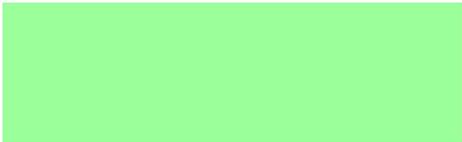


(b)(6)

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



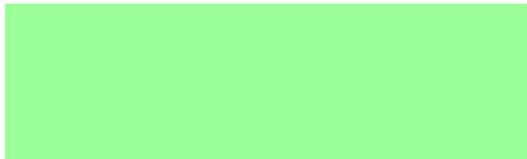
Date: **MAR 12 2013** Office: VERMONT SERVICE CENTER

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, or a request for a fee waiver. 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 petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, as the fiancé(e) 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, the petitioner, through counsel, submits a brief and additional evidence.

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).

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on June 23, 2009. The director subsequently issued a notice of intent to deny (NOID) because the evidence of record indicated that the petitioner was convicted in Connecticut of sexual assault in the fourth 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, *inter alia*: a psychological evaluation; his conviction record; police incident reports related to his conviction; a letter verifying the termination of his probation; a statement from the beneficiary; and statements from himself, his daughter-in-law and his sister. 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. Counsel 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. Counsel’s claims and the evidence submitted on appeal 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 April 23, 1984, the petitioner was arrested and charged with sexual assault in the second degree, a felony, in violation of section 53a-71 of the Connecticut Statutes and risk of injury to a child in violation of section 53-21 of the Connecticut Statutes. On August 16,

1984, the petitioner was convicted of sexual assault in the fourth degree, a misdemeanor, in violation of section 53a-73a of the Connecticut Statutes. The disposition reflects that the petitioner was given a one year suspended sentence and placed on three years of probation. At the time of the petitioner's conviction, the criminal statute stated, in pertinent part:

(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person intentionally subjects another person to sexual contact who is (A) under fifteen years of age, or . . . (D) less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare, or (2) such person subjects another person to sexual contact without such other person's consent

The petitioner indicated his initial statement, dated March 23, 2009, that the victim of the offense was his stepdaughter who was 16 or 17 years old at the time of his arrest. The record contains a police incident report, dated December 8, 1983, in which the petitioner's stepdaughter stated that she had been sexually assaulted by the petitioner since she was 11 years old. 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. In the petitioner's initial statement, he asserted that he maintained his innocence throughout the criminal court proceedings. He stated that he was given a plea offer of misdemeanor sexual assault in the four degree under the Alford Doctrine, which he asserted allowed him to maintain his innocence while acknowledging that the state may have had enough evidence for a conviction. In response to the NOID, the petitioner submitted another statement, dated October 2, 2010. In his second statement, the petitioner reasserted that he maintained his innocence under the Alford Doctrine. He stated that his stepdaughter may have accused him of sexual assault because she wanted to break up his marriage with her mother. The record shows that the petitioner was convicted of a specified offense against a minor and regardless of his present claims, we cannot go behind his criminal conviction to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031 (BIA 1999); *Matter of Fortis*, 14 I&N Dec. 576 (BIA 1974).

To show he posed no risk to the beneficiary, the petitioner submitted a psychological evaluation from [REDACTED] dated September 7, 2010. [REDACTED] opined that the petitioner is not an imminent danger to himself or others. He further opined that there is no psychiatric contraindication to the petitioner engaging in a relationship with his fiancée or any other individual. The director correctly determined that [REDACTED] failed to provide his training or experience in risk assessment or recidivism analysis for perpetrators of sex or other crimes. The director also correctly found that [REDACTED] failed to indicate that he performed any of the standard recognized psychological tests used to determine an individual's recidivistic tendencies.

The petitioner also submitted letters from the beneficiary, his daughter-in-law, [REDACTED] and sister, [REDACTED]. The petitioner's daughter-in-law and sister attested to his strong family ties and good moral character. The beneficiary stated that she and the petitioner trust each other and do not have any secrets. The petitioner also submitted a letter from a probation official who certified his completion of three years of probation. The director correctly concluded that these documents failed to establish that the petitioner posed no risk to the safety and well-being of the beneficiary.

On appeal, counsel submits a psychological evaluation from [REDACTED], dated May 26, 2011, and a letter from the petitioner's son, [REDACTED] [REDACTED] attests to the petitioner's strong family ties and good moral character. [REDACTED] opined that the beneficiary is not at risk in her relationship with the petitioner. He further opined that the petitioner does not present any obvious risk factors that would cause him to be considered a danger to himself or others. [REDACTED] however, does not provide his experience in risk assessment or recidivism analysis for perpetrators of sex crimes. He also does not indicate that he performed any of the standard recognized psychological tests used to determine an individual's risk for recidivism.

On appeal, counsel asserts that the director erroneously shifted the burden of proof to the petitioner and imposed a higher standard of proof to the risk analysis. Counsel further asserts that the petitioner cannot be considered a dangerous offender because he was convicted of a single misdemeanor, he was not sentenced to a term of imprisonment, and he has not been convicted of any other crimes. Counsel contends that the petitioner has demonstrated his character through home ownership, stable employment, relationships with his family members, and a lack of subsequent criminal record.

The petitioner, however, has not provided probative evidence to reflect that he has taken responsibility for his conviction, is fully rehabilitated, and consequently poses no risk to the beneficiary. Although the petitioner maintains his innocence, he was convicted of the offense and we cannot go behind the criminal proceedings to reassess his guilt or innocence. [REDACTED] noted that the petitioner has informed the beneficiary of his conviction. The beneficiary in her letter stated that the petitioner has told her "everything about his past 26 years." However, her letter fails to acknowledge the petitioner's criminal history or specify what, exactly, the petitioner has told her.

Although counsel contends that the petitioner was convicted of a single misdemeanor and not sentenced to a term of imprisonment, the petitioner was placed on probation for three years, which is a form of punishment. The fact that the petitioner reached a plea agreement to have the charge reduced from a felony to a misdemeanor does not undermine the gravity of his conviction for sexual assault of a minor child by a parental figure. The record is devoid of, for example, evaluations by psychiatrists, clinical psychologists, clinical social workers or other mental health professionals with experience in assessing risk and recidivism of sexual offenders and attesting to the petitioner's rehabilitation or behavioral modification. The two psychological reports submitted do not indicate that any psychological tests were administered on the petitioner during the evaluation to assess his risk for recidivism. The statements from the petitioner's family members attesting to his good moral character and strong family ties do not overcome his failure to demonstrate that he is fully rehabilitated and 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.