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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**

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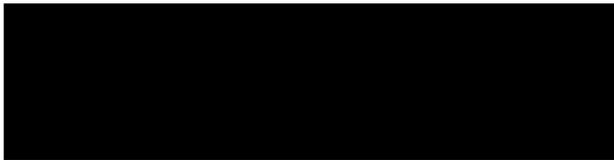


Date: **MAY 24 2012** Office: VERMONT SERVICE CENTER FILE: 

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:

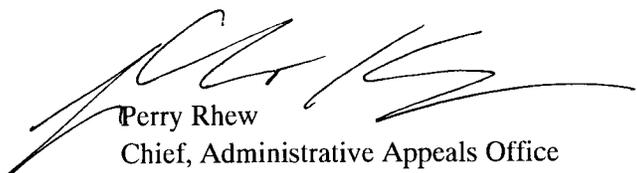


INSTRUCTIONS:

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), 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 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).

Applicable Law

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).

Facts and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on August 4, 2009. The director subsequently issued a notice of intent to deny (NOID) the petition, 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 February 28, 1992, the petitioner was convicted of two counts of aggravated sexual assault with a child in the State of Texas and was sentenced to 21 years of imprisonment on each count to run concurrently. 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, or evidence 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 NOID, the petitioner submitted, *inter alia*: a clinical evaluation of the petitioner performed by [REDACTED] the results of a polygraph examination; a letter from the beneficiary; and a copy of the STATIC-99 Coding Rules (2003).

The director denied the petition because the petitioner was convicted of a specified offense against a minor and failed to demonstrate that he posed no risk to the beneficiary of the visa petition.

On appeal, the petitioner asserts through counsel that the director failed to consider all of the submitted evidence and presumed risk to the beneficiary despite there not being any child derivative beneficiaries. The petitioner submits, *inter alia*: an October 11, 2010 letter from [REDACTED] statements from the petitioner and beneficiary; and letters from the petitioner’s sister and former girlfriends.

Analysis

In proceedings for an alien fiancé(e) petition, the petitioner bears the burden of proving eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met because the petitioner has failed to establish that he poses no risk to the beneficiary.

The record of conviction reflects that in 1992, the petitioner was convicted of two counts of aggravated sexual assault of a child in the State of Texas, committed in 1985. Relevant evidence shows that the petitioner's victims were his seven-year-old stepson and nine-year-old stepdaughter, with the reported offenses consisting of fondling and oral sex. Both [REDACTED] and the petitioner (in his July 14, 2009 letter) indicated that the petitioner also molested his 12-year-old stepdaughter, who was the older sister of his victims. The petitioner does not contest that he was convicted of a specified offense against a minor. Accordingly, the only issue on appeal is whether the petitioner poses no risk to the beneficiary.

[REDACTED] stated in his clinical evaluation that the petitioner is highly intelligent, adaptable, resourceful, and has good coping skills. [REDACTED] also gave the petitioner a diagnosis of pedophilia, non-exclusive, because the petitioner has a normal sexual interest in adult females. [REDACTED] stated that the STATIC-99 results placed the petitioner in the low category of sexual recidivism risk and concluded further: "there is no evidence available to support that he would be a risk of sexual abuse to his wife" [REDACTED] noted that the petitioner had successfully completed a sex offender treatment program during his parole and did not recommend that the petitioner undergo any treatment intervention at time of his report. In a letter, dated October 11, 2010, submitted on appeal, [REDACTED] stated: he does not know of any clinician who would ever state that a person would never re-offend with a child; the petitioner has no history of offenses with adults; and he is unaware of any evidence that would suggest a risk to the petitioner's adult intimate partner, particularly in a relationship that does not include a child. [REDACTED] again noted that the petitioner's diagnosis of pedophilia is non-exclusive, and that despite his sexual attraction to children, the petitioner also has the normal sex drives and interests of most heterosexual males. [REDACTED] concluded that a committed, bonded and intimate relationship with an age appropriate adult would further reduce the petitioner's already indicated low risk of re-offending with a child.

The petitioner also submitted the results of a polygraph examination where he was asked a set of questions concerning his sexual behaviors, including sexual contact with or exploitation of a child since being paroled in 2007 until the date of the examination on March 10, 2010. The polygraph examiner concluded that the petitioner was not being deceptive when responding "no" to the questions of whether he had intentionally lied on the questionnaire or withheld any information from the questionnaire.

The petitioner submitted two statements, one below and one on appeal. In his first statement, he described the circumstances surrounding the molestation of his stepchildren, the counseling he has undergone, and the reasons why he does not believe that his criminal convictions place the beneficiary at risk of harm from him. In his statement on appeal, the petitioner focuses solely on why USICS should find that he poses no risk to the beneficiary. In his statement, the petitioner discusses the counseling and rehabilitation that has occurred in his life, the beneficiary's personality and familial background, his belief that there is little correlation between child and spousal abuse, as well as his and the beneficiary's goals for the future as a married couple.

The petitioner also submits letters from his sister as well as several former girlfriends. The petitioner's sister states, in part, that the petitioner has developed and maintained close relationships with individuals over the years and she has no doubt that the petitioner would treat the beneficiary with only the utmost respect and kindness. All of the petitioner's former girlfriends state that they do not believe

that the petitioner would harm the beneficiary in any way and that they never experienced any violence towards them by the petitioner. In her statement submitted on appeal, the beneficiary asserts that she knows about the petitioner's past but that she loves the person whom the petitioner has become, which is a kind, attentive and good person. The beneficiary states that she would "never accept what he did if he would do it again."

In his appellate brief, counsel states that USCIS cannot presume risk to the beneficiary because no derivative beneficiaries are involved. Counsel asserts that the lack of any past acts of spousal abuse or violence outside of the petitioner's conviction record, the evidence from the psychiatric evaluation and tests, as well as the letters from the petitioner and his family and friends, demonstrate that he poses no risk to the beneficiary.

Upon a full review of the record, we find that the petitioner has not overcome the basis of denial. The beneficiary indicates in her statements submitted below and on appeal that the petitioner has told her about his "past," but she does not specify what the petitioner has told her and whether she is aware of the petitioner's victims' ages, the duration of the petitioner's sexual assaults, and the petitioner's relationship to his victims. The beneficiary also does not disclose that she is aware of the petitioner's diagnosis of pedophilia, non-exclusive, by [REDACTED]. Although the beneficiary and the petitioner state that there are no children who will be brought into the relationship, the beneficiary conveys that she "want[s to] have a family with the man I love." [REDACTED] opinion of the petitioner's risk to the beneficiary is based upon the absence of children in the relationship; it is unclear whether the petitioner discussed with [REDACTED] whether he and the beneficiary would have children and if so, whether such a disclosure would have impacted [REDACTED]'s assessment. In addition, [REDACTED] opinion addressed only the risk to the beneficiary of being sexually abused by the petitioner. He did not evaluate other situations, such as the risk to the beneficiary should a child be brought into the relationship.

In addition, although the petitioner has expressed his remorse for his criminal conduct and accepted responsibility for his behavior, his statement submitted below minimizes the impact of his actions on his victims. The grand jury indicted the petitioner with sodomizing his stepson. On page three of his July 14, 2009 letter, however, the petitioner asserts that "there was one incident with [the boy] that was classified as molestation," suggesting that he still considers his actions as less than aggravated sexual assault of a minor. Neither of the petitioner's statements provides a clear account of the duration of the criminal activity in which he engaged, to include the molestation of his victims' older sister that he admitted to [REDACTED] but for which he was not charged with a crime.

The results of the STATIC-99 are also unreliable based upon the petitioner's testimony. The "Notes" section of the STATIC-99 at Question #4 does not take into consideration the molestation of the petitioner's oldest stepdaughter. Additionally, it is unclear from the petitioner's statements how long he had been living with his former wife and stepchildren prior to their marriage, which is critical for determining whether a perpetrator and his victims are considered "related" for Question #6.¹

¹ According to the STATIC-99 Coding Rules (Revised 2003): "When considering whether step-relations are related or not, consider the nature and the length of the pre-existing relationship between the offender and the

Conclusion

De novo review of the relevant evidence submitted below and a full assessment of the evidence submitted on appeal fails to demonstrate that the petitioner poses no risk to the 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 remains denied.