



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

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

In Re: 29357728

Date: NOV. 29, 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 lawful permanent resident (LPR) of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification 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 her good moral character. The matter is now before us on appeal. 8 C.F.R. § 103.3. 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 VAWA self-petitioner who is the spouse of an LPR may self-petition for immigrant classification if the petitioner shows they entered into marriage with their LPR spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(B)(ii)(I)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(E). In addition, the petitioner must show they are a person of good moral character. Section 204(a)(1)(B)(ii)(II)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(F).

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. 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 generally* 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 they 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 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). USCIS shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner filed her VAWA petition in August 2020 based on abuse she experienced during her marriage to her LPR spouse. At the time, she indicated that she had never been arrested. However, the Director subsequently issued a request for evidence (RFE) because the Petitioner was arrested and convicted of a crime while her VAWA petition was pending.

In [] 2022, the Petitioner was convicted of third degree domestic assault in violation of Nebraska Revised Statutes section 28-323(4) and negligent commission of child abuse with no injury in violation of Nebraska Revised Statutes section 28-707(3). She was sentenced to 12 months of probation until [] 2023 with conditions that she work with Lutheran Family Services, attend a parenting class, receive therapy for post-traumatic stress disorder (PTSD), and participate with in-home services ordered for her and her child. She previously submitted a January 2023 letter from her probation officer describing the Petitioner's participation in the conditions of her probation and stating that "[a]t this point, [she] complies with all court directives and probation."

In [] 2023, the Petitioner was charged with child abuse in violation of Nebraska Revised Statutes section 28-707(5), which punishes child abuse as a felony when "the offense is committed negligently and results in serious bodily injury" A hearing relating to this charge was scheduled for March 2023. As a result, she was also charged with violating a term of her probation which provides that she "shall not violate any laws, refrain from disorderly conduct, or acts injurious to others" The Alleged Probation Violation also included comments from her probation officer that she had "two administrative sanctions" for which she was "counseled and reprimanded," once for failing to report for drug and alcohol testing and another time for "frequenting places or associating with persons engaged in illegal activity and a traffic infraction." The record contains a Motion to Revoke Probation indicating that a hearing on that matter would occur in March 2023. After considering the evidence in the record, including the Petitioner's response to the RFE, the Director determined the evidence of favorable and mitigating factors in the Petitioner's case did not outweigh her criminal history and the Petitioner had not met her burden of showing good moral character.

On appeal, the Petitioner's attorney asserts that she has been "compliant with her probation order as evidenced written by her probation officer" and that USCIS has acknowledged her compliance. Counsel concedes that there were "a couple of instances where she had to be informed by her probation officer of the requirements that she was not aware" Counsel's assertion¹ appears to be a reference to the Petitioner's personal statement in response to the Director's RFE in which she stated she accidentally missed the notification of one drug testing appointment and once spent time with friends who were drinking alcohol. The Petitioner also acknowledged in that statement that she violated her probation due to her arrest and had "a hearing coming up." With regard to the [] 2023 arrest, she described an incident with her son in which they argued, and he then threw shoes at her, broke items in the house, broke a window with a hammer, and injured himself while climbing through the window but then told police that she had injured him. The Petitioner claimed her problems with her children were related to the abuse in her marriage, and that the police never interviewed her in Spanish but instead recorded only the statements of her children because they spoke English.

The Petitioner also argues on appeal that her case should not be evaluated based on the standards of the average citizen in the community because she is not an average citizen due to the trauma she has suffered. She contends that the Director failed to consider her circumstances as a victim of years of severe emotional and physical abuse and that her actions were "reactive abuse," a form of self defense against her abuser. Counsel states that the Petitioner's spouse "encouraged and manipulated her children to abuse her too," and that her actions against them were defense against such behavior. She reiterates the rehabilitative efforts she has made as conditions of her probation and asserts that her criminal history is the direct result of abuse she experienced. The Petitioner requests that her case "should not be judged against the average citizen but instead within the context of the significant and overwhelming abuse she has endured."

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).

As the Director stated in the denial, although the probation officer's January 2023 letter indicated compliance as of that time, the Petitioner has not provided evidence regarding the outcome of her March 2023 hearing for her [] 2023 arrest for felony child abuse and related Motion to Revoke Probation. The disposition of these issues is not clear from the record and the Petitioner does not address them on appeal. Without additional evidence, we are unable to determine the impact of the Petitioner's [] 2023 arrest and potential revocation of probation on her claim of good moral character.

We acknowledge that the Petitioner has endured years of abuse during her relationship with her LPR spouse, and that it has also affected her relationship with her children. The Petitioner described in her

¹ Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

prior statements how her spouse's actions contributed to emotional and physical separations between her and her children, and that her spouse modeled abusive behavior and encouraged the children to participate. She has submitted evidence that she has been diagnosed with PTSD and attended therapy. On appeal she provides articles about the impact of traumatic abuse on the brain, domestic violence, and reactive abuse in which a victim responds by lashing out at their abuser and is then accused of being the abuser themselves. However, during the pendency of her VAWA petition the Petitioner was convicted of domestic assault, which is the type of conduct the VAWA classification is designed to address, and child abuse. The police citation indicates that the police viewed a video of the Petitioner hitting her child and observed a scratch on his arm. As a result, she was charged with "knowingly, intentionally or negligently caus[ing] or permit[ting] a minor child to be placed in a situation that endangers [their] life or physical or mental health" in violation of Nebraska Revised Statutes section 28-707(1)(a). Although she claims the police did not take her statement in Spanish, the record reflects there were subsequent court proceedings on the matter. Further, as discussed, the Petitioner was later charged with a second crime of child abuse, a serious felony offense involving serious bodily injury to a minor, and the disposition of that charge and its effect on her probation is unclear from the record.

The requirement that we consider a petitioner's 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, appears in the regulation. 8 C.F.R. § 204.2(c)(1)(vii). Although we recognize the trauma the Petitioner has endured and the effect it has had on her life and family, she does not cite any binding legal authority to support her claim that we should not apply this regulatory standard in her case. *See U.S. v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials). Without complete evidence about her criminal history, we cannot determine that she has met her burden of demonstrating by a preponderance of the evidence that she is a person of good moral character. Accordingly, the Director correctly determined that she has not established eligibility for VAWA classification.

ORDER: The appeal is dismissed.