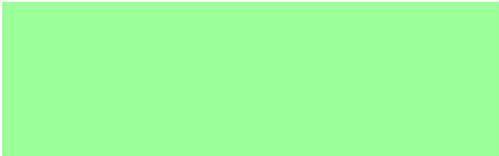


(b)(6)

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

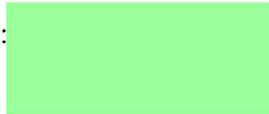


U.S. Citizenship  
and Immigration  
Services



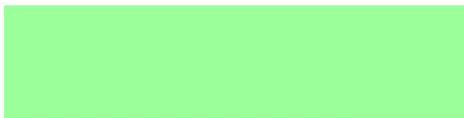
Date: Office: VERMONT SERVICE CENTER

FILE:



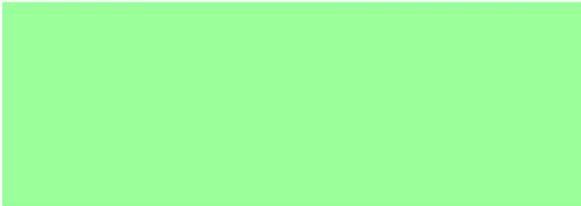
**AUG 06 2013**

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Acting 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 fiancée 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 posed no risk to the safety and well-being of the beneficiary. On appeal, counsel provides a brief and additional evidence.

*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.<sup>[1]</sup>

(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. Adam Walsh Act, Pub. L. 109-248, §§ 2, 102, 501 (Jul. 27, 2006).

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:

---

<sup>[1]</sup> 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).

- (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.

Section 111(14) of the Adam Walsh Act defines the term “minor” 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 February 3, 2011. The petitioner initially submitted, *inter alia*, the complaint, plea agreement, judgment and sentencing order from his conviction record. The director subsequently 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 January 9, 2001, he was convicted of two counts of lewd and lascivious acts with a child in violation of section 288 of the California Penal Code and sentenced to serve three years imprisonment. 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 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, as additional evidence: the conditions of his parole; and a psychological evaluation from [REDACTED]. 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 of the visa petition.

On appeal, counsel asserts that the petitioner and beneficiary do not currently have children and they have no plans for future children. Counsel states that the determination that the petitioner is at low risk for recidivism is the “most favorable identification allowed under medical evaluation.” Counsel contends that the director has “gone beyond the statute” in applying a heightened standard of proof. Counsel further asserts that the director violated the petitioner’s “due process and other constitutional rights.” The record reveals no error in the director’s processing of this petition. The petitioner was advised of the deficiencies of record by the director’s NOID and has been afforded a second opportunity to supplement the record on appeal. Counsel also fails to demonstrate that the petitioner bears any right to a fiancée visa petition for the beneficiary given his conviction for a specified offense against a minor such that he could prevail on a due process challenge to the additional restriction imposed on such petitioners by section 204(a)(1)(A)(viii) of the Act. *See Azizi v. Thornburgh*, 908 F.2d 1130, 1134-36 (2d Cir. 1990) (citizen petitioner and spouse married during spouse’s deportation proceedings had no inherent right to an immigrant visa for the spouse and lacked the requisite property interest to prevail on their procedural due process challenge.) Counsel fails to specifically identify any other constitutional right of the petitioner that was violated.

On appeal, counsel submits as additional evidence: a letter from [REDACTED] resume; and a certificate for [REDACTED] membership in the Association for the Treatment of Sexual Abusers. 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 appeal will be dismissed for the following reasons.

*The Petitioner's Conviction for a Specified Offense Against a Minor*

The petitioner's record of conviction reflects that on January 9, 2001, he was convicted of lewd or lascivious acts with a child in violation of subsections 288(a) and 288(c)(1) of the California Penal Code. The petitioner was sentenced to three years imprisonment and ordered to register as a sex offender and pay restitution to the victim. He was released on parole on April 10, 2003 pursuant to special conditions. The special conditions included: his participation in a psychiatric/psychological treatment program; having no contact with the victim and children under the age of 18; and informing individuals with whom he has a "significant relationship" about his criminal history.

At the time of the petitioner's conviction, section 288 of the California Penal Code provided, in pertinent part:

(a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

...

(c)(1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. . . .

Cal. Penal Code § 288 (West 2001).

The petitioner's parole review sheet reflects that he sexually molested a 13-year-old child over an 18-month period. The petitioner's offense is, therefore, the "specified offense against a minor" defined under subsection 111(7)(I) of the Adam Walsh Act: any conduct that by its nature is a sex offense against a minor.

*Risk to the Beneficiary*

Upon a full review of the record, we find that the petitioner has not overcome the basis of denial. In response to the NOID, the petitioner submitted a psychological evaluation dated March 10, 2012 from

[REDACTED] who stated that she met with the petitioner for one three-hour session. [REDACTED] reported that the petitioner abused the daughter of his former girlfriend from when the child was 13 years old until she was 15 years old. She noted that the petitioner completed sex offender therapy and currently a safety plan is in place to keep the petitioner from being left alone with children. [REDACTED] conducted a personality test and three risk assessments on the petitioner. She reported that the test results indicate possible antisocial traits, which she stated is common in sex offenders. She also reported that the petitioner scored in the "low range" for sexual recidivism. [REDACTED] opined that based upon the petitioner's scores, he does not appear to present a threat to his fiancée. The director correctly determined that this evidence does not establish that the petitioner poses no risk to the safety and well-being of the beneficiary.

On appeal, counsel submits a letter from [REDACTED] in which she asserts that she has expertise in forensic psychology and treatment and evaluation of sexual offenders. [REDACTED] reiterates that the petitioner "is at a low risk for sexual recidivism" and "does not present a threat to his family." [REDACTED] letter simply reiterates her previous determination and provides no additional evidence of the petitioner's rehabilitation. Although counsel asserts that the director has "gone beyond the statute" in applying a heightened standard of proof in this proceeding, we find no error in the director's determination. The petitioner has failed to demonstrate that he has taken responsibility for his sex offenses and is fully rehabilitated. The record shows that as a condition of the petitioner's parole, he was ordered participate in a psychiatric treatment program and inform individuals with whom he has a "significant relationship" about his criminal history. The petitioner, however, has not offered any evidence of having completed a sex offender treatment program. Nor has he indicated whether he has informed the beneficiary of: his convictions; the current "safety plan" that involves keeping him away from children; and his twice-yearly registration as a sex offender. The record is devoid of, for example, statements from the petitioner showing that he has taken responsibility for his offenses and statements from the beneficiary acknowledging the petitioner's criminal history. Consequently, 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.

*Conclusion*

In fiancée visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.