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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

Date: Office: VERMONT SERVICE CENTER

FILE:

**AUG 14 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)

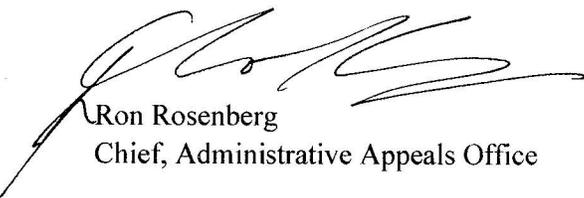
ON BEHALF OF PETITIONER:

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  
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 section 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:

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<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 October 28, 2011. 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 June 15, 2001, he was arrested for sexual abuse in the third degree in violation of Kentucky Criminal Statute section 510.130 and unlawful transaction with a minor in the third degree in violation of Kentucky Criminal Statute section 530.070. 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: the incident report, charging document and motion to set restitution amount from his conviction record; a letter from [REDACTED] a licensed psychologist; a letter from the beneficiary; his completed sex offender registry form; and letters from members of his church, [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 has taken responsibility for his actions, served his sentence, completed counseling and paid restitution. Counsel states that [REDACTED] has placed the petitioner in a low risk category and the petitioner’s former spouse does not believe that he is of risk to their daughter. Counsel states that no children would be placed in danger with the approval of the petition because the beneficiary does not have any children. Counsel contends that it is improper and unconstitutional to hold the petitioner to a heightened standard of proof.

On appeal, counsel submits as additional evidence: a psychological evaluation from [REDACTED]; an affidavit from the petitioner’s second spouse, [REDACTED]<sup>1</sup>; the divorce petition, property agreement and child custody order from his second marriage; and an affidavit from the petitioner.

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<sup>1</sup> Name withheld to protect the individual’s identity.

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 in August 2001, he was convicted of one count of sexual abuse in the third degree in violation of section 510.130 of the Kentucky Penal Code and six counts of unlawful transaction with a minor in the third degree in violation of section 530.070 of the Kentucky Penal Code. The petitioner was sentenced to serve 90 days imprisonment. He was granted a conditional discharge for two years on upon the stipulation that he commit no further offenses, have no contact with the victims, pay restitution, have no unsupervised contact with any children under 18 years of age (including his own children), complete a sex offense treatment program, and register as a sex offender.

At the time of the petitioner's conviction, section 510.130 of the Kentucky Penal Code provided, in pertinent part:

(1) A person is guilty of sexual abuse in the third degree when:

(a) He subjects another person to sexual contact without the latter's consent.

...

Ky. Rev. Stat. Ann. § 510.130 (West 2001).

The incident report provides that the respective ages of the victims of the petitioner's offense were 15 years and 16 years. 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.<sup>2</sup> The petitioner does not contest this determination on appeal.

*Risk to the Beneficiary*

Upon a full review of the record, we find that the petitioner has not overcome the basis of denial. Although counsel asserts that it is "improper and unconstitutional" to hold the petitioner to a heightened standard of proof, he fails to specifically identify any constitutional right of the petitioner that was violated. The petitioner submitted below a May 11, 2004 letter from [REDACTED], a licensed psychologist, in which [REDACTED] reported that the petitioner successfully completed a two-year treatment program under his care. In the October 12, 2012 psychological evaluation the petitioner submitted on appeal, [REDACTED] stated that he conducted several assessments of the petitioner and determined that the petitioner was at a "low risk" to sexually reoffend. [REDACTED] determination does not demonstrate that the petitioner is of no risk to the beneficiary.

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<sup>2</sup> The petitioner's other offenses, unlawful transactions with a minor, involve the sale or purchase of alcohol to or for a minor and are not sexual offenses.

In his November 6, 2012 statement submitted on appeal, the petitioner provided that after his divorce from his second wife, [REDACTED] they entered into a custody agreement for their minor daughter. He stated [REDACTED] did not consider it necessary to impose supervision during his visitation with their daughter. He asserted that he has taken responsibility for his actions and has let members of his church and his fiancée know about his offenses. The petitioner submitted letters from four members of his church attesting to his good moral character. The petitioner also submitted letters from the beneficiary and his former spouse, [REDACTED]. In her letter dated July 22, 2012 the beneficiary stated that she is aware of the petitioner's convictions, but believes that he is a "good man" and his "problems are in the past." [REDACTED] stated in her November 10, 2012 letter that she was married to the petitioner when he was convicted of sexual abuse and unlawful transaction with a minor. She stated the petitioner is a good father to their daughter and he has unsupervised visitation with her. The custody agreement provided on appeal reflects that the petitioner and his former spouse have joint custody of their daughter. Although these letters demonstrate that the beneficiary and the petitioner's former wife do not believe that he will reoffend, they were not authored by individuals professionally trained in risk assessment.

On appeal, counsel asserts that the petitioner "has taken responsibility for his actions in 2001 and at no time has he proclaimed he was innocent or tried to justify his actions in any way." However, the petitioner has failed to show how he has taken responsibility for his offenses. In his initial statement dated September 26, 2011, he recounted that he was coaching his daughter's basketball team and provided 15 and 16 year old girls with alcohol during a party at his home. He stated that the following day one of the girls "reported" that he had touched her inappropriately. By stating that the offense was "reported" by the victim, the petitioner fails to acknowledge that he actually committed the offense. The petitioner's statement on appeal also does not provide any information on his efforts to take responsibility for the offense and his rehabilitation. Although counsel asserts that no children would be placed in danger with the approval of the petition because the beneficiary is an adult and does not have any children, the beneficiary, who is 29 years old, does not state in her letter that she has no plans for biological or adopted children. The statements from members of the petitioner's church attesting to his good moral character do not overcome his failure to demonstrate that he has taken responsibility for his sex offenses, is fully rehabilitated, and is therefore of no risk to the beneficiary.

### *Conclusion*

Based on the foregoing discussion, 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. 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.