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U.S. Citizenship
and Immigration
Services

Date: Office: VERMONT SERVICE CENTER

APR 17 2013

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:

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 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,

Ron Rosenberg

Acting Chief, Administrative Appeals Office

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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 petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, as the fiancée of a United States citizen 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).

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 posed no risk to the safety and well-being of the beneficiary.

On appeal, the petitioner submits a statement.

Applicable Law

Section 101(a)(15)(K)(i) of the Act provides nonimmigrant classification to an alien who, in pertinent part:

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.

Section 204(a)(1)(A)(viii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(viii), describes, in pertinent part:

(I) . . . a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition . . . is filed.^[1]

(II) For purposes of subclause (I), the term 'specified offense against a minor' is defined as in section 111 of the Adam Walsh Child Protection and Safety Act of 2006.

These provisions were amended by the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), which was enacted 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. See Adam Walsh Act, Pub. L. 109-248, §§ 2, 102, 501 (Jul. 27, 2006) (recognizing Adam Walsh, naming victims and stating findings regarding child pornography).

^[1] The Secretary has delegated to U.S. Citizenship and Immigration Services (USCIS) the authority to determine whether or not a petitioner convicted of a specified offense against a minor poses no risk to the beneficiary. See Department of Homeland Security (DHS) Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003).

Section 111(7) of the Adam Walsh Act states:

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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on January 19, 2010. The director subsequently issued a notice of intent to deny (NOID) because the evidence of record indicated that the petitioner was convicted in South Carolina of criminal sexual conduct with a minor in the second degree. The director requested that the petitioner submit evidence that he was not convicted of any "specified offense against a minor" as defined in section 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: a personal statement; his criminal history report; his conviction records, including the arrest warrant, indictment, the plea negotiation agreement and the order of termination of parole; and letters from [REDACTED], [REDACTED] and [REDACTED]. The director determined the evidence was insufficient to demonstrate that the petitioner posed no risk to the safety and well-being of the beneficiary of the visa petition. The petitioner filed a timely appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's claims do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Analysis

The record of conviction reflects that on October 19, 1990, the petitioner was convicted of criminal sexual conduct with a minor in the second degree in violation of section 16-3-655 of the Code of Laws of South Carolina. Under the terms of a plea negotiation agreement, the petitioner was given a five year suspended sentence and placed on probation for five years. The special condition of probation included the payment of all recommended psychiatric and/or psychological treatment for the victim.

At the time of the petitioner's conviction, section 16-3-655(3) provided, in pertinent part, that "[a] person is guilty of criminal sexual conduct in the second degree if the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim." S.C. Code Ann. § 16-3-655(3) (1990). The petitioner's offense is, therefore, substantially similar to the "specified offense against a minor" defined under section 111(7)(I) of the Adam Walsh Act, which includes any conduct that by its nature is a sex offense against a minor.

Upon a full review of the record, we find that the petitioner has not overcome the basis of denial. The petitioner has not indicated if he has informed the beneficiary of his conviction. In the petitioner's statements, he appears to take little responsibility for the serious nature of his crime. In his statement submitted in rebuttal of the NOID, the petitioner asserted that he was "a 'bad' drunk" and has been sober for 20 years. He stated that "[n]o one was forced or harmed in my ordeal. Just a drunken man and drunken crazy teens." He stated that he keeps in contact with one of the victims. In his statement submitted on appeal, the petitioner contends that his offense was 21 years ago and he is "not on any list or anything." He states that he "was on the sofa drunk when two teens knocked on [his] door." The conviction record, however, reflects that the petitioner engaged in the sexual battery of two minor children. The petitioner's characterization of his sex offense as something that happened when he was "on the sofa drunk" with "drunken crazy teens" reflects his failure to understand the gravity of his offense and the power and control he had as an adult over the child victims of his offense.

The petitioner's supporting evidence consists of letters from his church pastor, [REDACTED], [REDACTED] and his former spouse, [REDACTED] attesting to his good moral character. The director correctly noted that while these letters speak positively of the petitioner's community involvement and general character, they were not authored by individuals professionally trained in risk assessment. On appeal, the petitioner asserts that he no longer drinks, he attends church and he has a Federal Bureau of Investigation (FBI) clearance for his employment. The petitioner asserts that his former spouse, [REDACTED] has a master's degree in drug and alcohol behavior and is well-qualified to evaluate behavior. Although [REDACTED] stated in her letter that she has never seen the petitioner perform a violent act, her letter is written from her personal experience as the petitioner's former spouse. [REDACTED] has not indicated that she has professional experience in risk assessment or recidivism analysis for perpetrators of sex crimes. The record is devoid of evaluations by psychiatrists, clinical psychologists, clinical social workers or other mental health professionals with experience in assessing risk and recidivism of sexual offenders attesting to the petitioner's rehabilitation or behavioral modification. The petitioner's professional accomplishments and the supporting statements attesting to his good moral character do

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not overcome his failure to demonstrate that he has taken responsibility for his crime, is fully rehabilitated, and therefore poses no risk to the beneficiary.

Conclusion

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. Consequently, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.