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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

D6

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[Redacted]

MAR 01 2011

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:

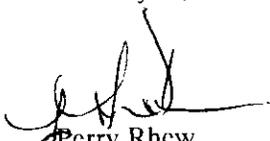
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 \$630. 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 poses no risk to the safety and well-being of the beneficiary and/or any derivative beneficiary. On appeal, counsel submits a brief and additional evidence, including: copies of documents entitled *Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws*, by Margaret Love and April Frazier, American Bar Association (October 1, 2006), and *Effect of Criminal Conduct on Security Clearances*, by William Henderson for ClearanceJobs.com (February 9, 2009); a letter dated October 25, 2010, from Richard C. Hagler who represented the petitioner on the charges of child molestation, statutory rape, and sodomy; an undated letter from the beneficiary; 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 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).

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 February 19, 2008. On January 4, 2010, 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 November 4, 1994, the petitioner was convicted of a violation of Georgia Statute 16-6-4(B), Child Molestation, and was sentenced to serve ten years of probation. The indictment from the State of Georgia, County of Muscogee Grand Jury, indicates that the victim was a child under the age of fourteen (14).

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 the petitioner with a detailed list of acceptable evidence.

In response to the director's NOID, counsel submitted a letter, dated March 30, 2010, and the following additional evidence: certified copies of court records in connection with the petitioner's arrests in 1980 (resulting in a felony conviction for Armed Robbery and a 12-year sentence) and 1993 (resulting in a felony conviction for Child Molestation and a 10-year sentence); two notarized statements from the petitioner, both dated March 12, 2010; a notarized statement dated March 4, 2010, from the petitioner's probation officer, [REDACTED] Jr.; a notarized statement dated February 25, 2010, from the petitioner's former counselor, [REDACTED] M.S., LPC, NCC; and additional notarized statements from the petitioner's pastor, family members, and friends.

As discussed above, the director denied the nonimmigrant visa petition because the petitioner failed to demonstrate that he posed no risk to the safety and well-being of the beneficiary and/or any derivative

beneficiary. On appeal, counsel states that the petitioner has proven that he poses no risk to the beneficiary or to anyone else. Counsel asserts that the petitioner accepted a plea deal based on the advice of his counsel, and he maintains that he did not commit any of the crimes alleged against him, but rather accepted a plea deal for which he thought was in the best interest of himself and his wife. Counsel also states that even if U.S. Citizenship and Immigration Services (USCIS) disregards the petitioner's claim of innocence, the events occurred more than two decades ago, with the petitioner having no criminal record since that time.

The AAO acknowledges the articles submitted by counsel on appeal, entitled *Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws*, [REDACTED], American Bar Association (October 1, 2006); and *Effect of Criminal Conduct on Security Clearances*, by [REDACTED] for ClearanceJobs.com (February 9, 2009). Counsel has not shown how the factors for determining rehabilitation discussed in the articles are relevant to determining a petitioner's risk to the safety and well-being of a beneficiary under the Adam Walsh Act. The passage of time between a conviction and the filing of a fiancé petition is only one factor that is assessed when determining the existence of risk.

The petitioner maintains that he never committed any acts of child molestation and counsel opines that the evidence in the record supports such a conclusion. The record contains a letter, dated October 25, 2010, from [REDACTED] who represented the petitioner on the charges of child molestation, statutory rape, and sodomy. [REDACTED] states that the petitioner entered into a best-interest plea to the charge of child molestation, that the petitioner satisfactorily completed any requirements that the Court imposed, and that he has not had any trouble of any kind with the law since that time. [REDACTED] asserts that that he does not believe the petitioner is a danger to himself or to anyone else in the community, and that he is neither a registered sex offender nor required under Georgia law to register as such. We note that [REDACTED] does not state that he believes that the petitioner was innocent of the charges of which he was convicted. Although [REDACTED] states that he does not believe the petitioner to be a danger to anyone in the community, he fails to explain how he came to such a conclusion. His letter is, therefore, of little probative value in establishing that the petitioner poses no risk to the safety and well-being of the beneficiary.

On appeal, counsel states: "Both his probation officer and the counselor in charge of his case maintain that they do not believe that [the petitioner] committed the acts alleged against him." The record contains a letter, dated March 4, 2010, from [REDACTED] who states that he has known the petitioner for approximately fifteen years, having been his probation officer, and that the petitioner "has gone above board to avoid any re-offense against the society in which he lives." [REDACTED] does not state that he believes that the petitioner was innocent of child molestation, as asserted by counsel.

Regarding counsel's claims that the petitioner's former counselor also did not believe that the petitioner committed acts of child molestation, the record contains a February 25, 2010 letter from [REDACTED] a licensed professional counselor, who treated the petitioner after his conviction. [REDACTED] stated that he could not recall the exact criminal charge against the petitioner, but he provided the following information about the circumstances surrounding the petitioner's child molestation conviction, as recounted to him by the petitioner:

It was alleged that [the petitioner] inappropriately touched the daughter of the woman he was dating at that time. He was assisting her in bathing her daughter. The child's mother was present at the time of the alleged incident. The daughter told her father that [the petitioner] had touched her. The father contacted authorities and [the petitioner] was charged. [The petitioner's] girlfriend refused to help him, even though she knew that he was not guilty, in fear that she would lose custody to the ex husband according to [the petitioner].

* * *

After many sessions . . . and getting to know this man, it became evident, in my professional opinion that [the petitioner] had been caught up in a dispute between his old girlfriend and her ex-husband over custody of their daughter.

In contrast, in his March 12, 2010 response to the director's NOID, the petitioner provides the following information about how he came to be charged with child molestation:

I met a woman, fell in love, and we got an apartment together

Well, I treated her and her child like gold. She later started running the bars with her girlfriends, though. . . . it was over and I left her.

After leaving her, I met my wife A few months before the wedding, the party girl calls me (and we hadn't spoken for years prior to the call) and starts accusing me of have sexually abused her daughter while we were together. I became enraged and told her she was way off base. She replied that because of my past, no jury would believe me. She wanted money...I told her where to go! I raised that girl up out of a life of very near poverty...and what thanks did I get?

The petitioner's description of why he was charged with child molestation as recounted to [REDACTED] is materially different from his description as reported to the director when responding to the NOID. In the events as relayed to [REDACTED] the petitioner's former girlfriend fully supported his innocence, while he informs the director that his former girlfriend initiated a complaint because the petitioner would not give her money. Given the inconsistencies with the petitioner's testimony, we cannot find [REDACTED] assessment of the petitioner's innocence to be based upon a sound factual foundation. In addition, although he states that a repeat offense would not happen even if the petitioner were guilty, [REDACTED] does not include his reasoning for coming to that conclusion. [REDACTED] last treated the petitioner 15 years ago and does not detail any clinical tests or evaluations he conducted in the recent past to reach such a conclusion. Accordingly, [REDACTED] assessment is of little probative value.

More importantly, however, the inconsistencies in the record regarding the circumstances surrounding his child molestation conviction do not support a finding that the petitioner poses no risk to safety and well-being of the beneficiary, as his credibility has been seriously undermined. The letters from petitioner's pastor, friends and family members, attesting to the petitioner's good moral character do little to either corroborate the petitioner's claimed innocence or establish that the

safety and well-being of the beneficiary would not be placed at risk upon the approval of the petition. We note that, other than the letters attesting to the petitioner's good moral character, the record is devoid of recent certified evaluations by psychiatrists, clinical psychologists, or clinical social workers attesting to the petitioner's rehabilitation or behavioral modification.

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. 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.