



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 18 2015** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

APPLICATION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Center Director, Vermont Service Center denied the nonimmigrant Petition for Alien Fiancé(e) (Form I-129F). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiancé(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The Acting Center Director denied the nonimmigrant visa petition because the petitioner was convicted of a specified offense against a minor and he failed to demonstrate that he posed no risk to the safety and well-being of the beneficiary. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Applicable Law

A "fiancé(e)" is defined at section 101(a)(15)(K) of the Act as:

Subject to subsections (d) and (p) of section 214, an alien who -

(i) is the fiancée or fiancé of a citizen of the United States . . . and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission.

On July 27, 2006, the President signed the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), Pub. L. 109-248, to protect children from sexual exploitation and violent crimes, to prevent child abuse and child pornography, to promote Internet safety and to honor the memory of Adam Walsh and other child crime victims.

Sections 402(a) and (b) of the Adam Walsh Act amended sections 101(a)(15)(K), 204(a)(1)(A) and 204(a)(1)(B)(i) of the Act to prohibit U.S. Citizens and lawful permanent residents who have been convicted of any "specified offense against a minor" from filing a family-based visa petition on behalf of any beneficiary, unless the Secretary of the Department of Homeland Security determines in his sole and unreviewable discretion that the petitioner poses no risk to the beneficiary of the visa petition. Pursuant to 8 C.F.R. § 103.1, the Secretary has delegated that authority to U.S. Citizenship and Immigration Services (USCIS).

USCIS has determined that a petitioner must meet the beyond a reasonable doubt standard to demonstrate that he or she does not pose a risk to the beneficiary. *See Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006 from Michael Aytes, Associate Director, Domestic Operations, dated February 8, 2007; Matter of Aceijas-Quiroz, 26 I&N Dec. 294 (BIA 2014) (Congress intends DHS to have the sole authority to establish a framework for USCIS adjudicators to make a "no risk" determination, including the standard of proof).*

Section 111(7) of the Adam Walsh Act provides:

The term ‘specified offense against a minor’ means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of title 18, United States Code.
- (G) Possession, production or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct.
- (I) Any conduct that by its nature is a sex offense against a minor.

According to section 111(14) of the Adam Walsh Act, the term “minor” is defined as an individual who has not attained the age of 18 years. The statutory list of criminal activity in the Adam Walsh Act that may be considered a specified offense against a minor is stated in relatively broad terms. With one exception, the statutory list is not composed of specific statutory violations; the majority of these offenses will be named differently in federal, state and foreign criminal statutes. For a conviction to be deemed a specified offense against a minor, the essential elements of the crime for which the petitioner was convicted must be substantially similar to an offense defined as such in the Adam Walsh Act (*see* section 111(5)(B) of the Adam Walsh Act, which establishes guidelines regarding the validity of foreign convictions).

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on February 24, 2009. The Acting Service Director determined the evidence was insufficient to demonstrate that the petitioner posed no risk to the safety and well-being of the beneficiary of the visa petition.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner’s eligibility. The evidence submitted on appeal does not overcome the Acting Service Director’s ground for denial.

Analysis

The record of conviction reflects that on [REDACTED], 2010, the petitioner pled guilty to committing crimes against nature, under section 18.2-361 of the Code of Virginia. On [REDACTED] 2010, the petitioner was sentenced to five years of incarceration, three years of probation, no contact with the victim,

placement on the sex offender registry, sex offender treatment and polygraph testing. At the time of the petitioner's conviction, the criminal statute stated, in pertinent part:

(a) If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a Class 6 felony ...

The record includes a plea transcript indicating that the petitioner engaged in fellatio with a victim that was 16 years of age. The petitioner's offense is, therefore, substantially similar to the "specified offense against a minor" defined under section 111(7)(I) of the Adam Walsh Act, which includes any conduct that by its nature is a sex offense against a minor.

Upon a full review of the record, we find that the petitioner has not overcome the basis of denial. The petitioner submitted a psychosocial evaluation report, dated April 2010. In this report, the petitioner stated to his evaluator that he abused his victim when the victim was 15 years of age on one occasion. The petitioner also stated that subsequent sexual contact with the victim occurred when the victim was 16 years of age and indicated that, at this age, the sexual contact was legal. The petitioner also submitted a letter dated February 25, 2013, asserting that in pleading guilty, he accepted details that were not true, including the victim's age. The petitioner asserts that the charges reflect that the victim was 15 and other documents reflect 16, but the petitioner contends that the victim was at least 16, probably older. The petitioner's own statements concerning the age of his minor victim are inconsistent and undermine the petitioner's assertions that he has accepted full responsibility for his criminal actions.

The petitioner submitted a psychosocial evaluation report based on two assessment days in April 2010. Amongst other findings and testing, the petitioner was administered the STATIC-99, identified as a risk assessment instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders. The petitioner scored a two, in the low medium risk category relative to other adult male sexual offenders. The evaluation states that individuals with those characteristics, on average, sexually reoffend at a rate of 16% over 15 years and any violent recidivism (including sexual) at the same average rate. The evaluator stated that based on a review of other risk factors, he believed that the STATIC-99 score overrepresented the petitioner's risk and the predictive score does not take into account factors such as treatment and supervision. The evaluator indicated his belief that the petitioner could be safely maintained in the community under three conditions, including chaperone certification training for the petitioner's fiancée.

The record contains five additional letters from the evaluator who completed the petitioner's psychosocial evaluation report of April 2010. Four of the letters consist of updates concerning the petitioner's progress in his sex offender treatment program, beginning on March 29, 2010. The final letter, dated December 15, 2014, states that the petitioner completed the treatment assignments, attended group sessions and passed polygraph tests. The same letter states that it is the evaluators' clinical opinion that the petitioner is at a significantly lower risk to offend than when he started treatment. The record also contains a letter from the evaluator, dated February 26, 2013, concerning the level of the petitioner's risk to his fiancée, which refers back to the petitioner's scores from testing in April 2010. The letter states that the petitioner's scores on the

Stable 2007 predicted a 3.4% chance of nonsexual violence within two years of his prison release and 4.8% within four years of his prison release. It is noted that the petitioner was released from prison on [REDACTED] 2011, so that it has been over three years since his prison release and there is no indication, based on this test, of the petitioner's chances for nonsexual violence post-four years of his prison release. The letter also states that the petitioner's Hare PCL-R score was exceptionally low. The psychosocial evaluation states that the Hare PCL-R test indicates a level of psychopathy. The letter further states that the petitioner has not been charged with domestic violence or assaultive behavior, has completed probation and the sex offender treatment program, and has completed polygraph tests in which he was truthful. The evaluator closes by stating that evidence strongly suggests that the petitioner would pose little, if any, threat to his fiancée. However, the evaluator's letter does not mention the petitioner's STATIC-99 score in the low medium risk category, also from April 2010, and there is no indication that the petitioner was retested following his completion of probation and treatment. Further, there is no indication that the petitioner's fiancée has completed chaperone certification training, one of the three conditions under which the petitioner's evaluator indicated that the petitioner could be safely maintained in the community.

The record contains a letter from the beneficiary, dated February 19, 2013, stating that she met the petitioner in September 2008 and accepted his marriage proposal a month later. The beneficiary indicates that she and the petitioner traveled together several times after the proposal and she has not physically seen him since [REDACTED] 2009. It is noted that the petitioner indicates that he met the beneficiary in September 2008 and they were engaged one week, rather than a month, later. The petitioner asserts that he visited the beneficiary on three occasions following their engagement. The beneficiary contends that she is aware of and familiar with the petitioner's past legal issues and she has been advised of the crime and has been referred to the internet registry. The beneficiary asserts she knows that the petitioner is not a danger to her or any other person and he has always been warm, kind and loving to her and her family. It is noted that the beneficiary does not indicate that she visited the petitioner's site on the sex offender registry and does not specify the nature of the petitioner's criminal history. It is acknowledged that the beneficiary attests to the petitioner's good character, but it is noted that her contact with the petitioner has been limited to several meetings.

As noted, the petitioner has submitted a psychosocial evaluation indicating that he has undergone testing, including tests for recidivism, and evidence that he has completed the sentencing court's requirements of probation, sexual offender treatment and polygraph tests. The beneficiary has submitted a letter stating that the petitioner has only demonstrated positive quality traits to her. However, the petitioner has made inconsistent statements concerning the age of his victim and assertions concerning the legality of the sexual contact with his victim once the victim attained 16 years of age. These statements demonstrate petitioner's lack of complete responsibility for his crime and, accordingly, full rehabilitation. Further, the record indicates that all the steps for the petitioner's safe maintenance in the community have not been completed and the petitioner's low medium risk score on the STATIC-99 has not been reevaluated since 2010. As such, the letter from the petitioner's evaluator stating that the petitioner would pose little, if any, threat to his fiancée carries less weight. The statements from the petitioner's evaluator concerning the low risk of harm to

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the beneficiary and the beneficiary's attestation to the petitioner's character do not overcome the petitioner's failure to demonstrate beyond a reasonable doubt that he poses no risk to the beneficiary.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Consequently, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.