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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[Redacted]

Date: Office: VERMONT SERVICE CENTER FILE: [Redacted]

**JUL 17 2013**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:

[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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, as the fiancée 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).

*Applicable Law*

Section 101(a)(15)(K)(i) of the Act provides nonimmigrant classification to an alien who, in pertinent part:

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.

Section 204(a)(1)(A)(viii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(viii), describes, in pertinent part:

(I) . . . a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition . . . is filed.<sup>[1]</sup>

(II) For purposes of subclause (I), the term "specified offense against a minor" is defined as in section 111 of the Adam Walsh Child Protection and Safety Act of 2006.

These provisions were amended by the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), which was enacted 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. Adam Walsh Act, Pub. L. 109-248, §§ 2, 102, 501 (Jul. 27, 2006).

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.

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<sup>[1]</sup> The Secretary has delegated to U.S. Citizenship and Immigration Services (USCIS) the authority to determine whether or not a petitioner convicted of a specified offense against a minor poses no risk to the beneficiary. See Department of Homeland Security (DHS) Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003).

- (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.

Section 111(14) of the Adam Walsh Act defines the term “minor” as an individual who has not attained the age of 18 years.

*Factual and Procedural History*

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on June 20, 2007. The director denied the petition on April 22, 2011 because the petitioner was convicted of a specified offense against a minor and he failed to demonstrate that he poses no risk to the safety and well-being of the beneficiary. On March 15, 2012, the AAO dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider its prior decision dismissing the appeal. The motion is granted.

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 fails to establish the petitioner’s eligibility. The decision to dismiss the appeal will be affirmed for the following reasons.

*The Petitioner's Conviction for a Specified Offense Against a Minor*

The record of conviction reflects that on October 7, 1985, the petitioner pled guilty to intrafamilial sex abuse in the first degree in violation of former section 609.3641(1) of the Minnesota Statutes.<sup>1</sup> At the time of the petitioner’s conviction, the criminal statute stated: “[a] person is guilty of intrafamilial sexual abuse in the first degree if: (1) He has a familial relationship to and engages in sexual penetration with a child.” Minn. Stat. § 609.3641 (1963). The term “child” was defined under the statute as any person under age of 16 years. *Id* at § 609.364, subdiv. 3. 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.

*Risk to the Beneficiary*

In its March 15, 2012 decision, the AAO reviewed the evidence of record and found that the submitted psychological evaluations from [REDACTED] which stated that the petitioner is in a low risk category for reoffending, did not demonstrate that the petitioner poses no risk to the beneficiary. [REDACTED] found that the petitioner was convicted of one sex offense, the nature of

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<sup>1</sup> The statute under which the petitioner was convicted was later repealed in 1985 and intrafamilial sex abuse crimes were merged with criminal sexual conduct crimes. See 1985 Minn.Laws ch. 286; 324.

the sex offense was not coercive and the petitioner has had two healthy, long-term marriages. The AAO noted that the record, however, differed significantly from [REDACTED] findings. Although the petitioner was convicted of sexually abusing only his 12-year-old stepdaughter, he disclosed to the case supervisor of his sex offender residential treatment program, [REDACTED] that he also sexually abused his younger stepdaughter when she was nine-years-old. The record showed that his sexual assaults were repeated over a two-year span and the victims were his two minor children. The AAO further stated that [REDACTED] had not indicated how he determined that the petitioner's offenses were not coercive since they involved the abuse of minor children who regarded the petitioner as a parental figure. Nor had [REDACTED] stated how he found the petitioner to have been in two healthy long-term marriages since the petitioner admitted to repeatedly sexually abusing his stepdaughters during his second marriage and the petitioner himself stated that he had "serious marriage problems" with his second wife and he described their family as "dysfunctional."

The AAO noted that the petitioner stated in his affidavit that he had a vasectomy and the beneficiary accepts that they will not have any children. The petitioner, however, had not submitted medical documentation of his vasectomy. Nor had he submitted evidence of the beneficiary's inability or lack of desire to have biological or adopted children. Further, the petitioner had not discussed whether the beneficiary now knows about his criminal history. The AAO also noted that the record did not contain a statement from the beneficiary that acknowledges the petitioner's criminal history and confirms her desire to not have any biological or adopted children.

The AAO also found that the petitioner appeared to take little responsibility for the serious nature of his crimes. Even though it was documented in a report from [REDACTED] the petitioner denied attempting to sexually assault his first wife's teenage sister and stated that they only "shared a bed and kissed." He claimed that his second wife initiated and facilitated the sexual abuse of her 12-year-old and nine-year-old daughters. He justified his abuse of his older stepdaughter by stating, "I believe very strongly that the reason her and I agreed to have sexual relations with each other was to use sex with each other just like someone might use alcohol and heavy drinking to mask or medicate their bad feelings. The sex helped us stand it in the home." The AAO concluded that the petitioner's characterization of his sex offense as a mutually agreed upon sexual relationship with his stepdaughter reflects his denial of the gravity of his offenses and his failure to understand the power and control he had over the victims of his offenses.

On motion, counsel asserts that the AAO has focused solely on the crime committed by the petitioner, and has ignored over 27 years of treatment, rehabilitation and exemplary good moral character exhibited by the petitioner. Counsel contends that the beneficiary is an adult, has no children and has seen the petitioner on several occasions during his visits to Vietnam. Counsel states that the petitioner was awarded sole custody of his three minor children in May 1994 and the Minnesota state government has restored his voting rights. Counsel contends that the previously submitted evidence demonstrates the petitioner's rehabilitation and that he is not a threat to the beneficiary. Counsel provides as additional, new evidence: an affidavit from the petitioner; the petitioner's voter registration card; the petitioner's flight itineraries, boarding passes, airline ticket receipts and visas reflecting his recent visits to Vietnam; photographs of the petitioner with the beneficiary; a letter from [REDACTED] two letters from the petitioner to the beneficiary; and a medical report that shows his past medical history as having had a vasectomy.

De novo review of the record fails to establish that the petitioner poses no risk to the safety and well-being of the beneficiary and/or any derivative beneficiary. In his April 10, 2012 letter, [REDACTED] clarified the discrepancies noted in the AAO's decision to dismiss the appeal. [REDACTED] stated that the instruments used to assess the petitioner's risk for recidivism, the STATIC-99 and MnSOST-R, are scored in a "yes or no, black and white manner." He noted that only convicted sexual offenses are considered in scoring these instruments and the quality of an individual's marriage is not a factor in determining his risk for re-offense. [REDACTED] stated that his prior assessment that the petitioner's offense was not coercive was an "oversight" on his part and "likely just overlooked in the editing process." [REDACTED] letter explains the limitations of the risk assessment instruments STATIC-99 and MnSOST-R, but it offers no additional insight into the petitioner's risk for recidivism.

In his April 13, 2012 affidavit, the petitioner asserts that he has taken full responsibility for his criminal offenses and he is rehabilitated. He recounts that he completed a sex offender treatment program, has not had an offense in 27 years, has been sober for 30 years, and has been employed for the last 27 years. The petitioner states that he was awarded custody of his three children and successfully raised them. He notes that the beneficiary knows about his offenses and she believes that they occurred a long time ago and that he is "not like that now." In his July 14, 2009 letter to the beneficiary, the petitioner stated, "I got in trouble 25 years ago (1984) when I was having sex with my step-daughter. We agreed to have sex with each other." He also stated that his step-daughter was 14 years old at the time of the offense and it was triggered by his ex-wife's failure to take care of their household. He further stated that his stepdaughter "changed places" with his ex-wife and his ex-wife "became like a child in the home and step-daughter became like my wife." The second letter from the petitioner to the beneficiary is also dated July 14, 2009 and discusses the processing of his fiancée visa petition.

The petitioner has again characterized his sex offense as a mutually agreed upon sexual relationship with his stepdaughter. This characterization reflects his continued denial of the gravity of his offenses and his failure to understand the power and control he had as an adult over the child victim of his offenses. He also failed to provide the full account of his crimes in his letter to the beneficiary. The report from [REDACTED] provided that the petitioner was convicted of sexually abusing his stepdaughter from his second marriage from the time she was 12-years-old until she was 14-years-old and he also sexually abused his younger stepdaughter when she was nine-years-old for a one-year period. Although the petitioner claims that the beneficiary knows about his offenses, he has not submitted a letter from the beneficiary that acknowledges his criminal history. Based on the foregoing, the evidence of record does not support the petitioner's assertions that he poses no risk to the safety and well-being of the beneficiary and/or any derivative beneficiary.

### *Conclusion*

On motion, the petitioner has not demonstrated that he has taken responsibility for his sex offenses, is fully rehabilitated, and is therefore of no risk to the beneficiary. The petitioner is consequently barred from filing this petition or any other family-based visa petition on behalf of this beneficiary or any other beneficiary pursuant to sections 101(a)(15)(K)(i) and 204(a)(1)(A)(viii) of the Act.

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*NON-PRECEDENT DECISION*

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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 remains dismissed and the petition will remain denied.

**ORDER:** The motion is granted. The AAO's decision, dated March 15, 2012, is affirmed.