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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

D6



FILE:

Office: VERMONT SERVICE CENTER

Date:

MAY 06 2010

IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 Viet Nam, as the fiancé(e) of a United States citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the nonimmigrant visa petition because the petitioner failed to demonstrate that he, beyond any reasonable doubt, poses no risk to the safety and well-being of the beneficiary and/or any derivative beneficiary. On appeal, counsel states, in part, that the petitioner “underwent lengthy and comprehensive probation supervision.” Counsel also states that the petitioner’s “good conduct while under official supervision certainly confirms a lack of any propensity to harm [his] fiancée or any children they may potentially have.” Counsel states further that the record is supported by verifications from independent witnesses. As additional supporting evidence, counsel submits an affidavit from [REDACTED] attesting to the petitioner’s good character and lack of any propensity to harm others.

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 amend sections 101(a)(15)(K), 204(a)(1)(A) and 204(a)(1)(B)(i) of the INA 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 (Secretary) determines in his or her 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).

Section 111(7) of the Adam Walsh Act defines "specified offense against a minor" as:

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 § 111(5)(B) of the Adam Walsh Act, which establishes guidelines regarding the validity of foreign convictions).

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on June 29, 2007.

On December 10, 2008, the director issued a notice of intent to deny (NOID), indicating that the petitioner may be prohibited from filing a family-based visa petition on behalf of the beneficiary because the evidence of record indicated that, on January 23, 1998, the petitioner was convicted of the following charges and corresponding sentences in Pennsylvania: Indecent Assault, 12 months probation and fined \$18,800 restitution; Corruption of Minors, 12 months probation and court costs; 2 counts of Incest, 12 months less 1 day to 24 months less 1 day imprisonment, 36 months probation, and fined \$19,400 restitution; all probation was to be served consecutively. The director requested that the petitioner submit evidence that he was not convicted of any “specified offense against a minor” as defined in § 111(7) of the Adam Walsh Act, and/or evidence that he poses no risk to the beneficiary of the visa petition. The director provided a detailed list of acceptable evidence.

In his March 6, 2009 response to the director’s NOID, counsel submitted additional evidence, which counsel stated “clearly demonstrates, beyond a reasonable doubt, that [the petitioner] poses no risk to the safety and well-being of the beneficiary, as well as demonstrating intervening good and exemplary service to the community and/or the uniformed services.” This evidence included: court and police records pertaining to the petitioner; affidavits from two friends of the petitioner and the beneficiary’s brother, attesting to the petitioner’s “fine character”; the petitioner’s autobiography; a letter dated May 12, 1993, addressed to the petitioner from the Central Intelligence Agency (CIA), inviting the petitioner to attend a “Symposium on Teaching Intelligence”; an excerpt from the petitioner’s 1989 article “*Prescribing facility maintenance strategies for urban water distribution systems*”; a “Speech given at convocation at the U.S. Army War College, Carlisle Barracks, Pennsylvania, by [the petitioner] for [redacted]” on September 20, 2001; photographs of the petitioner with a POW and of three plaques of recognition pertaining to military intelligence; a copy of the Summer 2006 electronic newsletter *INKognito* of the “DELMARPA Chapter of Military Intelligence Corps Association (MICA)” listing the petitioner as the “Chapter Chair Pro Temp”; and a copy of the publication *The Vanguard, Journal of the Military Intelligence Corps Association*, “of which [the petitioner] is a regular contributor.”

As discussed above, the director denied the nonimmigrant visa petition because the petitioner failed to demonstrate that he, beyond any reasonable doubt, poses no risk to the safety and well-being of the

beneficiary and/or any derivative beneficiary. The AAO acknowledges the petitioner's professional accomplishments and the affidavits from the petitioner's family and friends attesting to his "fine character." The AAO also acknowledges counsel's assertions on appeal that the petitioner "underwent lengthy and comprehensive probation supervision," that the petitioner's "good conduct while under official supervision certainly confirms a lack of any propensity to harm [his] fiancée or any children they may potentially have," as well as the affidavit from [REDACTED] that counsel submits on appeal. A review of the evidence of record as a whole, however, does not support counsel's assertions. Specifically, the record contains a letter dated April 3, 2000, from the Adult Probation and Parole Services, located in Media, Pennsylvania, addressed to [REDACTED] recommending that the petitioner be found in violation of his probation, as the petitioner "has recanted his previous statements and now claims the sexual charges against him are misinterpreted." Thus, the Adult Probation and Parole Services discussed above did not find that the petitioner demonstrated "good conduct," as described by counsel on appeal. Nor does [REDACTED] from [REDACTED] in Philadelphia, Pennsylvania, which is a private, non-profit organization that treats exclusively sex offenders and victims of sexual abuse, find that the petitioner demonstrated "good conduct," as described by counsel on appeal. In his June 4, 1999 letter, addressed to the Adult Probation and Parole Services discussed above, [REDACTED] indicated that the petitioner was attending monthly treatment with the overall goal of "the reduction of risk of sexual involvement with children or adolescents in the future." In a second letter to the same Adult Probation and Parole Services, dated March 16, 2000, [REDACTED] stated, in part:

When [the petitioner] first entered treatment of [sic] he believed that his offense was not sexual for him or for his children. . . . Later, he was able to recognize that it was sexual for both him and his children. Currently he believes that it was neither sexual nor incestuous. He justifies this by saying that incest is a biological act that involves procreation, which was not the case in the relationship between him and his children.

I believe that [the petitioner] is at low risk for recidivism because his children are no longer young, and he has almost no contact with them. *However, I do not believe it appropriate that he have close, continuing contact with children or adolescents because I believe that he would be able to justify for himself a close physical relationship with them.* (Emphasis added.)

In this matter, the petitioner's professional accomplishments and the affidavits from the petitioner's family and friends attesting to his "fine character" do not overcome the professional assessments from the Adult Probation and Parole Services, located in Media, Pennsylvania, and from [REDACTED] of [REDACTED] in Philadelphia, Pennsylvania. Based upon the totality of the evidence, the Service cannot conclude that the petitioner poses no risk the safety and well-being of the beneficiary and/or any derivative beneficiary.

In view of the foregoing, the petitioner has failed to demonstrate that he poses no risk to the safety and well-being of the beneficiary and/or any derivative beneficiary. Consequently, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed. The petition is denied.