



U.S. Citizenship
and Immigration
Services

D6

[REDACTED]

Date: NOV 05 2012

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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

PETITION: 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)

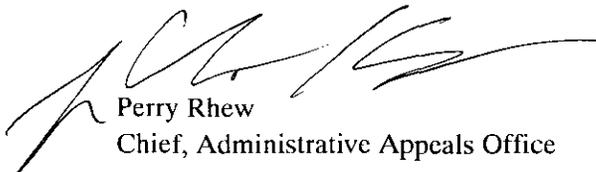
ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) recommended approval of the *Petition for Alien Fiancé(e)* (Form I-129F) and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed and the petition will be approved.

The petitioner is a U.S. citizen who seeks to classify the beneficiary, a native and citizen of [REDACTED], as an alien fiancée pursuant to section 101(a)(15)(K)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(i).

Applicable Law

A U.S. citizen may file a Form I-129F petition on behalf of his intended spouse though the provisions of section 101(a)(15)(K) of the Act, which states, in pertinent part:

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 (other than a citizen described in section 204(a)(1)(A)(viii)(I)) 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 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).

As referenced in sections 204(a)(1)(B)(i)(II) and 204(a)(1)(A)(viii)(II) of the Act, section 111(7) of the Adam Walsh Act states:

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).

Facts and Procedural History

The petitioner filed the Form I-129F with USCIS on August 19, 2010. The director subsequently issued a notice of intent to deny (NOID) the petition, 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 in 2001, the petitioner was convicted of accosting, enticing or soliciting a child for immoral purposes in violation of section 750.145a of the Michigan Penal Code (M.C.L.A.).¹ 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, or evidence that he posed no risk to the beneficiary of the visa petition. The director provided the petitioner with a detailed list of acceptable evidence.

In response to the director’s NOID, the petitioner submitted, *inter alia*: dispositions of his arrest and conviction; evidence of the petitioner’s successful completion of his probation; statements from the petitioner, the beneficiary, the petitioner’s victim, and the victim’s father; evidence of the court’s award of custody to the petitioner of the child that he fathered with the victim; psychological evaluations; and letters from family members and friends attesting to the petitioner’s moral character.²

¹ “Any person who shall accost, entice, or solicit a child under the age of 16 years with intent to induce or force said child to commit an immoral act, or to submit to an act of sexual intercourse, or an act of gross indecency, or any other act of depravity or delinquency, or shall suggest to such child any of the aforementioned acts, shall on conviction thereof be deemed guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than 1 year.” Mich. Comp. Laws Ann. § 750.145a (West 2001)

² In response to the NOID, counsel argued that the petitioner was not convicted of a specified offense against a minor because the definition of “sex offense” at section 111(5) of the Adam Walsh Act includes an exception at subsection (C) for consensual sexual conduct. However, section 111(5)(C) of the Adam Walsh

In his certification notice, dated October 17, 2012, the director recommended approval of the petitioner's Form I-129F because although he was convicted of a specified offense against a minor, he posed no risk to the beneficiary. The director notified the petitioner that he was certifying his decision to the AAO for review, and that he had 30 days to supplement the record with any additional evidence he wished the AAO to consider. On October 25, 2012, the AAO received a letter from counsel waiving the 30-day briefing period.

Analysis

The AAO reviews this matter *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In proceedings for a Form I-129F petition, the petitioner bears the burden of proving eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

According to the record, the petitioner and the victim engaged in sexual intercourse that resulted in the victim's pregnancy at the age of fourteen; the petitioner was eighteen years old at the time. The victim's parents notified law enforcement authorities of their daughter's pregnancy and the petitioner was arrested and subsequently convicted under M.C.L.A § 750.145a in November 2001, after the birth of his daughter. He was sentenced to 180 days in prison and twenty-four months of probation, and ordered to register as a sex offender and complete a sex offender treatment program.

In 2002, the petitioner was discharged from his court ordered sex offender treatment program. In 2003, the petitioner and the victim were granted joint custody of their daughter, and in 2008, the petitioner was awarded temporary sole physical custody of his daughter. In March 2004, the 24th Judicial Circuit Court, ██████ County, Michigan discharged the petitioner from his probation, and in October 2011, the same court discontinued the requirement for the petitioner to register as a sex offender in the State of Michigan.

According to the record, the petitioner and the victim were in a dating relationship for approximately five to six years after the birth of their daughter. In his statements, the petitioner acknowledges that he made a poor decision in engaging in sexual intercourse with the victim and that he takes full responsibility for his actions. He states that his daughter is the joy of his life and that he would never do anything to hurt a child or a woman. In her statement, the beneficiary explains that the petitioner told her about his conviction and that he had a sexual relationship with the mother of his daughter, who was fourteen years old at the time. In her statements, the victim asserts that the petitioner is a great father, and that she has never worried about their daughter's safety when their daughter is with the petitioner. The victim states further that she knows the petitioner's character well and does not believe he would ever harm any woman, including the beneficiary. In his statement, the victim's father states that the

Act states that consensual sexual conduct is not a sex offense if, in part, "the victim was at least 13 years old and the offender was *not more than 4 years older* than the victim." (Emphasis added). Although the victim was fourteen years old at the time of the offense, the difference in age between the petitioner and the victim, based upon their dates of birth, is four years and 27 days. Therefore, the consensual sexual conduct exception does not apply.

petitioner's placement on the "sex offender list" was too harsh of a punishment, because that list is for people "that pose a true threat to others." The victim's father opines that the petitioner does not pose a threat to the petitioner's daughter and would not pose a threat to the beneficiary, either.

The petitioner also submitted psychological evaluations from three separate individuals; [REDACTED] [REDACTED] Their evaluations state that, based upon their interviews with the petitioner and the results of psychological tests, the petitioner does not pose a risk to the beneficiary. The letters from family members, coworkers and friends all generally attest to the petitioner being a loving, devoted and hard-working father and boyfriend to the beneficiary.

The record demonstrates that the petitioner poses no risk to the beneficiary. The records relating to the petitioner's conviction contain no indication that the court believed that the petitioner posed a risk to his victim or their child. The petitioner's *Judgment of Sentence*, dated November 19, 2011, does not prohibit the petitioner from contact with his victim or their child, and both parties were granted joint custody in March 2003, prior to the petitioner's discharge from probation in March 2004. The petitioner successfully completed his probation, and also was discharged from the requirement to register as a sex offender in the State of Michigan. The Circuit Court for the County of Tuscola, Michigan, Family Division, granted sole physical custody of the petitioner's daughter to him in 2008. The statements and letters from family and friends all attest to the petitioner's devotion to his daughter, how he has learned from his past mistakes, and how he would not harm anyone. Overall, a preponderance of the relevant evidence establishes that the petitioner poses no risk to the beneficiary with whom he has been in a relationship for approximately four years.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. *Matter of Chawathe*, 25 I&N at 375. The petitioner has met that burden.

ORDER: The director's recommendation to approve the Form I-129F is affirmed and the petition is approved.