the Act, which specifically includes "murder, rape, or sexual abuse of a minor," and the Petitioner is therefore statutorily barred from establishing good moral character.

However, we do not further reach the Petitioner's arguments in support of their good moral character claim as neither the brief on appeal nor the Petitioner's Form I-290B address the good faith marriage and the battery or extreme cruelty grounds for denial also identified by the Director. Since the Petitioner does not address these additional grounds for denial on appeal, they are unable to establish eligibility for classification under VAWA.

Since the good faith marriage and battery or extreme cruelty determinations of the Director have not been overcome and are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the good moral character determination of the Director. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Petitioner has not overcome the Director's finding that they had not established that they married their U.S. citizen spouse in good faith and that they were subject to battery or extreme cruelty by their spouse. As a result, the Petitioner has not established eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.

³ We note here that the brief provided with the Form I-290B erroneously cites N.Y. Penal Law § 130.01 as the relevant statute. The record establishes the Petitioner was convicted under N.Y. Penal Law § 130.30(1), corresponding to second degree rape.