



U.S. Citizenship
and Immigration
Services

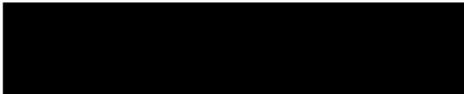


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Date: **DEC 18 2012**

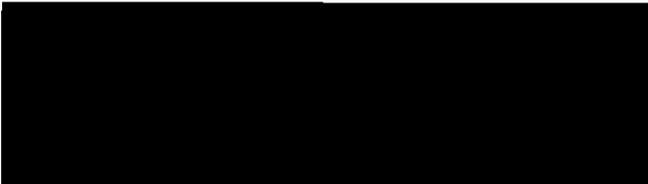
Office: CHARLOTTE, NC

FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)(i)

ON BEHALF OF PETITIONER:

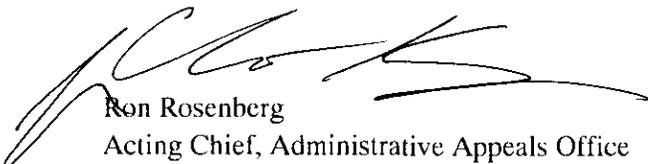


INSTRUCTIONS:

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 in accordance with the instructions on 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: U.S. Citizenship and Immigration Services (USCIS) initially approved the nonimmigrant Petition for Alien Fiancé(e) (Form I-129F). Upon subsequent review, the Director of the Charlotte, North Carolina Field Office (the director) reopened the matter and ultimately denied the Form I-129F. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and 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 United Kingdom, as a fiancé(e) 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).

Applicable Law

A U.S. citizen may file a Form I-129F petition on behalf of his intended spouse though the provisions of section 101(a)(15)(K) of the Act, which states, in pertinent part:

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 (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[.]

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 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).

Facts and Procedural History

The petitioner filed the instant Form I-129F with USCIS on November 14, 2006. The Form I-129F was subsequently approved on January 24, 2007, and the beneficiary entered the United States on September 12, 2007 in K-1 nonimmigrant status. The petitioner and the beneficiary were married on October 13, 2007 in the State of Ohio.

The beneficiary filed an application to adjust status (Form I-485) with USCIS on October 29, 2007 at which time it came to the director’s attention 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 2005 the petitioner was convicted of two counts sexual battery in the State of North Carolina. The director subsequently issued a Service motion to reopen the Form I-129F proceedings and requested that the petitioner submit evidence to establish either that he was not convicted of a specified offense against a minor, or 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 motion, the petitioner submitted, *inter alia*: dispositions of his conviction; evidence relating to his probation, community service and completion of mental health treatment; letters from family members and friends; psychological evaluations; and statements from the petitioner and beneficiary. The director subsequently denied the petition because the evidence in the record was insufficient to demonstrate that the petitioner poses no risk to the beneficiary. The petitioner submitted a motion for the director to reopen his decision, which resulted in the director affirming his decision to deny the Form I-129F. On appeal, counsel submits a brief and copies of documents already in the record.

Analysis

In proceedings for a Form I-129F petition, the petitioner bears the burden of proving eligibility for the requested visa classification on the beneficiary's behalf. Section 291 of the Act, 8 U.S.C. § 1361.

The record of conviction reflects that on May 18, 2005, the petitioner was convicted of two counts of sexual battery in violation of section 14-27.5A of the North Carolina Statutes (N.C.G.S.A.).¹ He was sentenced to sixty days confinement, twenty-four months of probation, fined two-hundred dollars, and required to perform forty-eight hours of community service. The petitioner was also ordered to stay away from Meadowbrook School and his two victims, and to obtain a mental health assessment and comply with the recommended treatment.²

The petitioner provided a statement describing the conduct that led to his 2005 conviction. According to the petitioner, he was working as a computer science teacher [REDACTED] when on one occasion he brushed up against the back of a female student with his genitals. In a separate incident, the petitioner found a different female student lying on the ground outside of his computer lab in the early morning with a blanket over her, at which time he lay on top of her and kissed her neck. These are the only incidents between him and the two students that the petitioner describes in his statement; however, according to a letter from the legal counsel for [REDACTED] dated May 20, 2005, the two students complained to school officials not only about the inappropriate physical contact between them and the petitioner, but also of the petitioner's "inappropriate statements to them." The petitioner's failure to disclose and discuss these inappropriate statements to his victims undermines the probative value of his expression of remorse for his behavior, as well as his claim that he poses no risk to the beneficiary.

The petitioner also submitted a July 15, 2011 letter from [REDACTED] a therapist with the [REDACTED] who stated that the petitioner successfully participated in the adult offender group and aftercare program from 2005 until 2007 and "completed all goals

¹ The petitioner was initially charged with two counts of taking indecent liberties against a student in violation of N.C.G.S.A. § 14-202.4(a). He subsequently pled guilty to two counts of sexual battery under N.C.G.S.A. § 14-27.5A, which states, in pertinent part:

- “(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:
- (1) By force and against the will of the other person; or
 - (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.” N.C. Gen. Stat. Ann. § 14-27.5A (West 2005)

² Although N.C.G.S.A § 14-27.5A does not specify an age for the victim, the underlying facts of the petitioner's offense are pertinent in determining whether he committed a “specified offense against a minor.” See *United States v. Mi Kyung Byun*, 539 F.3d 982, 993-94 (9th Cir. 2008). Here, the petitioner does not dispute that his victims were minors.

successfully.” [REDACTED] provided no information about the petitioner’s treatment plan, such as whether he was diagnosed with any mental health condition. [REDACTED] also did not assess whether the petitioner poses a risk to the beneficiary, based upon her treatment of the petitioner over a two-year period. Accordingly, her letter is of little probative value in demonstrating that the petitioner poses no risk to the beneficiary.

The petitioner also submitted a psychological evaluation, dated August 26, 2011, from [REDACTED]. After evaluating the petitioner, [REDACTED] concluded that there was no evidence to suggest that the petitioner posed any risk to the safety and well-being of the beneficiary. Although we do not discredit [REDACTED] expertise, his findings have limited probative value. First, [REDACTED] summary of the petitioner’s criminal offense does not include the inappropriate statements that the petitioner made to the two students as noted in the May 20, 2005 letter from the legal counsel for the [REDACTED]. Thus, [REDACTED] evaluation was not based upon a complete picture of the petitioner’s actions and behaviors with the two students. Second, [REDACTED] references another’s individual’s name ([REDACTED]) at page two of the evaluation, which calls into question whether the information contained in the evaluation relates solely to the petitioner.

The beneficiary provided an affidavit, dated July 17, 2011, in which she stated that she feels safe in her husband’s presence and that he “has never posed any risk to [her] either by being physically violent, verbally abusive or sexually abusive towards [her].” The beneficiary stated that she loves the petitioner dearly and “despite his past misconduct” he is a gentleman and a good father. The beneficiary’s reference to the petitioner’s “past misconduct” fails to demonstrate that she is fully aware of his conviction of sexual battery against two students, which also involved inappropriate statements made by the petitioner to the two girls. Nothing in her affidavit indicates that she is aware of the full details of the petitioner’s criminal conduct, such as the petitioner’s victims’ ages and the events that transpired.³ The psychological evaluation of the beneficiary by [REDACTED], dated August 31, 2011, is also of little probative value, as it was accomplished “to determine if [the beneficiary] is suffering psychological trauma because of her inability to find someone to petition in her support, since [USCIS] has declared her husband unable to sign.” While [REDACTED] noted the beneficiary’s “mild depressive state,” he provided no assessment of whether the petitioner poses any risk to the beneficiary.

The petitioner also submitted letters from family members and friends, each of whom describes the petitioner in positive terms and supports the petitioner and the beneficiary’s marriage. While these letters attest to the petitioner’s favorable attributes, the evidence in the record overall does not demonstrate that the petitioner poses no risk to the beneficiary.

³ The beneficiary stated in her affidavit: “I have read the contents of the memorandum submitted by [counsel] on behalf of [the petitioner] and confirm the contents thereof insofar as it relates to me.” This statement is insufficient to establish that she is fully aware of the events leading to the petitioner’s criminal conviction.

Conclusion

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). *De novo* review of the relevant evidence fails to demonstrate that the petitioner poses no risk to the beneficiary and the petition will remain denied.

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 remains denied.