



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

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

In Re: 19062655

Date: JUL. 18, 2022

Appeal of Vermont Service Center Decision

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

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, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), finding that the Petitioner had not demonstrated that he was a person of good moral character. The matter is before us on appeal. 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 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>.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Although USCIS must consider “any credible evidence” relevant to the VAWA petition, we determine, in our sole discretion, the credibility of and the weight to give to that evidence. See section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a native and citizen of Mexico, who claims to have entered the United States without inspection, admission, or parole in 1996, filed the instant VAWA petition in November 2018 based on her marriage to A-I-V-¹ a U.S. citizen.

The record indicates the Applicant was arrested for driving while intoxicated (DWI) in [redacted] and [redacted] 2018. As evidence relating to her good moral character claim, the Petitioner provided copies of charging documents for both DWI arrests, the conviction record for her [redacted] 2018 DWI, a 2015 Federal Income Tax Return, a prior approval notice for Deferred Action for Childhood Arrivals (DACA), her U.S. high school diploma, a letter from a counseling and social services provider indicating she missed a counseling appointment that was requested by her mother on her behalf, and a payment receipt from Mobile Alcohol Breathalyzer dated February 2019. The Petitioner also submitted evidence indicating that she was assaulted by an individual who was not her spouse in [redacted] 2020 and admitted to the [redacted] Medical Center Burn ICU where she remained in critical condition. The Director denied the petition in May 2021, concluding that the Petitioner had not established her good moral character given her two DWI arrests, one of which resulted in a conviction while the other remained pending. The Director noted that the arrests occurred within the three years preceding the filing of her petition and that the Petitioner had not provided evidence of rehabilitation. The Director further determined the positive factors in the record did not outweigh the negative weight of her criminal history.

On appeal, the Petitioner asserts she is a person of good moral character and merits favorable discretion. She requests that her case be considered under the “extenuating circumstances” and “case by case” provisions of 8 C.F.R. § 204.2(c), highlighting that prior to her marriage to A-I-V-, she had no arrests or criminal convictions and had not been the victim of abuse; that she has had no other criminal arrests since [redacted] 2018; and that she has been hospitalized and under medical care and supervision since being assaulted in 2020. The Petitioner also contends that the Director improperly determined she was automatically precluded from establishing her good moral character under section 101(f)(1) of the Act as a “habitual drunkard” because she does not meet legal and ordinary definitions for that term. She also indicates that she has provided a copy of the requested disposition for her second [redacted] 2018 DWI with her appeal, which she asserts shows that the charge was dismissed. She argues that since the second DWI was the reason for denying the petition under the statutory bar under section 101(f)(1) of the Act, the dismissal of the charge should rebut any argument against finding her to be a person of good moral character. In support of her assertions, she cites to *Matter of Castillo-*

¹ Initials are used to protect the identity of individuals.

Perez, 27 I&N Dec. 664, 665 (A.G. 2019) (holding that “evidence of two or more DUI convictions during the [statutory] period establishes a rebuttable presumption that [an applicant] lack[s] good moral character), and contends that her case is distinguishable and that she should not be barred from establishing her good moral character because she has only one DWI conviction.

As an initial matter, contrary to the Petitioner’s assertion, the Director did not specifically conclude that the Petitioner was precluded from establishing her good moral character under section 101(f)(1) of the Act as a habitual drunkard based on her two DWI arrests. Rather, the Director indicated the Petitioner had not established her good moral character as a matter of discretion, given her recent criminal history within the three years preceding the filing of this petition, including a still pending DWI charge. Therefore, we do not reach her arguments related to the application of section 101(f)(1) to her case. Moreover, while we do not dispute that a conviction for a single DWI would distinguish her case from *Matter of Castillo-Perez*, the Board of Immigration Appeal’s finding there that two DWI convictions gave rise to a *presumption* of lack of good moral character does not preclude us from concluding that a petitioner has not established good moral character where, as here, the petitioner has a DWI conviction and an outstanding arrest for DWI. *See Matter of Castillo-Perez*, 27 I&N Dec. at 665. Additionally, the record does not reflect that the Petitioner’s second DWI charge was dismissed as she asserts. Although the Petitioner indicates that she submitted the final disposition for her [redacted] 2018 arrest on appeal, our review of the record does not reflect that the disposition was in fact provided. Regardless, even if it had been submitted as intended, the dismissal of the Petitioner’s second DWI would not negate the seriousness of her first DWI conviction. The offense of DWI is both a serious crime and a significant adverse factor relevant to our consideration of whether the Petitioner has established her good moral character. *See Matter of Siniaskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding that the offense of driving under the influence of alcohol (DUI) is a significant adverse consideration in determining a respondent’s danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. at 671 (discussing the “reckless and dangerous nature of the crime of DUI”). Although, as the Petitioner asserts, a single DWI conviction does not necessarily indicate she is a habitual drunkard, her two DWI arrests, close in proximity to each other and to the time of filing her VAWA petition, nevertheless indicate that she lacks good moral character under the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii) as they reflect unlawful behavior that falls below the standards of the average citizen of the community.

Moreover, the Petitioner has not sufficiently described extenuating circumstances that would mitigate the negative impact on her moral character of her DWI arrests and conviction, nor has she submitted probative evidence such as police reports for her arrests that might provide better context to evaluate the severity of her conduct and whether the conduct is contrary to the standards of the average citizen in the community. *See* 8 C.F.R. § 204.2(c)(1)(vii); 3 *USCIS Policy Manual*, *supra*, at D.2(G)(3) (stating that, in determining if a petitioner’s conduct is contrary to the standards of the average citizen of the community, “[s]ome relevant considerations may include but are not limited to the severity of the conduct or act and whether the self-petitioner has demonstrated rehabilitation of character”). As noted, as evidence of extenuating circumstances for her criminal history, the Petitioner points to the alleged abuse by her spouse and notes that prior to her marriage she was never arrested or convicted of any crimes. However, the Petitioner’s first DWI arrest in [redacted] 2018 was over one year after her escape from her alleged abuser and she has not otherwise explained the relationship between the alleged abuse and her unlawful conduct to establish extenuating circumstances for her DWI history.

We are sympathetic to the fact that the Petitioner was recently hospitalized due to severe injuries resulting from having been assaulted by an individual who was not her spouse in 2020. While we do not diminish the hardship caused by her injuries, extenuating circumstances must generally pertain to the unlawful acts in question. *See United States v. Jean-Baptiste*, 395 F.3d 1190, 1195 (11th Cir. 2005) (discussing good moral character, in relationship to a citizenship claim, and stating that, “extenuating circumstances in the context of a determination of good moral character . . . must pertain to the reasons showing lack of good character, including acts negating good character, not to the consequences of” hardship arising from a negative good moral character determination). As such, given that the assault and injuries the Petitioner suffered are unrelated to her prior DWI arrests and conviction, they are not sufficient to establish extenuating circumstances for her criminal history.

A 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 and the standards of the average citizen in the community.” 8 C.F.R. § 204.2(c)(1)(vii). Here, the Petitioner was arrested for two DWIs, one of which she was convicted of less than one year prior to filing her VAWA petition. The arrests and conviction adversely reflect upon her moral character and indicate her conduct falls below the standards of the average citizen in the community. Moreover, she has not established extenuating circumstances that would mitigate their adverse impact on her good moral character determination.

Upon review of the entire record, as determined by the Director, the Petitioner has not demonstrated that she is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. Consequently, she has not established her eligibility for VAWA classification.

ORDER: The appeal is dismissed.