

Proving the Good Moral Character of VAWA Self-Petitioners with Convictions Connected to their Status as Domestic Violence Survivors

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The Violence Against Women Act (VAWA) allows immigrant survivors of domestic violence to self-petition for legal status in the United States without relying on their abusive U.S. citizen spouses to sponsor their adjustment of status (i.e., “green card”) applications. VAWA self-petitioners must prove that they are persons of “good moral character” to obtain approval of their petitions.

Proving good moral character can become challenging when the petitioner has criminal history. Unfortunately, some VAWA petitioners end up with criminal records through no fault of their own because their abusive U.S. citizen spouses cause them to be arrested – a tactic that domestic violence perpetrators often use to assert power and control over their undocumented victims.

One of my undocumented pro bono clients found himself in this difficult situation when his U.S. citizen spouse caused the police to arrest him on false allegations. On another occasion, when my client tried to end his marriage, his husband physically attacked him and then falsely reported to the police that my client was the perpetrator because my client had tried to defend himself during the attack.

Because my client was in a same-sex relationship, he became a victim not only of his spouse’s violence, but also of common misconceptions about gay batterers and victims. When a domestic violence incident occurs within a same-sex relationship, the police frequently don’t know how to determine which party to arrest. They may mistakenly classify same-sex partners as “mutual combatants” and therefore arrest both parties or neither party, or they may misidentify and wrongly arrest the victim.

In my client's case, the police arrested him on charges of disorderly conduct, assault, strangulation, robbery, and grand larceny because they failed to recognize that my client's husband was the aggressor. His public defender was able to get the more serious charges dismissed, but my client was unfortunately convicted of disorderly conduct.

Even though we submitted certified certificates of disposition and an affidavit in which the client explained how these arrests, charges, and conviction were all the result of his husband's false allegations and physical abuse, U.S. Citizenship & Immigration Services (USCIS) nevertheless sent us a Request for Evidence demanding copies of my client's arrest records and alleging that he lacked good moral character because of his past arrests and disorderly conduct conviction.

While we argued that disorderly conduct is only a violation – not a crime – under New York Penal Law, and that disorderly conduct is not enumerated under Immigration & Nationality Act § 101(f) as a bar to good moral character, our most important argument was that USCIS cannot find that VAWA self-petitioners lack good moral character based on arrests or convictions that are connected to their status as a victim of domestic violence.

Indeed, Congress's 2000 reauthorization of VAWA contained the Battered Immigrant Women Protection Act (BIWPA), through which Congress made clear that acts or convictions "connected to" the victim "having been battered or subjected to extreme cruelty" *cannot* bar an affirmative finding of good moral character. USCIS could not rely on my client's disorderly conduct conviction to find that he lacks good moral character because the conviction resulted from his attempt to protect himself from his spouse's battering. Denying his VAWA petition on that basis would directly contravene Congress's purpose in enacting BIWPA and would – paradoxically – deny him a lawful status under VAWA *because* he is a victim of domestic violence.

We also argued that false allegations are a common form of legal systems abuse, in which perpetrators use the criminal justice system to coerce and punish their victims, and that arrests founded upon such fabricated allegations have no probative value as to the victim's character. We refused to provide the requested arrest reports on the basis that such reports are inherently unreliable, prejudicial, and irrelevant – particularly where the charges were ultimately dismissed. USCIS should not infer bad moral character from arrests that never resulted in convictions. It is not within USCIS's authority to convict an immigrant of crimes for which the criminal court did not find him guilty.

In addition, we submitted an expert report from a psychologist who explained why the client had been particularly susceptible to repeated acts of legal systems abuse that led to multiple arrests, and why those arrests were a reflection not of his moral character but of the perpetrator's ability to identify and exploit his vulnerabilities. The expert also explained why the client was at greatest risk of domestic violence upon trying to end his marriage, and the unique barriers gay men face when trying to leave an abusive relationship – including a dearth of programs that specialize in assisting gay survivors and widespread ignorance about same-sex domestic violence that impedes both victims and services providers from recognizing and responding to domestic violence in gay relationships.

Lastly, we submitted voluminous evidence of the client's good moral character, including letters of recommendation from employers, letters of support from friends and family, proof of the client's participation in local community and religious organizations, and proof of the client's pursuit of educational and job training opportunities. We also submitted an advocacy letter from the client's domestic violence counselor documenting his continued participation in therapy sessions.

USCIS ultimately granted my client's VAWA petition, but issued yet another Request for Evidence alleging lack of good moral character – based on the exact same arrests and conviction – when adjudicating the client's adjustment of status application. We resubmitted the same evidence in response to this second request, and fortunately USCIS approved the client's I-485 application. The entire process took more than four years to complete, but the client has finally achieved lawful permanent residency and, with it, the peace of mind in knowing he is no longer beholden to an abusive spouse in continuing his journey to U.S. citizenship.

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