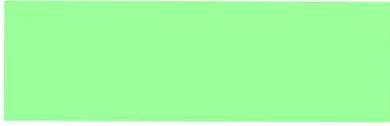


(b)(6)

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

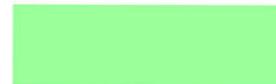


U.S. Citizenship
and Immigration
Services

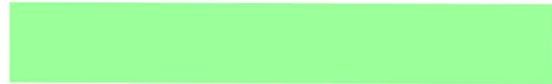


Date: **JUN 27 2013** Office: VERMONT SERVICE CENTER

FILE:

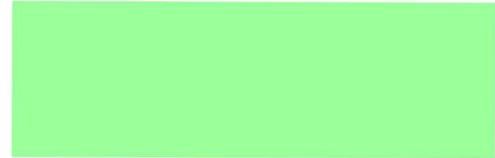


IN RE: Petitioner:
 Beneficiary:



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 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

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 Colombia, 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, through counsel, submits a statement 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.^[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. Adam Walsh Act, Pub. L. 109-248, §§ 2, 102, 501 (Jul. 27, 2006).

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

^[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).

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.

Section 111(14) of the Adam Walsh Act defines the term "minor" as an individual who has not attained the age of 18 years.

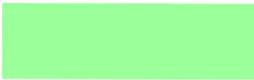
Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on January 31, 2011. He initially submitted the following documentation from his conviction record: a presentence investigation report; a sentencing memorandum with supporting documentation; the judgment and sentencing order; and an order to change the terms of his probation. The petitioner also submitted the following relevant documentation: a letter from his parole and probation officer, Brenda Carney; a letter from his psychotherapist, Astrid Green; and letters of support from his daughter and the senior pastor at his church, Brad Makowski.

The director subsequently issued a notice of intent to deny (NOID) because the evidence of record indicated that the petitioner was convicted in Oregon of rape in the first degree and sodomy in the first degree of a nine-year-old child. 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, or evidence that he posed no risk to the beneficiary of the visa petition despite his conviction. 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 incident report, the indictment and a probation order from his conviction record; an evaluation from [REDACTED] Ph.D.; a second letter from [REDACTED]; a second statement from [REDACTED] a letter from the beneficiary; and a letter from the beneficiary's daughter. He also submitted additional letters of support from: the senior pastor at his church, [REDACTED] a retired captain with the [REDACTED] County Sheriff's Office, [REDACTED] and the executive director of a non-profit mental health agency, [REDACTED]

The director reviewed the documentation and determined that the petitioner had been convicted of a specified offense against a minor and that the evidence was insufficient to demonstrate that the petitioner posed no risk to the safety and well-being of the beneficiary. Counsel filed a timely appeal.



On appeal, counsel asserts that “no risk” is an impossible finding for a convicted sex-offender and that by requiring the petitioner to show that he does not continue to pose a heightened risk when compared with the general population is beyond the scope and purpose of the Adam Walsh Act. The petitioner submits: a personal statement; a statement from the beneficiary; photographs of himself with the beneficiary and her family members; a letter from Dr. [REDACTED] a third letter from [REDACTED] and additional supporting letters from retired captain Jim Carpenter, the executive pastor of his church, [REDACTED] and his friend, Tom Rose.

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 December 22, 1999, he plead guilty to rape in the first degree in violation of section 163.375 of the Oregon Revised Statutes and sodomy in the first degree in violation of section 163.405 of the Oregon Revised Statutes. On February 24, 2000, separate judgment and sentencing orders were issued for the petitioner’s two convictions. The sentencing orders stipulated that the petitioner was placed on probation for 20 years under the terms and conditions that he: serve 180 days in jail; complete a sex offender treatment program; take a phethysmograph examination and polygraph examination; have no contact with female minors; make a written clarification to the victim; remain employed; have no contact with the victim; make a restitution payment to the victim; possess no pornography; not enter places where children are likely to congregate; and submit to blood tests.

At the time of the petitioner’s conviction, the Oregon Revised Statutes defined rape in the first degree as, in pertinent part:

(1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:

...

(b) The victim is under 12 years of age;

...

(2) Rape in the first degree is a Class A felony.

Or. Rev. Stat. Ann. § 163.375 (West 2000).

Sodomy in the first degree was, at the time of the petitioner’s conviction, defined as, in pertinent part:

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if:

...

(b) The victim is under 12 years of age;

...

(2) Sodomy in the first degree is a Class A felony.

Or. Rev. Stat. Ann. § 163.405 (West 2000).

The indictment from the petitioner's conviction record reflects that the victim of these crimes was a minor child under the age of twelve years. The petitioner's offense is, therefore, the "specified offense against a minor" defined under subsections 111(7)(H) and (I) of the Adam Walsh Act: criminal sexual conduct involving a minor and any conduct that by its nature is a sex offense against a minor.

Risk to the Beneficiary

Because the petitioner has been convicted of a specified offense against a minor, he is prohibited from filing this fiancée petition under section 101(a)(15)(K)(i) of the Act unless he establishes that he poses no risk to the beneficiary. Such risk is determined by USCIS in its sole and unreviewable discretion. Section 204(a)(1)(A)(viii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(viii)(I). In his statement, dated July 24, 2010, the petitioner recounted that in September 2010, he told the beneficiary that he was convicted of sexually abusing his daughter when she was a child. He stated that he has taken responsibility for his offense and he now has a good relationship with his daughter. The beneficiary, in her December 12, 2011 letter, stated that she was in shock when she found out about the petitioner's abuse of his daughter, but decided to continue with the relationship because the petitioner "went to church and received forgiveness through a prayer of repentance." In her July 23, 2012 letter, the beneficiary reiterated her intention to marry the petitioner and stated that he has given her "love, respect, care and economic support." The beneficiary's 20-year-old daughter similarly stated in her December 16, 2011 letter that the petitioner does not present any risk to her and she would like to reside with him. The victim of the offense, the petitioner's daughter, noted in a December 15, 2010 letter that she has a good relationship with her father, has forgiven him, and does not see him as a threat.

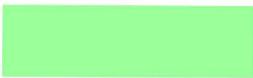
Although the petitioner has shown that he has taken responsibility for his sex offenses and the beneficiary is aware of them, the record does not demonstrate that he is fully rehabilitated, and is therefore of no risk to the beneficiary and/or any derivative beneficiary. The petitioner submitted a letter, dated November 17, 2010 from his psychotherapist, [REDACTED] Ms. [REDACTED] stated that she started working with the petitioner on June 1, 2006 to help him deal with the end of his first marriage. She briefly opined that the petitioner is not a threat to himself or others. In response to the NOID, the

petitioner submitted another letter from Ms. [REDACTED]. In her second letter, dated January 1, 2012, Ms. [REDACTED] stated that she is a licensed professional counselor and a certified sex addiction therapist. She stated that she conducted psychological tests and determined that the petitioner did not meet the criteria for sexual addiction. She again opined that the petitioner is not a danger to himself or others. In her third letter, submitted on appeal, dated July 20, 2012, Ms. [REDACTED] explained that she does not work with sex offenders and is not an expert in their treatment. She stated that although most sex offenders are sociopathic with little or no empathy or remorse, the petitioner took complete responsibility for his offense and was extremely remorseful. She reiterated that in her expert opinion, the petitioner is not a threat to himself or anyone else. While we do not question Dr. [REDACTED] psychiatric expertise, the record does not indicate that she is a certified sex offender treatment provider or has a background in the assessment of sex offenders. Nor has she indicated that she conducted forensic psychological testing to reach her conclusion that the petitioner is not a danger or threat to others, such as the beneficiary.

In response to the NOID, the petitioner also submitted an evaluation from [REDACTED] Ph.D., a certified sex offender treatment provider. In his evaluation, dated January 12, 2012, Dr. [REDACTED] assessed the petitioner and determined that the petitioner's overall score for recidivism risk was the lowest score possible. He opined that based upon the information available there is no reason to believe that the petitioner poses a risk to his fiancée or her 18-year-old daughter. In his July 23, 2012 letter submitted on appeal, Dr. [REDACTED] clarified that the petitioner's risk is at the lowest level possible for an individual who has a prior sexual offense. Dr. [REDACTED] stated in his January 12, 2012 evaluation that the petitioner entered a sex offender treatment program in 1999 where he participated in a structured group therapy program with other offenders. He stated that in 2001, the petitioner was transferred to a group therapy program run by Dr. [REDACTED] and completed the sex offender treatment program in 2003. The petitioner, however, has failed to submit an evaluation or any other documentation from Dr. [REDACTED] related to his completion of a sexual offender treatment program.

The record shows that the petitioner is currently on probation. [REDACTED] Carney, the lead parole and probation officer and sex offender supervision specialist for [REDACTED] County Community Corrections, stated in her November 18, 2010 letter that the petitioner's formal probation was converted to bench probation on January 6, 2009. She noted that during the petitioner's formal probation he completed all of the requirements of his treatment and his risk assessments scored low for risk to re-offend. She stated that the petitioner has been reunited with his family, including his children and the victim. In response to the NOID, the petitioner submitted a second letter from Ms. [REDACTED] in which she reiterated that all risk assessments scored the petitioner as a low risk to re-offend. The petitioner, however, has not completed his probationary period, which as noted in Ms. [REDACTED] initial letter, expires on February 23, 2020.

The petitioner indicated in his initial statement that he and the beneficiary would like to have children and the beneficiary has a 20-year-old daughter who has expressed her interest in accompanying her mother to the United States. The petitioner submitted several letters of support from his personal and professional contacts, including: the senior pastor at his church, [REDACTED]; the executive pastor of his church, [REDACTED] a retired captain with the [REDACTED] County Sheriff's Office, [REDACTED] the executive director of a non-profit mental health agency, [REDACTED] and his friend, [REDACTED]. The individuals who authored the letters attested to the petitioner's professional accomplishments, community service and his good moral character. However, the psychological



evaluations submitted with the petition do not establish that the petitioner has been fully rehabilitated. The petitioner's current therapist, Dr. [REDACTED] is not a certified sex offender treatment provider nor does she have a background in the assessment of sex offenders. The petitioner has not submitted any documentation from Dr. [REDACTED] related to his completion of a sex offender treatment program. Although [REDACTED], the lead parole and probation officer, stated that the petitioner scored low for risk to re-offend, the petitioner has not completed his probationary period and he remains on probation for over six more years. Based on the foregoing, 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 and/or any derivative beneficiary.

Conclusion

The petitioner has not demonstrated that he is fully rehabilitated and poses no risk to the beneficiary. The petitioner is consequently barred from filing this petition or any other family-based visa petition on behalf of this beneficiary or any other beneficiary pursuant to sections 101(a)(15)(K)(i) and 204(a)(1)(A)(viii) of the Act.

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. The petition remains denied.