



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

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

In Re: 28079158

Date: SEPT. 28, 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 Form I-360 (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. 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. U.S. Citizenship and Immigration Services (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). 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.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Petitioners are "encouraged to submit primary evidence whenever possible," but may submit any relevant, credible evidence in order to establish eligibility. 8 C.F.R. § 204.2(c)(2)(i). Primary evidence of good moral character is the petitioner's affidavit which should be accompanied by a local police clearance or a state-issued criminal background check from each location where the petitioner has resided for at least six months during the 3 years immediately preceding the filing of the VAWA petition. 8 C.F.R. § 204.2(c)(2)(v). If police clearances, criminal background checks, or similar reports are unavailable for some or all locations, the petitioner may include an explanation and submit other evidence with their affidavit. *Id.* USCIS will also consider other credible evidence of good moral character, such as affidavits from

responsible persons who can knowledgeably attest to the petitioner's good moral character. *Id.* USCIS determines, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The Petitioner indicates on his VAWA petition that he entered the United States without inspection in 2002. In [REDACTED] 2011, the Petitioner married T-M-¹ a U.S. citizen. The Petitioner filed a VAWA petition in 2018. The Director denied the VAWA petition, concluding that the Petitioner had not established that he was a person of good moral character. The Director detailed that the Petitioner had been arrested on at least seven separate occasions for various charges relating to shoplifting, domestic violence, identity fraud, forgery, trespassing, and misdemeanor traffic violations between 2003 and 2015. The Director further outlined the Petitioner's failure to provide requested arrest reports, dispositions, and court documentation regarding the shoplifting, speeding, and trespassing arrests. Although the Petitioner had submitted a personal statement discussing his criminal history, claimed family ties in the United States through his daughter, described his involvement with his church, and included third-party letters in support of his VAWA petition, the Director found that such documentation did not outweigh the Petitioner's criminal history, elements of which he downplayed or minimized, and much of which he did not document and fully address in his statements.

On appeal, the Petitioner submits a new statement, and resubmits evidence showing that his domestic violence offense was nolle prossed and then expunged in 2018 after he completed a pre-trial intervention program diversion program. The Petitioner also includes letters of support from his pastor, his former English teacher, and a counselor.

Upon de novo review, we adopt and affirm the Director's decision, with the comments below. *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 U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As detailed by the Director and supported by documentation in the record, in addition to his convictions for identity fraud and forgery and an expunged arrest record for criminal domestic violence, the Petitioner has not provided arrest records and court dispositions for all of his offenses, either below or on appeal, in order to clarify the events and his underlying conduct leading to and resolving the arrests.² The Petitioner claims on appeal that his misdemeanor offenses of shoplifting, speeding, and trespassing from 2003 and 2004 are now so old that it is "nearly impossible to access such records," these offenses "do not appear on any local, public records," and he has not repeated these offenses. However, the Petitioner does not explain what constitutes "local, public records" and his evidence does not show that he sought the complete criminal history records of the 2003 and 2004 offenses from the relevant, local authorities and courts, and that the authorities confirmed that these records are unavailable.

¹ We use initials to protect the privacy of individuals.

² While we recognize that incident reports are not required evidence, the Petitioner's statements, as submitted in the record, either downplay his role or refute responsibility for events that resulted in his separate arrests.

The individuals who provide letters of support on appeal attest to the Petitioner's good character, discussing his positive interactions with his church community, his English language classmates, and his daughter, in addition to his optimistic attitude during his lengthy recovery from a leg amputation. However, although D-S-, C-H-, and N-B- claim to have personal knowledge of Petitioner's good character based on their own interactions with him, their letters do not reflect their awareness of the Petitioner's character in the context of his full criminal history record. Only D-S- discusses the Petitioner's criminal history when she references his domestic abuse offense and recounts that the Petitioner told her that T-M- "put him in jail with false accusations." However, the Petitioner's record shows that the police arrested him after his spouse claimed he choked her and after identifying marks on her throat, that the Petitioner had fled the scene of the assault, that he left behind false identification documents, and that his records for this offense were expunged based on completion of a pretrial diversion program rather than a finding that he was not guilty of the offense.

As the Director previously noted in the denial, the Petitioner downplayed and minimized his responsibility and role in his offenses, claiming, for example, that his wife falsely accused him of domestic violence, and that his shoplifting was actually a failure to remember that he had an additional item when he was checking out of a store. He continues to downplay his conduct underlying his criminal history on appeal, asserting, with respect to his 2015 convictions for identity fraud and forgery, that he obtained fraudulent identification documents solely for employment purposes whereas court records for his 2009 traffic-related offenses show that he used false personal identification information in that setting as well. Specifically, the 2009 court records reflect that his date of birth is in [REDACTED] 1979 and that he was residing in [REDACTED] South Carolina, whereas his actual date of birth is in [REDACTED] 1979 and his 2018 Form G-325A, Biographic Information, does not include a [REDACTED] residential address for the period he covered from 2004 to 2018. To the extent that D-S- appears to be aware of the Petitioner's domestic violence record, her claims appear to be based solely on the Petitioner's representations, which, as discussed above, appear inconsistent with the information in the criminal records he submitted. Consequently, the Petitioner's own evidence on appeal does not fully document or address his criminal history, include his own role and responsibility. The record, in its totality, supports a finding that the Petitioner's conduct, specifically his criminal history, falls below the standard of the average person in the community. 8 C.F.R. § 204.2(c)(1)(vii). As such, the Petitioner has not demonstrated that he is a person of good moral character. Section 204(a)(1)(A)(iii)(II)(bb) of the Act. Consequently, he has not established that he is eligible for immigrant classification under VAWA.

ORDER: The appeal is dismissed.