



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

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

In Re: 28895859

Date: NOV. 07, 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 revoked the approval of 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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)(i)(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.* Additionally, if the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character the approval of a self-petition will be revoked. *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 generally* 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).

II. ANALYSIS

The Petitioner, a native and citizen of Guatemala, filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) in October 2019, based upon his marriage to a United States citizen, K-R-R-.¹ His VAWA petition was approved by the Director in November 2021; however, after the approval of his petition, USCIS was notified that the Petitioner was arrested in Texas in [REDACTED] 2022 and charged with transporting noncitizens. The record reflects that the Petitioner was pulled over by United States Border Patrol (USBP) in the [REDACTED] [REDACTED] and that the Petitioner was the driver of the vehicle. The other passengers were verified as nationals of Honduras and El Salvador and did not have any valid United States immigration documents which would allow them to enter, pass through, or reside in the United States legally. Upon receipt of this information, the Director issued a notice of intent to revoke (NOIR) the approval of the Petitioner's VAWA petition and requested that he submit evidence to establish his good moral character. However, the Petitioner did not provide a response to the Director's NOIR, and the approval of his VAWA petition was revoked in April 2023.

On appeal, the Petitioner submits a brief, a personal statement, a statement from his attorney, letters in support from those who know him, and a copy of a criminal history search. The Petitioner's attorney explains in the brief that they failed to respond to the Director's NOIR as his prior attorney had left her position. The Petitioner indicates that he had moved, and the attorneys were unable to reach him in order to obtain his response. In the Petitioner's statement regarding the incident, he admits that he was pulled over and arrested by USBP with other undocumented individuals who were in the vehicle with him. The Petitioner claims that he was not criminally charged; however, USCIS records indicate that although he was charged with transporting noncitizens, the prosecution of the charges was declined. In his support, the Petitioner provides letters from those who know him, who speak to knowledge of the incident and note that he has learned from it.

The record reflects that the Petitioner has submitted relevant evidence that the Director has not had the opportunity to consider, and we will remand the matter to the Director to consider this evidence in the first instance and determine whether the Petitioner has established that he is a person of good moral character.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ We use initials to protect the identity of individuals.