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

(b)(6)

Date: MAY 30 2013 Office: VERMONT SERVICE CENTER FILE:

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:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO**. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 petition will remain denied.

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

The 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, counsel submits a brief and additional evidence.

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.[1]
>
> (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. *See* Adam Walsh Act, Pub. L. 109-248, §§ 2, 102, 501 (Jul. 27, 2006) (recognizing Adam Walsh, naming victims and stating findings regarding child pornography).

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[1] 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).

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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on May 18, 2009. The director subsequently issued a notice of intent to deny (NOID) because the evidence of record indicated that the petitioner was convicted of specified offenses against minors. The record reflects that on January 9, 1987, the petitioner was convicted a violation of the Minnesota Criminal Code for possession of obscene materials and was sentenced to five years of imprisonment with all but six months suspended and 54 months of probation. On March 1, 1993, the petitioner was convicted of a violation of the Minnesota Criminal Code for criminal sexual conduct in the second degree and was sentenced to 15 years of imprisonment, the execution of which was stayed on the condition that he serve 90 days imprisonment and 12 years of probation. The director requested that the petitioner submit evidence that he was not convicted of any "specified offense against a minor" as defined in section 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 the petitioner with a detailed list of acceptable evidence.

The petitioner initially submitted, *inter alia*: the offense report, complaint and judgment/sentencing order for his conviction for criminal sexual conduct in the second degree; a motion and order for reduction of sentence related to his conviction for possession of obscene materials; an evaluation of his participation in a sex offender treatment program; a letter from his son, a letter from his daughter-in-law, a letter from his son-in-law, and letters from his friends, In response to the director's NOID, the petitioner submitted: a personal statement; a letter from the beneficiary; a second letter from his son, and a letter from his daughter, The director determined the evidence failed to demonstrate

that the petitioner was not convicted of a "specified offense against a minor." The director further determined that 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 petitioner, though counsel, filed a timely appeal.

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. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Analysis

The petitioner failed to submit the indictment and judgment related to his 1987 conviction for possession of obscene materials. On appeal, however, counsel concedes that the petitioner possessed a pornographic videotape with one scene involving an eleven year old girl. *Counsel's Appellate Brief* at p. 1. The petitioner provided the offense report, complaint and judgment and sentencing order for his last conviction, criminal sexual conduct in the second degree. The court documents reflect that on March 1, 1993, the petitioner was convicted of attempted criminal sexual conduct in the second degree in violation of sections 609.343 and 609.17 of the Minnesota Statutes and he was sentenced to 15 years of imprisonment, the execution of which was stayed on the condition that he serve 90 days imprisonment and 12 years of probation. The complaint shows that at the time of the offense, the petitioner was 44 years old and the victim of his offense was 8 years old.

At the time of the petitioner's conviction, section 609.343(a) provided, in pertinent part, that, "[a] person who engages in sexual contact with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists: the complainant is under 13 years of age and the actor is more than 36 months older than the complainant." Minn. Stat. Ann. § 609.343 (West 1993). 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. The petitioner does not contest this determination on appeal.

Upon a full review of the record, we find that the petitioner has not overcome the basis of denial. The petitioner initially submitted a letter from his friend, [redacted] a licensed clinical social worker, and a copy of an evaluation conducted after his completion of a sex offender treatment program. Although Mr. [redacted] stated that the petitioner is an honest person of integrity and he does not pose a risk of harm to anyone, his letter is written from his personal experience as the petitioner's friend. Mr. [redacted] has not indicated that he has professional experience in risk assessment or recidivism analysis for perpetrators of sex crimes. The sex offender treatment program evaluation, dated July 28, 1994, was, according to the petitioner, conducted through the University of Minnesota Program in Human Sexuality. The handwritten evaluation provides that the petitioner attended 133 conjoint, group sessions and states that the petitioner has met his goals, his symptoms are reversed, and the treatment was effective. However, the remainder of the evaluation is in handwriting that is largely illegible. The evaluation does not provide the name, background and expertise of the evaluator. Nor does it indicate if the evaluator performed any psychological tests to determine the petitioner's risk for recidivism.

In response to the NOID, the petitioner noted his education and professional accomplishments. He stated that he has a close relationship with his parents, his siblings, his two children and his grandchild. He stated that he has visited the beneficiary in the Philippines and has explained his past history to her. The petitioner submitted a letter from the beneficiary in which she stated that the petitioner has never given her a reason to believe that he would pose a risk to her. However, her statement does not indicate that she has knowledge of the petitioner's convictions. The petitioner also submitted letters from his son, his daughter-in-law, his son-in-law, his daughter, and his friend, which attest to his professional accomplishments, good moral character and that he poses no risk to the beneficiary. The director correctly noted that while these letters speak positively of the petitioner's moral character, they were not authored by individuals professionally trained in risk assessment.

On appeal, counsel asserts that the petitioner and the beneficiary do not plan to have any children together and the petitioner has had a vasectomy. Counsel states that the petitioner's friends and family members have all attested that the petitioner poses no risk to the beneficiary. Counsel states that the beneficiary is aware of the petitioner's criminal offenses and she does not fear that he will harm her. Counsel asserts that the petitioner has completed a sexual offender treatment program, almost 20 years have passed since the petitioner's last offense and he has not had any arrests since that time. Counsel submits the following additional evidence: a second statement from the petitioner; a letter from the petitioner's sister, a letter from the petitioner's first wife, a letter from the petitioner's second wife, a letter from the housing director of the senior community where the petitioner's parents reside; a letter the beneficiary; a letter from the beneficiary's sister, a letter from a community leader within the beneficiary's hometown in the Philippines; and a letter from Dr. a licensed psychologist and professor within the at the

The petitioner in his second statement asserted that the beneficiary does not have any children and they have no plans for future children. He stated that he had a vasectomy in 1976 after the birth of his second child. The petitioner reiterated that he attended a sex offender treatment program at the University of Minnesota. He stated that he was in the program for one and a half years and met 100 percent of the set goals. The petitioner asserted that the beneficiary is aware of his past convictions. He stated that since his retirement he has spent his time helping his family members, friends and the beneficiary's community in the Philippines. The beneficiary, in her second statement, discussed the petitioner's involvement in helping her parents' community with a water system. She briefly stated that the petitioner has informed her of his "legal convictions" and she is "fully aware of all the issues." She further stated that the petitioner does not pose a risk to her safety and well-being. The beneficiary, however, has not stated that she has knowledge of the nature of the two convictions and that the petitioner's last conviction involved the sexual assault of a minor child. Although the petitioner asserts that he has had a vasectomy and has no plans for future children, he has not submitted any medical documentation of this procedure and the beneficiary, who is 29 years old, has not discussed whether she plans to have children after their marriage.

Dr. stated in his letter that he was the petitioner's primary therapist while the petitioner was in the sex offender treatment program at the University of Minnesota from December 3, 1992 until July 28,

1994. He stated that he reviewed the petitioner's previous clinical record and interviewed the petitioner for one hour prior to writing his letter. Dr. stated that the victims of the petitioner's offenses were pre-pubescent children who were unknown to the petitioner. He noted that the petitioner and the beneficiary do not plan on having children, the petitioner had a vasectomy, and there is no evidence that the petitioner has been abusive towards adults. Dr. opined that the petitioner poses no risk to the safety and well-being of the beneficiary. Although we find that Dr. 's opinion is valuable, he did not indicate that he conducted an evaluation based on forensic psychological testing to reach his conclusion. He instead stated that he based his conclusion, in part, on the petitioner's testimony that he had a vasectomy and he and the beneficiary do not plan to have children. However, as discussed, the petitioner has not submitted medical evidence of his vasectomy, nor has the beneficiary stated in either of her letters that she has no plans to have children.

The remaining evidence in the record consists of supporting letters from: the petitioner's sister, the petitioner's first wife, the petitioner's second wife, the housing director of the senior community where the petitioner's parents reside, the beneficiary's sister, and a community leader within the beneficiary's hometown in the Philippines. These individuals speak positively about the petitioner's strong family bonds, community service and good moral character. They opine that the petitioner would not pose a risk to the safety and well-being of the beneficiary, but they do not indicate that they are aware of his criminal record. These individuals also do not indicate that they have any expertise in risk assessment. Although Dr. opined that the petitioner is of no risk to the safety and well-being of the beneficiary, there is no indication that during his one-hour meeting with the petitioner he conducted any psychological testing to assess risk and recidivism. The supporting statements attesting to the petitioner's good moral character do not overcome his failure to demonstrate that he is fully rehabilitated, and therefore 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. Here, the petitioner has not met that burden. Consequently, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.