



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

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

In Re: 28567494

Date: NOV. 13, 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. *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 petition, concluding that the Petitioner did not establish that he meets the good moral character requirement for VAWA. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner asserts that his conviction for Driving While Intoxicated (DWI) is not a Crime Involving Moral Turpitude (CIMT), that he is not a habitual drunkard, and that his pre-trial confinement of more than 180 days should not be counted as incarceration in a penal institution as a result of a conviction.

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.

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 the petitioner is 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)(F). 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).

A VAWA petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act, 8 U.S.C. § 1101(f), and the standards of the average citizen in the community. 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act states, in relevant part, 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” A

petitioner who has committed unlawful acts that adversely reflect upon their moral character will be found to lack good moral character, although the acts do not require an automatic finding of lack of good moral character, unless the petitioner establishes extenuating circumstances regardless of whether the petitioner was convicted of those acts. 8 C.F.R. § 204.2(c)(1)(vii). As explained in policy guidance, 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>.

II. ANALYSIS

The Petitioner, a citizen and national of Guatemala, entered the United States without inspection in February 2002. He married L-O-, a U.S. Citizen, in [] 2016 and divorced in [] 2020. The Petitioner filed the current VAWA petition based on that relationship in January 2022.

The record indicates that the Petitioner has been arrested and convicted for DWI on three occasions. The Petitioner was first convicted for DWI in [] 2011 and sentenced to 120 days confinement with an additional 18 months of probation. The Petitioner's second conviction for DWI occurred in [] 2016 and he was sentenced to 60 days confinement. The Petitioner's third conviction for DWI occurred in [] 2021 and he was sentenced to 365 days confinement in county jail with 183 days credited for time served. In addition to the DWI convictions, the Petitioner was also arrested in [] 2019 for Public Peace Class C offense in [] County Texas, however, no disposition was provided to the Director.

The Director determined that the Petitioner had not established good moral character because he was imprisoned for more than 180 days during the period for which good moral character is required, being a habitual drunkard, and being convicted of multiple crimes involving moral turpitude. Sections 101(f)(1), (3), (7) of the Act. On appeal, the Petitioner states that driving while intoxicated is not a CIMT, that he is not a habitual drunkard, and that because 183 days of his 365-day sentence for his third DWI were during pre-trial detention they should not be considered incarceration within the meaning of section 101(f)(7) of the Act.

Section 101(f)(7) of the Act states:

No 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-

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period

Generally, for the purposes of a VAWA petition, USCIS will consider the three-year period prior to filing as the applicable statutory period for which good moral character is required. On appeal, the

Petitioner does not contest that he was incarcerated during the statutory period but instead argues that his pre-trial detention is not “as a result of conviction” and therefore should not be included when considering his good moral character. The Petitioner has provided no relevant case law, regulation, or policy to support his position. The question of whether to include pre-trial detention as “incarceration” for the purposes of section 101(f)(7) hinges on whether or not the final judgement incorporates the pre-trial detention as time served. *See Troncoso-Oviedo v. Garland*, 43 F.4th 936 (9th Cir. 2022) (finding that only time credited to the final judgement can be used to calculate time of incarceration as a result of conviction.) Therefore, pre-trial detention is included in the calculation for incarceration under section 101(f)(7) of the Act if the non-citizen is eventually convicted for an offense and the time served is incorporated into the final judgement. *See Arreguin-Moreno v. Mukasey*, 511 F.3d 1229 (9th Cir. 2008) (holding that pretrial detention was “confinement” within the meaning of the statute precluding a finding of good moral character if the non-citizen was confined because of a conviction of 180 days or more); *Garcia-Mendoza v. Holder*, 753 F.3d 1165 (10th Cir. 2014) (concluding that the Board of Immigration Appeals’ determination that periods of pre-trial confinement prior to conviction were included in computing the length of a non-citizen’s confinement for purposes of good moral character is entitled to deference); *See generally Rodriguez-Avalos v. Holder*, 788 F.3d 444 (5th Cir. 2015) (finding that the text of section 101(f)(7) of the Act “unambiguously reflects Congress’s intent to preclude petitioners who have served 180 days in a penal institution as a result of any conviction from demonstrating GMC.”). The Petitioner’s pre-trial detention of 183 days was incorporated into his final sentence of 365 days as time served. Therefore, his pre-trial detention is incarceration within the meaning of section 101(f)(7) of the Act.

The Petitioner is precluded from establishing good moral character under section 101(f)(7) of the Act because he was confined to a penal institution for more than 180 days as a result of a conviction during the period in which good moral character is required. Therefore, the Petitioner is ineligible for classification under VAWA. Section 204(a)(1)(A)(iii)(II)(bb) of the Act. Since the above-identified basis for denial is dispositive of the Petitioner’s appeal, we need not reach and therefore reserve the Petitioner’s arguments related to the Director’s determination that the Petitioner is a habitual drunkard and that his DWI convictions were crimes involving moral turpitude. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof). Accordingly, the petition will remain denied.

ORDER: The appeal is dismissed.