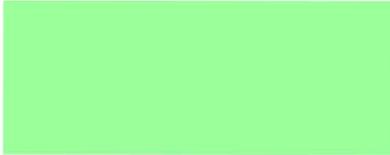


(b)(6)

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

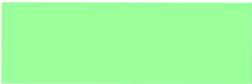


U.S. Citizenship
and Immigration
Services



Date: **AUG 02 2013**

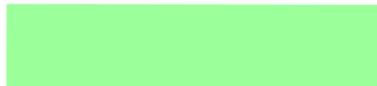
Office: VERMONT SERVICE CENTER

FILE: 

IN RE:

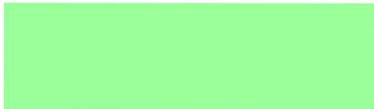
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Relative Pursuant to Section 204(a)(1)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(i)

ON BEHALF OF PETITIONER:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) recommended approval of the immigrant visa petition 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 married the beneficiary, a native and citizen of Trinidad and Tobago, on November 17, 2008 in the State of Florida. The petitioner seeks approval of the instant Petition for Alien Relative (Form I-130) pursuant to section 204(a)(1)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(i).

Applicable Law

A U.S. citizen may file a Form I-130 on behalf of his alien spouse though the provisions of section 204(a)(1)(A) of the Act, which states, in pertinent part:

(i) Except as provided in clause (viii), any citizen of the United States claiming that an alien is entitled . . . to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the [Secretary of Homeland Security] for such classification.

. . .

(viii)(I) Clause (i) shall not apply to 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 described in clause (i) is filed.

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"¹ from filing a family-based visa petition on behalf

¹ 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.

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. 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).

Facts and Procedural History

The petitioner filed the Form I-130 with USCIS on December 20, 2009. 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 1996, the petitioner was convicted of a lewd or lascivious act upon a child in violation of section 800.04(3) of the Florida Statutes (F.S.A.).² 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; a clinical psychological evaluation of the petitioner, the beneficiary and their two children; and letters from the petitioner’s friends and family members regarding the petitioner’s character.

In his certification notice, dated October 17, 2012, the director recommended approval of the petitioner’s Form I-130 because although he was convicted of a specified offense against a minor, the petitioner 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. The petitioner did not respond to the director’s notice by submitting any evidence for the AAO’s consideration.

On April 15, 2013, the AAO requested additional evidence from the petitioner because the administrative record indicated that on June 18, 2001 in the County of Orange, Florida, the petitioner pled no contest to and was convicted of battery in violation of F.S.A. § 784.03; however, the record did not contain any evidence relating to this conviction. The petitioner, through counsel, responded to the AAO’s Request for Evidence (RFE) with, in pertinent part, a copy of the arresting officer’s report relating to this offense.

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-130 petition, the petitioner bears the burden of proving eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

² “Any person who . . . (3) Commits an act defined as sexual battery under s. 794.011(1)(h) upon any child under the age of 16 years . . . commits a felony of the second degree[.]” Fla. Stat. Ann. § 800.04(3) (West 1996).

The AAO concurs with the director's decision to approve this petition.

According to the record of conviction, on September 4, 1996, the petitioner pled "no contest" to violating F.S.A. § 800.04(3). Adjudication of his guilt was withheld, and he was sentenced to four years of probation and fined \$505. The petitioner was required to register as a sex offender in the State of Florida. The petitioner was also ordered to have no contact with his victim or her family during his period of probation. According to an accompanying police report, when the petitioner was 19 years old he engaged in sexual intercourse with a 13 year-old girl, which resulted in his arrest when the girl's mother called the police after learning about the incident. The reporting police officer indicated that the victim informed him that she had engaged in sexual intercourse with the petitioner in the past and did not want to press charges against him.

In his psychological evaluation performed by [REDACTED] a clinical social worker, the petitioner told Ms. [REDACTED] that when he was either 18 or 19 years old, he met a girl who told him that she was 16 or 17 years old. The petitioner stated that he had met the girl's mother who did not appear to have a problem with his age or his relationship with the victim, and that approximately three or four months into the relationship, the victim's brother told the victim's mother that the couple had engaged in sexual intercourse. The petitioner expressed his remorse for engaging in a relationship with a minor and told Ms. [REDACTED] that he tries to help other young people learn from his mistakes.

Based on her three interviews with the petitioner, the beneficiary and their children, Ms. [REDACTED] concluded that the petitioner posed no risk to the safety and well-being of his wife and children. Ms. [REDACTED] reported that the beneficiary stated that the petitioner has never acted with aggression towards her and that she feels completely safe living with him. In her evaluation, Ms. [REDACTED] also observed that the beneficiary and their daughter demonstrated a strong bond with the petitioner and that they exhibited no signs of fear or risk of harm from him. The letters from family members and friends all generally attest to the petitioner being a hard-working and kind father and family man. The record further indicates that the petitioner and the beneficiary have been a couple since 2001, that their daughter was born in January 2003, and they were married in 2008. The couple also raises the petitioner's son from a prior relationship.

Overall, the relevant evidence establishes that the petitioner poses no risk to the beneficiary with whom he has been in a committed relationship for approximately 12 years. According to the Florida Department of Law Enforcement, the petitioner last registered as a sex offender on February 28, 2013, as required and there is no evidence that the petitioner is under any form of confinement, supervision or any other court imposed sanction relating to his 1996 conviction other than his requirement to register in accordance with Florida law. Regarding his no contest plea to battery in 2001 in violation of F.S.A. § 784.03, the arresting officer's report indicates that the petitioner was involved in an argument and physical fight with a woman who was not the beneficiary. This misdemeanor conviction occurred more than 12 years ago and prior to when the petitioner and the beneficiary met. The psychological evaluation of the petitioner, the beneficiary and their two children indicate no risk of harm to their

healthy and loving family unit. The letters from family and friends further attest that the petitioner would not harm anyone, including 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has met that burden. The petition will be approved. The matter will be returned to the Vermont Service Center for final action.

ORDER: The director's recommendation to approve the Form I-130 is affirmed and the petition is approved.