



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

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

In Re: 28744909

Date: NOV. 7, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* 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 Form I-360, Petition for Abused Spouse of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish that he is 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 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. 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. In addition, it states 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.

United States Citizenship and Immigration Service (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). 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>.

And USCIS may review and request any evidence of good moral character or a lack of good moral character for any time period before or after the filing of the self-petition if USCIS has reason to believe the self-petitioner lacks good moral character. A self-petitioner is required to maintain good moral character through the time of final adjudication of both the self-petition and the adjustment of status application. See 3 USCIS Policy Manual D.2(G)(3), <https://www.uscis.gov/policy-manual>. 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, or were not convicted of an offense or offenses but admit to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. 8 C.F.R. § 204.2(c)(1)(vii).

The Petitioner, a native and citizen of Vietnam, entered the United States with an F-1 visa in August 2012. He filed the instant VAWA petition in June 2017 based on his marriage to V-T-N,¹ a U.S. citizen. The Director acknowledged the positive factors in the record including the Petitioner's pursuit of a college degree while experiencing mental health challenges and criminal charges, community service participation since 2017, and the Petitioner's awareness of his need for treatment. The Director noted that although a letter from the International Buddhist Bhiksu Association indicated that the Petitioner demonstrated good moral character in the community, the letter did not speak to the Petitioner's criminal history. Ultimately, the Director denied the VAWA petition concluding that the Petitioner was not a person of good moral character.

On appeal, the Petitioner submits new declarations, an October 2022 letter from his doctor; and evidence that he previously submitted including copies of his criminal, medical and educational records. He asserts that the totality of the evidence shows that he should have been found to have good moral character despite his criminal history.² The Petitioner argues that his criminal history was significantly influenced by his schizophrenia, and since his diagnosis, his behavior has been stabilized and he has not had any further interactions with law enforcement.

¹ We use initials to protect the privacy of individuals.

² In [REDACTED] 2018, the Petitioner was arrested for Cal. Penal Code § 470(d), Resist & Obstruct an Officer; Cal. Penal Code § 530.5(a) and (c)(1), Forgery; and Cal. Penal Code § 148(a)(1), Identify Theft. On [REDACTED] 2021, he was arrested for Cal. Penal Code § 459-460(b), Burglary; Cal. Penal Code § 594(a)/(b)(1), Vandalism - Damage \$400 or more; Cal. Penal Code § 594(a)(b)(2)(A), Vandalism - Under \$400; and Cal. Penal Code § 602(m), Trespass - Occupation by a Squatter. In [REDACTED] 2021, the Petitioner pled guilty to Cal. Penal Code § 470(d), Cal. Penal Code § 530.5(C)(1), and Cal. Penal Code § 148(a)(1). He was sentenced to 1 year probation, 154 days in jail concurrent to all other sentences, and restitution. The other charges were dismissed. In [REDACTED] 2021, the Petitioner was arrested for Cal. Penal Code § 594(a)(b)(2)(A), Vandalism and Cal. Penal Code § 602.5(b), Malicious Mischief. He pled guilty to Cal. Penal Code § 594(a)(b)(2)(A). The remaining charge was dismissed. In [REDACTED] 2021, he pled guilty to Cal. Penal Code § 459-460(b); Cal. Penal Code § 594(a)(b)(1) and Cal. Penal Code § 602(m), Malicious Mischief. In [REDACTED] 2020, the Petitioner was arrested for Cal. Penal Code § 602(o), Trespass and the charge was later dismissed. In [REDACTED] 2019, the charge issued under [REDACTED] Municipal Code § 8.40.010(7), Being present upon or within any City park between the hours of 11:00 p.m. and 6:00 p.m., without first obtaining a permit from the City Manager or his or her designee, was dismissed.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director's decision thoroughly discussed relevant evidence submitted by the Petitioner, and his submission on appeal does not include new evidence which would overcome the Director's findings. While the October 2022 letter from the Petitioner's doctor indicates that at the present time his symptoms of schizophrenia are well controlled with his long-acting injectable medication, the doctor notes that there is no cure for schizophrenia, and should the Petitioner stop taking his medication, his symptoms would recur. The doctor further notes that the Petitioner has had problems with medication compliance in the past. The Petitioner has not established that there is a plan in place to ensure his compliance with treatment. And the Petitioner's treatment success is entirely dependent on his voluntary compliance. We note that in her declaration, H-T-P- explains that the Petitioner was prosecuted for having her personal papers in his possession. She explains that she gave him her personal papers but forgot to take them back from the Petitioner, and that she testified in court on his behalf. She further explains that the Petitioner was also prosecuted for having the personal papers of T-T-V- but that T-T-V- died shortly before the court date and consequently the Petitioner was still punished. H-T-P- does not state if the Petitioner was authorized to possess T-T-V-'s papers. Regardless, we are not permitted to look beyond the record of conviction. *See Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980).

In this case, although the Petitioner's criminal convictions and arrests do not require an automatic finding of a lack of good moral character, they are demonstrative of a pattern of lawlessness. The Petitioner's extensive criminal history includes convictions or arrests for resisting and obstructing an officer, forgery, vandalism, and theft. The Director correctly determined that the Petitioner has not established that he is a person of good moral character, and the Petitioner has not provided sufficient new evidence on appeal to overcome this finding. While we sympathize with the Petitioner's mental health challenges, he has not established by a preponderance of the evidence that he is a person of good moral character. The record, in its totality, supports a finding that the Petitioner's conduct falls below the standard of the average person in the community. Therefore, the Petitioner has not established his eligibility for immigrant classification as an abused spouse of a U.S. citizen under VAWA.

ORDER: The appeal is dismissed.