



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

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

In Re: 29161167

Date: DEC. 6, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner seeks immigrant classification as the abused parent¹ of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(vii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(vii). The Director of the Vermont Service Center (Director) denied the Form I-360, Petition for Abused Parent of U.S. Citizen (VAWA petition), and the matter is before us on appeal.

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 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand to the Director for the issuance of a new decision.

I. LAW

A petitioner who is the parent 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)(vii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(vii). 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.* 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>. Primary evidence of the petitioner's good moral character is their affidavit, which should be accompanied by local

¹ We note that in the decision, the Director erroneously refers to the Petitioner as the spouse of a U.S. citizen and incorrectly cites in part, section 204(a)(1)(A)(iii) of the Act as the applicable law. However, we find this error to be *de minimus* because it did not affect the Director's intention to deny the VAWA petition.

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).

Section 101(f) of the Act lists the classes of persons who are statutorily barred from being considered a person of good moral character. While certain types of conduct or convictions will permanently bar a petitioner from establishing their good moral character, others trigger non-permanent, or "conditional bars" resulting from specific acts, offenses, activities, circumstances, or convictions under section 101(f) of the Act that occurred in the three-year period immediately preceding the filing of the VAWA petition. *See* section 101(f)(1)-(7) of the Act; *see generally* 3 *USCIS Policy Manual* D.2(G)(3), <https://www.uscis.gov/policy-manual>. When a conditional bar is triggered, USCIS has discretion to make a finding of good moral character despite an act or conviction falling under the conditional bar. For self-petitioners with a conditional bar to establishing their good moral character, they must demonstrate that the act or conviction is waivable for purposes of determining inadmissibility or removability, and that the act or conviction was connected to the petitioner's having been battered or subjected to extreme cruelty. Section 204(a)(1)(C) of the Act. However, if the act is outside the statutory period, USCIS may consider whether the petitioner meets the good moral character criterion on a case-by-case basis.

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, filed his Form I-360, Petition for Abused Parent of U.S. Citizen (VAWA petition) in November 2021, claiming he was the abused parent of K-S-A-², a United States citizen. Following the review of the initial evidence provided with his VAWA petition and his response to a request for evidence (RFE), the Director denied the VAWA petition finding that the Petitioner had not established that he was a person of good moral character. The record reflects that in [] 1993, the [] Police Department in Georgia arrested the Petitioner for Failure to Appear under GA. Code Ann. § 17-6-12.³ The Petitioner submitted a letter from the Municipal Court in the City of [] indicting that it was unable to supply the Petitioner with a disposition because the retention period had passed, and the documents were destroyed per the Georgia Record Retention procedures. In his affidavit, the Petitioner explained that he was pulled over in 1993 and arrested due to unpaid traffic tickets. He stated that he did not speak English well and did not know he missed court dates for the traffic tickets. Consequently, after he was arrested, he paid the tickets, and the case was closed. On [] 1994, the Petitioner was arrested by the [] Police Department in

² We use initials to protect the identity of individuals.

³ Discretion of court to release person charged with crime on person's own recognizance only; effect of failure of person charged to appear for trial. . . [] (d) Upon the failure of a person released on his or her own recognizance only to appear for trial, if the release is not otherwise conditioned by the court, the court may summarily issue an order for his or her arrest which shall be enforced as in cases of forfeited bonds.

Georgia and charged with Driving While License Suspended or Revoked under GA. Code Ann. § 40-5-121(a).⁴ In [] 1994, the Petitioner was convicted after entering a plea of *nolo contendere*, fined \$500.00 and sentenced to 180 days in jail according to the Disposition from the [] Municipal Court. After acknowledging the Petitioner's RFE response, the Director denied the VAWA petition. The Director determined that the Petitioner was confined for an aggregate period of 180 days preceding the filing of the VAWA petition as a result of the [] 1994 arrest. Thus, the Director concluded that the Petitioner did not meet his burden of establishing the good moral character requirement under section 101(f) of the Act.

In making their determination, the Director discussed the positive equities in the record including the Petitioner acknowledging the arrests, recounting the mistakes he made, and accepting responsibility for his conduct. The Director acknowledged that the Petitioner provided sufficient documentation for the arrests and that he satisfied and complied with the sentencing requirements of each incident. The Director noted that USCIS evaluated good moral character on a case-by-case basis taking into account the standards of the average citizen of the community and the totality of the evidence in each case. *See* 8 C.F.R. § 204.2(c)(1)(vii). And that good moral character is determined by considering the person's actions generally and the regard in which he or she is held by the community as a whole. *See Matter of K-*, 3 I&N Dec. 180, 182 (BIA 1949). Therefore, after weighing the positive and negative factors in the case, the Director determined that the Petitioner did not establish that he was a person of good moral character.

On appeal, the Petitioner submits a brief contending that the decision was issued in error because the Director applied the conditional bar to a "traffic citation conviction from 1994, nearly 30 years ago." The Petitioner however agreed that the Director could look beyond the 3-year statutory period in considering good moral character. The Petitioner now argues that he did not spend any of the 180 days in jail because the sentence was deferred or suspended. The Petitioner has not provided any evidence from the [] Municipal Court other than his own statement that the sentence was deferred or suspended. Indeed, in his April 2023 affidavit he initially explains that in [] 1994, he was stopped by a police officer while driving in [], Georgia. He was arrested for driving

⁴ Except when a license has been revoked under Code Section 40-5-58 as a habitual violator, any person who drives a motor vehicle on any public highway of this state without being licensed as required by subsection (a) of Code Section 40-5-20 or at a time when his or her privilege to so drive is suspended, disqualified, or revoked shall be guilty of a misdemeanor for a first conviction thereof and, upon a first conviction thereof or plea of *nolo contendere* within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained or a plea of *nolo contendere* is accepted, shall be fingerprinted and shall be punished by imprisonment for not less than two days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$500.00 nor more than \$1,000.00. . . [].

without a license. He paid a bond, and he was released. Thereafter, he entered a plea of nolo contendere. In this affidavit he explains: "I was given a \$500.00 fine and 180 days in jail. I paid the fine and completed my 180 days in jail." The Petitioner contends that he has not been arrested since 1994. He argues that the conditional bar requires actual confinement and because he now claims he was never confined, the conditional bar does not apply. We note that other than the Petitioner's two conflicting statements, there is no evidence in the record, including jail records, probation records or court records that show the Petitioner was actually confined for a total of 180 days. We further note that the Disposition from the [REDACTED] Municipal Court stipulates, "paid in full/case closed" without any reference to the completion of a term of confinement.

In our de novo review of the whole record, we determine that the Director's decision was in error. Regardless of whether the Petitioner was confined for 180 days or not, a period of nearly 30 years have passed since the Petitioner was convicted of a non-violent, non-substance abuse traffic related offense. As previously stated, when a conditional bar is triggered, USCIS has discretion to make a finding of good moral character despite an act or conviction falling under the conditional bar. Notably, the record does not indicate that anyone was harmed or that there was any property damage. The Board of Immigration Appeals has long held that "good moral character does not mean moral excellence and that it is not destroyed by a single lapse." *Matter of Sanchez-Linn*, 20 I&N Dec. 362, 367 (BIA 1991) at 365 (quoting *Matter of B-*, 1 I&N Dec. 611 (BIA 1943)). Moreover, "the greater the gravity of an individuals past misconduct, the longer the period of intervening good conduct must be before an [alien] may be able to satisfactorily meet his burden of establishing that he is now a person of good moral character." *Id.* at 365. In adjudicating a case where a petitioner's good moral character is in question, the USCIS Policy Manual states that [s]ome relevant considerations may include but are not limited to the severity of the act or conviction and whether the self-petitioner has demonstrated rehabilitation of character. See 3 USCIS Policy Manual D.2(G)3, <https://www.uscis.gov/policymanual>. Moreover, on appeal, the Petitioner has provided additional evidence including various letters of support from religious and law enforcement officials, among others, attesting to the Petitioner's positive attributes as a family man, businessman and community member. Therefore, we recognize that there has been a nearly 30-year period during which the Petitioner has not been the subject of any known criminal proceeding or other adverse conduct,⁵ and this may support a finding of good moral character.

Because the Petitioner has overcome the basis of the Director's denial, we will remand the matter to the Director to determine whether the Petitioner satisfies the remaining eligibility requirements for immigrant classification under VAWA.

⁵ The Petitioner submitted below a 2022 police clearance letter from the [REDACTED] Police Department in Mississippi where he resides, which states that he has no record.

ORDER: The decision of the Director is withdrawn. The matter is remanded for consideration of the remaining issues and issuance of a new decision.