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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: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 05 2010

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:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 the Philippines, 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, the petitioner submits additional evidence, including: a personal letter dated January 21, 2010; an undated letter from [REDACTED] and copies of previously submitted documentation.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

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 . . . 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 (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 May 20, 2008. On May 6, 2009, 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 [REDACTED] the petitioner was convicted of the following charges and received the corresponding sentences in the State of [REDACTED]

- 2 counts of indecent assault and battery on person 14 or over in violation of the General Laws of [REDACTED] and sentenced to probation;
- 2 counts of rape (unnatural with force) in violation of the General Laws of [REDACTED] and sentenced to probation;
- 2 counts of rape with force in violation of the General Laws of [REDACTED] and sentenced to ten to twenty years confinement (split sentence), four years to serve and the remainder suspended, and probation.

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 July 23, 2009 response to the director's NOID, the petitioner submitted the following additional evidence: a letter, dated September 13, 2005, from the petitioner's probation officer for the Probation Department for the Counties of [REDACTED], advising the petitioner, in part, that his probation was terminated; a letter, dated July 17, 2009, from the Assistant Chief Probation Officer of the [REDACTED] confirming that on September 9, 2005, the petitioner completed ten years of successful probation supervision that included sex offender treatment; a letter, dated June 23, 2009, from the [REDACTED]

[REDACTED], certifying that the petitioner participated in treatment from March 1997 through August 2005; an autobiographical letter from the petitioner, dated June 2005; an undated letter from the petitioner to [REDACTED] an "evaluation of Cognition, Organicity and Personality" from [REDACTED] notarized on July 16, 2009; documentation related to the petitioner's accomplishments; cards and letters from individuals attesting to the petitioner's good moral character; correspondence between the petitioner and the beneficiary; and related photographs.

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. On appeal, the petitioner claims that he does not know the age of the victim of his crimes, and claims further that the victim herself does not know her own age. Thus, he has not overcome the director's findings in his January 13, 2010 decision that the victim was not a minor. The AAO acknowledges the petitioner's additional supporting documentation, including his professional accomplishments and the affidavits from his friends and acquaintances attesting to his "highest moral character and dignity" and describing him as "a loyal, honest, hard working, and trusted individual." The AAO also acknowledges the sex offender treatment completed by the petitioner, which is confirmed in the July 17, 2009 letter from the [REDACTED]

[REDACTED] The AAO further acknowledges the undated letter submitted on appeal from [REDACTED], who reiterates some of the information from his evaluation of the petitioner that was submitted in response to the director's NOID. [REDACTED] states, in part, "[The petitioner's] personality profile as defined by his response pattern from the [REDACTED] failed to identify a behavioral profile that would warrant clinical concern.... His clinical profile fell within the "Normal" range and his clinical profile was deemed valid."

A review of the evidence of record as a whole does not support the petitioner's assertions that he, beyond any reasonable doubt, poses no risk to the safety and well-being of the beneficiary and/or any derivative beneficiary. It is noted that in his evaluation notarized on July 16, 2009, under the Personality Profile section, [REDACTED] states, in part, that [the petitioner] "approached the items [of the [REDACTED] in a defensive and overly cautious manner....it is possible to assume that he harbors a reluctance to admit to many personal shortcomings." [REDACTED] also states that "[the petitioner's] moderately elevated profile on the Paranoia subscale suggests that he . . . is prone to define himself as a person of high moral virtue....and present himself in a highly favorable light, a denial of problems and the presence of an unrealistic self-image." It is also noted that in the "Observations & Background Information" section of the evaluation, [REDACTED] states that the petitioner "was convicted of indecent assault and battery on a person 14-years of age or older and sentenced to serve probation and four years of incarceration in a [REDACTED] As [REDACTED] does not mention the petitioner's additional convictions of 2 counts of rape (unnatural with force) and 2 counts of rape with force, it is unclear whether [REDACTED] was made aware of this information by the petitioner, or whether the petitioner intentionally withheld such information. While we do not question the expertise of [REDACTED], it remains unclear whether he was aware of the petitioner's entire criminal history when he concluded that the evaluation "suggests that [the petitioner] does not present as being a danger to himself or others" and that "[the petitioner's] clinical profile failed to identify a behavioral pattern that would suggest that he is manipulative, aggressive, deceptive or self-oriented."

The AAO acknowledges the petitioner's January 21, 2010 letter, in which he states, in part, that he "did take full responsibility and stated that very clearly in the section containing the letter [he] was asked to write but-not-mail to [the victim], by the counselors in the Sex Offender Treatment program." Other documents from the petitioner, however, do not appear to be so forthcoming. For example, in his autobiographical document entitled "General Background" that he submitted in response to the director's NOID, the petitioner includes a section entitled "Behavior that Brought Me into Trouble with the Law," in which the petitioner describes the victim as the initial aggressor and himself as being "scared" and having initially "declined" her advances. The petitioner's portrayal of the victim as an aggressor and he as a meek follower of her sexual advances underscores [REDACTED]'s findings of the petitioner's "reluctance to admit to many personal shortcomings," "prone to define himself as a person of high moral virtue" and "tendency to present himself in a highly favorable light, a denial of problems and the presence of an unrealistic self-image." The same is true when reviewing the petitioner's "letter to the victim," in which the petitioner suggests that the victim lied about the rape to "save face" and describes the victim as "a prime suspect" in a murder case. The petitioner's letter, which primarily assigns blame to the victim for his convictions, also underscores [REDACTED]'s findings of the petitioner's "reluctance to admit to many personal shortcomings," "prone to define himself as a person of high moral virtue" and "tendency to present himself in a highly favorable light, a denial of problems and the presence of an unrealistic self-image."

In this matter, the petitioner's professional accomplishments and the affidavits from his friends attesting to his "highest moral character and dignity" do not overcome the professional assessment from Dr. Holloway and the record in its entirety. Based upon the totality of the evidence, the AAO cannot conclude that the petitioner poses no risk to 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, beyond any reasonable doubt, 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.