

## GOOD MORAL CHARACTER

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**October 15, 2013**

Federal immigration law provides that an immigrant must be of good moral character to be eligible for the following areas of discretionary relief.

- Eligibility to become a naturalized citizen.
- Eligibility for VAWA Self-Petitioning and for lawful permanent resident status based upon an approved VAWA self petition.
- Eligibility of a non-permanent resident for cancellation of removal or adjustment to lawful permanent resident status.
- Eligibility of a non-permanent resident battered child or spouse for cancellation of removal or adjustment to lawful permanent resident status.

An alien's good moral character is not determined by a single act, but rather is measured by a person's actions generally. It does not require moral excellence, but is a measure of a person's character derived by the sum total of all his or her actions.

Federal immigration law provides that an individual who is or has engaged in any of the following cannot demonstrate good moral character:

- Habitual drunkard;
- Conviction of or admission to acts which constitute the essential elements of
  - A crime involving moral turpitude or
  - A crime related to a controlled substance, with exception for a single offense of simple possession of 30 grams or less of marijuana (but see discussion of the residual clause below);
- Receiving one's primary income from illegal gambling;
- Conviction of two or more gambling offenses;
- Known or reasonably believed to have engaged in drug trafficking;
- Coming solely, principally, or incidentally to engage in prostitution or having engaged in prostitution within 10 years of the date of application for immigration benefits;
- Conviction of an aggravated felony;
- Multiple convictions with an aggregate sentence of more than five years;
- Giving false testimony for the purpose of gaining immigration benefits;

**This was developed under grant SJI-12-E-169 from State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of State Justice Institute.**

- Confinement in a penal institution for an aggregate of 180 days or more;
- Failure to pay court-ordered child support or alimony;
- Failure to complete probation or parole;
- Smuggling aliens into the U.S.;
- Polygamy;
- Participation in Nazi persecution or religious persecution; and
- Illegal voting or falsely claiming U.S. citizenship.

There is a petty offense exception for one conviction of a crime involving moral turpitude.

- A petty offense is defined as one conviction of a crime involving moral turpitude with maximum sentence of one year or less and actual sentence of six months or less.
- The court looks to actual sentence imposed, not the possible sentence. If the imposition of the sentence is suspended, the sentence is not “imposed”, but if the execution of the sentence is suspended, the sentence is considered “imposed”.
- Commission of a petty offense does not bar a person from establishing good moral character.

There is a residual clause providing that the fact that an individual does not fall within any of these classes does not preclude a finding that s/he is or was not a person of good moral character for other reasons. Family court actions such as having a protection order issued against the immigrant, interaction with law enforcement, failure to pay child support, and civil charges of child abuse or neglect can all negate good moral character. Further, the residual clause can override the exception for a single offense of simple possession of 30 grams or less of marijuana.

The immigrant has the burden of establishing good moral character. In determining whether the applicant has sustained the burden of establishing good moral character, the DHS or immigration court is not limited to the applicant’s conduct during the five years preceding the filing of a naturalization application or three years preceding the filing of a VAWA self petition application but may take into consideration the applicant’s conduct and acts at any time prior to that period. For other applications, the period for which good moral character is reviewed will differ, depending on which application is filed.

While an applicant for naturalization must establish that he or she was of good moral character during the five years prior to filing the application and up to the present, USCIS can consider behavior at any time prior to that period. This includes acts committed while the alien was a juvenile, even if such acts are not classified as criminal behavior under state law or criminal convictions under federal immigration law.