



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: DEC 08 2014 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for a Spouse Pursuant to Section 101(a)(15)(K)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)(ii)

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 of the Vermont Service Center (the director) denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal and the petition will remain denied.

The petitioner is a U.S. citizen who seeks to classify the beneficiary, a native and citizen of China, as the K-3 spouse of a U.S. citizen pursuant to section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii).

Applicable Law

Section 101(a)(15)(K) of the Act allows an alien married to a U.S. citizen to be admitted to the United States as a nonimmigrant if he or she:

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I) [of the Act]) who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa[.]

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 2006.²

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.

² 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.

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, 120 Stat. 587.

Facts and Procedural History

The petitioner and beneficiary were married in China in [REDACTED]. In 2009 the petitioner filed an alien relative petition (Form I-130) and a petition for a nonimmigrant spouse (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on his spouse's behalf. In separate decisions, the director denied the Form I-129F and the Form I-130. The petitioner appealed the denied Form I-129F to us, and the denied Form I-130 to the Board of Immigration Appeals (the Board), which has jurisdiction over denied alien relative petitions. See 8 C.F.R. § 1003.1(b)(5). On May 1, 2014, the Board remanded the Form I-130 matter to the director for issuance of a new decision. As of the date of this decision, the Form I-130 remains pending with the Vermont Service Center.

When filing the Form I-129F, the petitioner indicated "no" to the question at Part C.2 regarding any convictions for criminal activity involving domestic violence, sexual assault, child abuse or neglect, or abusive sexual contact.³ A subsequent check of the petitioner's background by USCIS, however, revealed that the petitioner was convicted of indecent liberties in 1986 for an offense against his minor daughter and had been placed on the sex offender registries in Washington State and Maryland.⁴ Accordingly, in a Notice of Intent to Deny (NOID), the director apprised the petitioner of this derogatory evidence, notifying him that the offense for which he was convicted appeared to be a specified offense against a minor under the Adam Walsh Act. The director provided the petitioner with an opportunity to demonstrate either: that he was not convicted of a specified offense under the Adam Walsh Act; or that despite this conviction, he posed no risk to his spouse, the beneficiary of the Form I-129F petition.

The petitioner responded to the NOID with a personal statement; statements from his two adult daughters, one of whom was the victim of his offense; a statement from a former girlfriend; a psychological assessment prepared by [REDACTED] Ph.D., the Executive Director of Clinical and [REDACTED] and incomplete records of conviction for his 1986 indecent liberties offense and 2006 offense for failure to register as a sex offender. The petitioner also submitted evidence of a 2000 conviction for domestic violence assault and harassment against one of his former wives, and submitted incomplete records regarding this conviction as well.

The director denied the Form I-129F, determining that the petitioner was convicted of a specified offense against a minor and that he failed to establish that he posed no risk to the beneficiary of the

³ According to the *Instructions* to the Form I-129F, the term "domestic violence" means, in pertinent part: felony or misdemeanor crimes of violence committed by a victim's current or former spouse, or a youth victim who is protected from a perpetrator's acts under the domestic or family violence laws of the jurisdiction. On August 4, 2014, we requested the petitioner to submit a newly-signed last page of the Form I-129F to show an affirmative response to the question about arrests for domestic violence, so that the petition would accurately reflect the administrative record.

⁴ The criminal act took place in 1982 when the petitioner's daughter was approximately five years old, but the petitioner was not prosecuted and convicted until 1986.

visa petition, his spouse. The petitioner timely appealed the director's decision to us. In his appellate filing, the petitioner submitted: a second personal statement; a statement from the beneficiary; a 2009 psychological evaluation prepared by Dr. [REDACTED] of the [REDACTED] Maryland, along with Dr. [REDACTED] curriculum vitae; the results of a polygraph test administered to the petitioner; and an "order of discharge" relating to his 1986 indecent liberties conviction.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon our review of the record of proceeding to include the evidence submitted on appeal, we issued to the petitioner a Request for Evidence (RFE) on May 22, 2014. In this RFE, we informed the petitioner that the evidence in the record relating to his criminal history was incomplete because he had not submitted all dispositions relating to his criminal convictions or evidence from the court(s) that such records were unavailable. We also notified the petitioner that he could, at his discretion, submit any evidence that he would like us to consider relating to the "no risk" determination described at section 204(a)(1)(A)(viii) of the Act, and which was not already included in the record. In July 2014, the petitioner responded to our RFE with the requested evidence regarding his criminal convictions. Additionally, the petitioner submitted: a third statement; copies of the beneficiary and his daughter's (the victim) statements; a copy of Dr. [REDACTED] 2009 evaluation as well as an updated letter from Dr. [REDACTED] dated July 2014; and letters of support from family, friends and business associates.

On August 11, 2014, the petitioner further supplemented the record with: a copy of his divorce decree from his marriage to his victim's mother, which gave custody of the couple's male children as well as visitation rights involving his daughter (the victim) to the petitioner; and additional documents relating to the record of his 1986 indecent liberties conviction.

Subsequent to our receipt of the petitioner's August 2014 submission, we obtained new derogatory information, which the petitioner had not disclosed, indicating that in August 2010, the petitioner was a respondent in a peace order proceeding within the District Court for [REDACTED] Maryland.⁵ According to the information we obtained, on August 3, 2010 the petitioner was a named respondent in a temporary peace order, with a final order issued eight days later on August 11, 2010. The petitioner was ordered to not abuse, contact or enter the residence and to stay away from the employment of the protected person. The order was valid through January 31, 2011.

This peace order was issued after the director denied the Form I-129F, and we were unaware of it at the time we issued our May 2014 RFE. This August 2010 peace order was also not discussed in any of the petitioner's statements submitted to USCIS, including his most recent statement, dated July 9, 2014. Nor was this peace order mentioned by Dr. [REDACTED] who provided a letter, dated July 2014, to update his 2009 assessment of whether the petitioner poses a risk to the petitioner's spouse. As the circumstances surrounding this 2010 peace order were unknown to us, we issued a second RFE on September 10, 2014 to obtain clarifying evidence from the petitioner for the purpose of the "no risk" determination at section 204(a)(1)(A)(viii) of the Act.

⁵ In the State of Maryland, peace and protective orders are civil orders issued by a judge that order one person to refrain from committing certain acts against others. The relationship between the person alleged to have committed the prohibited act (respondent) and the person seeking protection determines which type of order is filed. Protective orders generally apply to people in domestic relationships; peace orders apply to other persons.

In response, the petitioner submitted the following: a fourth personal statement; dispositions relating to a 2010 assault charge against the petitioner in the State of Maryland that was not prosecuted and expunged from his record in October 2010; and copies of temporary and final peace orders against the petitioner in August 2010, with the validity of the final peace order effective until January 31, 2011.

Analysis

Records of the petitioner's criminal history demonstrate that he was convicted of indecent liberties in 1986 for an offense against his daughter. The petitioner does not dispute that he is described at section 204(a)(1)(A)(viii)(I) of the Act, but rather contends on appeal that the standard applied for the "no risk" determination "is irrationally high," impossible to achieve, and arbitrary and capricious. The petitioner also asserts that he has been rehabilitated and poses no risk to his wife, the beneficiary of the petition.

The plain language of the statute requires a petitioner to establish that he or she "poses no risk" to the beneficiary. See Section 204(a)(1)(A)(viii) of the Act. Congress did not identify the evidentiary standard to be applied to this "no risk" determination, leaving the matter to the Secretary of Homeland Security, through USCIS, to decide in its sole and unreviewable discretion. Congress's deliberate choice of the term "*no risk*" compels USCIS to apply the highest evidentiary standard of proof - "beyond any reasonable doubt" - as a means to protect beneficiaries whose immigration to the United States is dependent on a person who has been convicted of criminal activity that under the Adam Walsh Act is an offense against a minor. See *Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006*, USCIS Memorandum, 5-7 (Feb. 8, 2007). As the appellate body of USCIS, we are bound to follow our agency's policy regarding the standard of proof required of the petitioner in these proceedings and, therefore, the evidence must establish that the petitioner, beyond any reasonable doubt, poses no risk to his wife.

The petitioner has submitted several statements regarding his criminal offenses and rehabilitation. The record also contains a statement from the beneficiary, who states that she is aware of the petitioner's past and that she trusts and feels safe with him. The petitioner's daughter, who was the victim of the 1986 offense, similarly wrote a letter in support of her father, stating that she can count on him to be there for her, and he is kind, generous, honest and compassionate. Letters from friends, family, business associates and employers attest to the petitioner's trustworthiness and overall positive character. The record also contains psychiatric evaluations of the petitioner by Drs. [REDACTED] in 2009, as well as a July 2014 letter in which Dr. [REDACTED] asserts that he has been able to conclude, with reasonable medical certainty, that the petitioner poses no risk to the beneficiary or her now adult son.

We acknowledge that the offense that placed the petitioner within the purview of section 204(a)(1)(A)(viii) of the Act occurred in 1982, approximately 32 years ago, and that he has a repaired relationship with his daughter, the victim of his offense. *De novo* review of the record, however, fails to demonstrate that, beyond any reasonable doubt, the petitioner poses no risk to the beneficiary for the following reasons.

In 2000, the petitioner was convicted of domestic violence assault in the fourth degree and harassment for an offense against a former spouse, and had been convicted in 1986 for indecent liberties against his daughter; yet, at the time of filing the Form I-129F, he indicated “no” to the question at Part C.2 that asked the petitioner whether he had been convicted of certain criminal activity, to include domestic violence and abusive sexual contact. Only until USCIS performed a background check was the petitioner’s criminal history revealed. Additionally, when we issued our RFE in May 22, 2014, we not only asked for specific documents relating to his criminal history but also provided the petitioner with the opportunity to submit any other evidence that he wanted to us consider relating to the “no risk” determination. The petitioner’s response included evidence regarding his claims of rehabilitation as well as his assertions regarding the lack of any criminal history for more than 15 years. Not until we performed another background check after the petitioner responded to our May 22, 2014 RFE did we discover that the petitioner had been the respondent in a peace order proceeding in the State of Maryland in 2010, a discovery which compelled us to issue a second RFE on September 10, 2014.

The documents that the petitioner submitted in response to our September 10, 2014 RFE include records of the petitioner’s arrest in February [REDACTED] in the State for Maryland for assault in the second degree, which was not prosecuted and the arrest expunged from his record in October 2010. According to the petitioner, this arrest related to a landlord-tenant dispute with a woman, [REDACTED] who was living with him in his home at the time. The petitioner stated that [REDACTED] was arrested for assault and then counter-charged the petitioner for assault several days later.

The documents relating to the peace order reveal that on August 3, 2010, [REDACTED], a 58-year-old female who had been living in the petitioner’s home along with him, and for part of the time with [REDACTED] as well, sought a temporary peace order against him in the State of Maryland. [REDACTED] stated in her petition for the temporary order: “[The petitioner] has violent outbursts. He has repeatedly got in my face screaming and name calling. I moved from the property fearful of him. He has a history of violence and verbal abuse.”

A hearing on a final peace order was held on August 11, 2010 at the [REDACTED] Maryland District Court. At this hearing, the judge determined that there was clear and convincing evidence that the petitioner had committed harassment against [REDACTED] and was likely to commit a prohibited act against her in the future.⁶ The judge issued the final peace order effective until January 31, 2011.

The petitioner states in an October 2, 2014 statement submitted in response to our September 10, 2014 RFE that he never disclosed the peace order because “[t]he Government has never requested that [he] provide anything related to disputes with [his] tenants.” The petitioner’s preferred reason for failing to disclose the peace order is unpersuasive. From the outset of the petitioning process, the petitioner has not been forthcoming about his criminal history or events that have a direct bearing on the “no risk” determination. As noted, when initially filing the Form I-129F, the petitioner failed to disclose his convictions for indecent liberties against his daughter and domestic violence against a former spouse, despite being specifically asked through a question on the Form I-129F. Now, the

⁶ The prohibited acts listed on the peace order are: assault in any degree; rape or a statutory sexual offense (or attempt) in any degree; false imprisonment; stalking; trespassing; malicious destruction of property; or harassment.

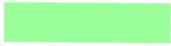
petitioner characterizes the peace order proceedings as a landlord-tenant dispute when a judge found, by clear and convincing evidence, that the petitioner harassed an adult female with whom he was living and would likely commit a prohibited act against her in the future. The petitioner's failure to fully and openly disclose his documented history of abusive behavior diminishes the probative value of his claims to his rehabilitation and does not establish that he would, beyond any reasonable doubt, pose no risk to the beneficiary.

In response to our May 22, 2014 RFE, the petitioner submitted a July 2014 letter from Dr. [REDACTED] who in 2009 had provided an assessment of the petitioner's risk to the beneficiary. Dr. [REDACTED] asserts in his July 2014 letter that he "has been able to conclude, with reasonable medical certainty that [the petitioner] poses no risk to [the beneficiary]"; however, it is clear that the petitioner did not disclose the incidents regarding [REDACTED] and [REDACTED] to Dr. [REDACTED] as Dr. [REDACTED] letter refers only to the 1986 incident liberties and the 2000 domestic violence assault and harassment convictions. In his statement submitted in response to the September 10, 2014 RFE, the petitioner admits to not informing Dr. [REDACTED] about the incidents with [REDACTED] and [REDACTED] as "[he] did not feel it necessary . . . because [he] handled both situations without violence, threat or retaliation of any kind and had no problem doing so."

The petitioner's pronouncements regarding the lack of threats in his incident with [REDACTED], in particular, are contradicted by the District Court judge's findings that there was clear and convincing evidence of the petitioner's harassment of [REDACTED] in the past and the likelihood of him committing a prohibited act against her in the future. The petitioner's choice to not disclose these incidents to Dr. [REDACTED] precluded Dr. [REDACTED] from pursuing a material line of inquiry directly relating to the petitioner's potential risk to his wife. As [REDACTED] were both adult females living in the petitioner's household, the petitioner's interactions with them would have been relevant to Dr. [REDACTED] assessment of whether the petitioner poses a risk to the beneficiary. Because Dr. [REDACTED] risk assessment is not based on a complete set of facts, the conclusions in his July 2014 letter have little evidentiary value in demonstrating that the petitioner, beyond any reasonable doubt, poses no risk to his wife.

The letters from the petitioner's family, friends, associates and employers, as well as from the beneficiary and the petitioner's daughter, attest to the petitioner's character; nevertheless, they do not overcome the derogatory evidence in the record regarding the petitioner's domestic violence conviction for assault and harassment against a prior spouse in 2000 and a judge's determination in 2010 that an adult female living in the same home with the petitioner was deserving of the State of Maryland's protection because she had established, by clear and convincing evidence, that she had been harassed by the petitioner and that it was likely he would commit a prohibited act against her in the future. Additionally, the record contains no probative psychological evaluation of the petitioner that considers the petitioner's risk to the beneficiary in light of these more recent 2010 incidents, and the petitioner has not sufficiently explained his lack of candor to USCIS regarding his convictions and civil matters during the petitioning process. Overall, the petitioner has not met his burden of establishing, beyond any reasonable doubt, that he poses no risk to the beneficiary.⁷

⁷ Although we have applied the appropriate "beyond any reasonable doubt" evidentiary standard, the evidence in the record also fails to demonstrate the petitioner's eligibility for the benefit by the lesser "clear and convincing evidence" standard.



Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met his burden of establishing, beyond any reasonable doubt, that he poses no risk to the beneficiary and the approval of the Form I-192F is barred by section 204(a)(1)(A)(viii) of the Act.

ORDER: The appeal is dismissed. The petition remains denied.