



U.S. Citizenship
and Immigration
Services

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D.C

Date: NOV 22 2011 Office: VERMONT SERVICE CENTER

FILE [Redacted]

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:

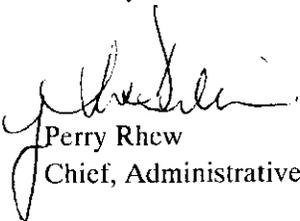
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 Ukraine, 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 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 and/or any derivative beneficiary. On appeal, the petitioner, through counsel, submits additional evidence, including: statements from the petitioner and beneficiary; the petitioner's inmate skills development plan; a course description for a prison rehabilitation class; documentation related to the petitioner's custody classification; and documentation of the petitioner's service in the peace corps.

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 March 17, 2009. On December 10, 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 a violation of [REDACTED] Activities Relating to Material Containing Child Pornography, and was sentenced to serve a term of imprisonment of 60 months.

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, the petitioner submitted, *inter alia*: statements from himself and the beneficiary; his record of conviction, including the complaint, information, plea agreement, judgment and presentence investigation report; and supporting letters from his friends and family members addressed to the sentencing judge in his criminal case.

The record of conviction reflects that on [REDACTED], the petitioner pled guilty in the United States District Court of the [REDACTED] to Knowingly Transporting Child Pornography in violation of 18 U.S.C. § 2252A(a)(1). On September 25, 2009, the petitioner was convicted of the offense and sentenced to a term of imprisonment of 60 months. At the time of the petitioner’s conviction, 18 U.S.C. § 2252A(a)(1) provided that it is unlawful for any person to knowingly mail, or transport or ship using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography. 18

U.S.C.A. § 2252A(a)(1) (West 2009). The term “minor” as it relates to 18 U.S.C. § 2252A is defined as any person under the age of eighteen years. 18 U.S.C.A. § 2256(1) (West 2011). The petitioner’s offense is, therefore, substantially similar to the “specified offense against a minor” defined under section 111(7)(G) of the Adam Walsh Act, which includes possession or distribution of child pornography.

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, the petitioner asserts that he is not a threat and he has turned his life around. He states that he had an addiction to pornography and collected all forms of pornography, not just child pornography. He states that he did not derive sexual pleasure from the pornography, but felt that he needed a thorough collection. The petitioner claims that when he realized he had a problem he “began to cleanse [himself] due to the shame and regret.” He contends that the beneficiary knows that he is a kind, giving and caring man who is not a threat to her or their future children.

The petitioner submits a statement from the beneficiary as corroborating evidence. In her statement, the beneficiary explains that she knows about the petitioner’s conviction and she still loves him. She states that if her fiancée visa is approved, she will move to the United States and marry the petitioner. In the statement the beneficiary issued in response to the NOID, she reiterated her intent to marry the petitioner. She stated that the petitioner had problems long before he joined the [REDACTED] which is where they met. She explained that she thinks the petitioner is supportive, loving and kind, and is already being punished for his mistake.

The petitioner submitted as evidence of his public service, a certificate of appreciation from the [REDACTED]. We acknowledge that the petitioner served as a volunteer in the [REDACTED] prior to his conviction for knowingly transporting child pornography, but it was in the middle of the petitioner’s [REDACTED] service that he was arrested for this offense. The sentencing statement filed on his behalf provides that in December 2008, the petitioner was a [REDACTED] volunteer who was flying home from the Ukraine to spend Christmas with his family in New York. He was selected for secondary inspection at Detroit Metropolitan Airport and his two laptop computers were viewed as a part of the inspection. During the inspection, the petitioner admitted to having downloaded child pornography on his hard drive. He was later arrested on a warrant issued by the District Court for the [REDACTED] on [REDACTED].

The presentence investigation report states that the Computer Forensic Agent who examined the petitioner’s computers recovered over 1,000 images of child pornography and numerous videos that contained child pornography. The report states that images and videos contained very young children and some of the material portrayed sadistic or masochistic conduct. Although the petitioner claims in his statement entitled “Attachment 3” that he now understands that downloading child pornography encourages the production and distribution of the material, his other statements submitted on appeal indicate otherwise. The petitioner in his appeal statements attempts to downplay the impact and significance of his crime. In a statement entitled “Attachment #2,” the petitioner indicates that he was a collector of all types of pornography, and his problem is “not a perverse interest in having sexual intercourse with minors.” He exclaims, “I am labeled a ‘sex offender’ even though I have never taken advantage of a woman or tried anything illicit with a minor!” In a follow-up statement submitted to the

AAO, the petitioner reiterates that he downloaded "collections" that contained hundreds or thousands of images because he was an "addicted collector" of pornography. He states, "I believe you will find the amount of material typical for people convicted of my offence. Personally, I would be more concerned about an individual with only a few images, not hundreds or more." These statements indicate that the petitioner has not taken full responsibility for the true nature of his crime, which involves the sexual exploitation of children.

In addition, the petitioner's conviction is recent and he is currently serving his prison sentence. He has served only half of his five year sentence. Although he claims that he is a non-violent offender and is under a low security level at the prison, he has not demonstrated his rehabilitation with any documentation. The petitioner submitted a description of a prison rehabilitation class entitled "Men In Need of Direction," which he claims he is participating in. However, he did not submit evidence of having completed the class. Moreover, 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 supporting letters from the beneficiary and the petitioner's friends and family members attesting to the petitioner's good moral character do not overcome his failure to demonstrate his rehabilitation.

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. 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.