



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

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

In Re: 27741757

Date: SEP. 12, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

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 petition, concluding that the record did not establish that the Petitioner was a person of good moral character. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, in part, that they entered into the marriage with the U.S. citizen spouse in good faith and the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii) of the Act. Among other things, the petitioner must establish their good moral character. Section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Section 101(f) of the Act lists the classes of persons who are statutorily barred from being considered a person of good moral character. While certain types of conduct or convictions will permanently bar a petitioner from establishing their good moral character, others trigger non-permanent, or "conditional bars" resulting from specific acts, offenses, activities, circumstances, or convictions under section 101(f) of the Act that occurred in the three-year period immediately preceding the filing of the VAWA petition. See section 101(f)(1)-(7) of the Act; see generally 3 *USCIS Policy Manual* D.2(G)(3), <https://www.uscis.gov/policy-manual>. When a conditional bar is triggered, USCIS has discretion to make a finding of good moral character despite an act or conviction falling under the conditional bar. For self-petitioners with a conditional bar to establishing their good moral character, they must demonstrate that the act or conviction is waivable for purposes of determining

inadmissibility or removability, and that the act or conviction was connected to the petitioner's having been battered or subjected to extreme cruelty. Section 204(a)(1)(C) of the Act.

The Petitioner, a native and citizen of Nicaragua, filed her Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) in August 2020, based upon her marriage to R-A-¹, a United States citizen. Following the review of the initial evidence provided with her VAWA petition and a response to a request for evidence, the Director issued a notice of intent to deny (NOID) informing the Petitioner that due to her criminal history, she had not established that she was a person of good moral character. Further, the Director notified the Petitioner that the acts she was convicted of were considered crimes involving moral turpitude (CIMT) and that per section 204(a)(1)(C) of the Act, she may still be able to establish good moral character by showing that a waiver is available and that the act or conviction was connected to the battery or extreme cruelty that she suffered.² After reviewing the Petitioner's response to the NOID, the Director denied the VAWA petition, determining that, while there was a waiver available, she had not provided sufficient evidence to determine that her conviction was connected to the battery or extreme cruelty she suffered from R-A-, and as such had not established that she was a person of good moral character.

The Director's decision noted that the Petitioner was convicted in 2018 of Grand Theft 2nd Degree and False Entries in Books of Business Entity in violation of Florida Statutes Annotated sections 812.014(2)(b) and 817.15, respectively. As a result, the Petitioner was sentenced to eight years of probation and payment of \$30,000 in restitution. The Director determined that the Petitioner's conviction was for a CIMT. The Director further explained that the Petitioner had not established a connection between her conviction and the battery or extreme cruelty she suffered.

In making their determination, the Director discussed statements contained in the record from the Petitioner, her attorney, and a psychosocial evaluation. In the Petitioner's statement provided with her initial VAWA petition, she indicated that she was "tortuously influenced" in the crime by R-A- when he told her that the victim was never going to realize what she was doing, and that R-A- told her not to involve him so that he could "keep a clean record." The Petitioner's attorney stated that the Petitioner had provided sufficient evidence to establish that the criminal activity was related to her battery or extreme cruelty and that "she would not have committed the acts in the absence of her spouse and his abuse" and stated that the Petitioner expressed her remorse and immediately signed an agreement with the victim to "repay the financial loss." Finally, the psychosocial evaluation indicated that the Petitioner "started misusing the money" and that R-A- was "aware and supported that practice." In the Petitioner's statement in response to the NOID, she did not provide any further explanation to indicate a connection between her conviction and the battery or extreme cruelty. As a

¹ We use initials to protect the identity of individuals.

² The USCIS Policy Manual notes a three-pronged process for evaluating acts or convictions that are considered conditional bars to good moral character. This includes a determination of whether a waiver would be available for the act or conviction, whether an act or conviction is connected to battery or extreme cruelty experienced by the self-petitioner, and finally, whether the self-petitioner warrants a finding of good moral character in the exercise of discretion. *See generally* 3 *USCIS Policy Manual, supra*, at D.2(G)(3) and (4). In assessing whether the act or conviction is connected, the self-petitioner must establish that there is a causal or logical relationship to the battery or extreme cruelty. *See Da Silva v. Attorney General*, 948 F.3d 629 (3rd Cir. 2020). The Director's decision did not contain a discretionary analysis of whether the Petitioner warranted a finding of good moral character in the exercise of discretion; however, it was unnecessary for the Director to reach that issue, as they determined that the Petitioner did not establish that her act or conviction was connected to the battery or extreme cruelty she experienced.

result, the Director determined that the Petitioner had not established, by a preponderance of the evidence, that her conviction was connected to the battery or extreme cruelty that she suffered, and as such, she had not established that she was a person of good moral character.

On appeal, the Petitioner submits a brief which contends that the Director's decision denies her the opportunity to file a waiver, which she claims she was not required to do at the time of filing her VAWA petition, "nor was she required to establish that said waiver was approvable." The Petitioner claims that the Director's use of the statements in the record to reach their decision was "unfair and irrational" because the decision "dissect[ed] [her] written statements issued years apart and rais[ed] minor inconsistencies between counsel and the mental health counselor's statements as the sole grounds for the denial . . . and essentially faces them against one another revealing minor variations of [her] struggles with her spouse." However, we disagree. Regarding the Petitioner's initial argument, she is correct that section 204(a)(1)(C) of the Act only requires a determination that there is a waiver available for the act or conviction, and not that the waiver be approvable. However, the Director denied her VAWA petition for failing to establish that she was a person of good moral character, which is a requirement under section 204(a)(1)(A)(iii)(II)(bb) of the Act, and did not deny the VAWA petition because she had not established eligibility for a waiver of inadmissibility.³ As we note, the Petitioner did not have to establish that a waiver was approvable, but the Petitioner has not met the additional requirement of demonstrating that her act or conviction was connected to the battery or extreme cruelty that she suffered.

Further, in our de novo review of the record and the Director's decision, we determine that the Director's discussion of the statements in the record was not in error; rather, the Director considered the statements in making the determination that the Petitioner had not established the connection between her conviction and the battery or extreme cruelty she suffered. The Director's decision indicated that the statements were insufficient to establish a connection, and that although the Petitioner claimed that R-A- "orchestrated" the "fraud incident," she had not provided sufficient detail to establish a connection between her conviction and the battery or extreme cruelty that she suffered. The Director's decision also appropriately mentioned inconsistencies between the Petitioner's own statement and the assertions of counsel regarding the Petitioner's expression of remorse and agreement to repay the loss resulting from her crime, which is relevant to her good moral character. The Petitioner has not supplemented the record on appeal with additional information to resolve the noted discrepancy or establish the required connection between her conviction and battery or extreme cruelty.

³ On page 4 of the decision, the Director stated that they reviewed the record "to determine if [the Petitioner] w[as] eligible for a waiver" As discussed, the Petitioner's eligibility for a waiver is not material to a determination of whether she has met the requirements of section 204(a)(1)(C) of the Act; instead, the Petitioner only needs to show that a waiver would be available. *See generally* 3 *USCIS Policy Manual*, *supra*, at D.2(G)(4) (providing guidance that USCIS "does not need to consider whether a waiver would be granted, only that a waiver would be available at the time the adjustment of status or immigrant visa application is filed.") Additionally, the Director mistakenly stated on page 6 of the decision that an issue in the case was "whether or not the evidence establishes the CIMTs are waivable because the act or conviction was connected to [the Petitioner] having been battered by and/or subjected to extreme cruelty by [her] spouse." As explained above, under section 204(a)(1)(C) of the Act, whether the act or conviction is waivable is a separate requirement from whether it is connected to battery or extreme cruelty. However, any error on the Director's part was harmless, as the Director's decision as a whole indicates that they accurately applied the law in their determination of the Petitioner's eligibility, correctly explaining that although a waiver would be available in relation to the Petitioner's CIMT, she had not established the required connection between the act or conviction and the battery or extreme cruelty she had experienced.

We concur with the Director that the Petitioner has not established that her conduct was connected to the battery or extreme cruelty she suffered, and as such, she has not established by a preponderance of the evidence that she is a person of good moral character as required.

ORDER: The appeal is dismissed.