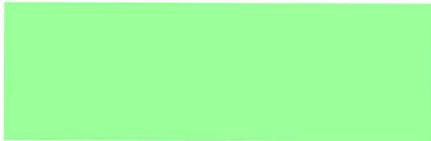


(b)(6)

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



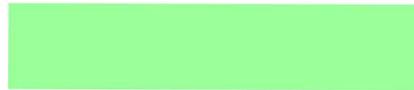
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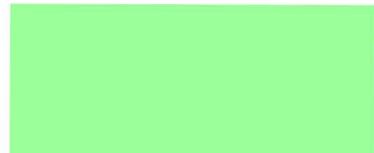


IN RE: Petitioner:
Beneficiary:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), 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 beyond any reasonable doubt that he poses no risk to the safety and well-being of the beneficiary. On appeal, the petitioner, through counsel, submits a brief.

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:

The term 'specified offense against a minor' means an offense against a minor that involves any of the following:

^[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).

- (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, 2012. The petitioner submitted the following relevant evidence: his conviction records; an affidavit from the beneficiary; a letter from his pastor; a letter from his employer; a sexual offender deviance/risk assessment; and his military 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 November 28, 2006, the petitioner was convicted of indecent assault and corruption of minors, and was sentenced to two (2) years of probation. 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 poses no risk to the beneficiary of the visa petition. The director provided the petitioner with a detailed list of acceptable evidence. The petitioner responded to the NOID with a resubmission of his initial supporting documentation, which the director found insufficient to establish eligibility. The director denied the nonimmigrant visa petition because the petitioner failed to demonstrate that he, beyond any reasonable doubt, poses no risk to the safety and well-being of the beneficiary of the visa petition. Counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In these proceedings, the petitioner bears the burden of demonstrating, beyond any reasonable doubt, that he poses no risk to the beneficiary.¹ Upon a full review of the record, the petitioner has failed to make such a demonstration for the following reasons.

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

The petitioner’s conviction records reflect that on November 28, 2006, he was convicted in Pennsylvania of indecent assault in violation of 18 Pa. Cons. Stat. § 3126(a)(1) and corruption of minors

¹ 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).

in violation of 18 Pa. Cons. Stat. § 6301(a)(1), and sentenced to two years of probation, mental health counseling and payment of court costs. At the time of the petitioner's conviction for indecent assault, the statute stated, in pertinent part: "[a] person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and: . . . the person does so without the complainant's consent" 18 Pa. Cons. Stat. § 3126(a)(1)(2006). The statute defining "corruption of minors" provided, in pertinent part: "[w]hoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree." 18 Pa. Cons. Stat. § 6301(a)(1)(2006). The complaint and information related to these crimes provide that the victim was less than 18 years old. The petitioner has therefore been convicted of a "specified offenses 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. The petitioner does not contest this determination on appeal.

Risk to the Beneficiary

On appeal, counsel asserts that the petitioner has only had one offense and "[t]here was no rape, no violence, no genital contact . . . there is no evidence of physical compulsion against non-consent." Counsel contends that since the beneficiary is 34 years old and has no children, she is not at risk of being harmed as a minor. Counsel asserts that the petitioner's conviction was over seven years ago, and during this period he completed a successful two-year term of probation and 23 months of sex offender counseling. Counsel contends that the assessment tools, Static-99 and Stable-2007, show that "low risk" is the lowest possible recidivism category, and no professional clinician can ever categorize a client as "no risk." Counsel provides information on the Static-99, including the Static-99 score sheet.

Upon a full review of the record, we find that the petitioner has not overcome the basis of denial. The deviance/risk assessment is from [REDACTED] a certified sexual offender treatment specialist, with [REDACTED] the same practice that provided court-ordered treatment to the petitioner after his conviction. Ms. [REDACTED] reviewed the petitioner's history and evaluated him on October 26, 2011 and November 2, 2011 using the Able Assessment of Sexual Interest, Static-99, Stable-2007, Beck Depression Inventory and Beck Anxiety Inventory. She concluded, in part, that, "[w]hile [the petitioner] does demonstrate an ongoing sexual interest in adolescent females, this is secondary to his sexual interest in adult females as measured by the Abel Assessment of Sexual Interest and therefore given his recidivism prediction as measured through his combined Static and Stable scores, in conjunction with his sexual interest in developed females, it would appear unlikely overall that [the petitioner] will recidivate in terms of his sexual behavior against a minor." The assessment from Ms. [REDACTED] has been given due weight. However, her finding that the petitioner is "unlikely overall" to recidivate does not demonstrate that he poses no risk to the beneficiary. Although counsel asserts that the assessment tools are limited to a determination of "low risk" as the lowest possible recidivism category, section 204(a)(1)(A)(viii) of the Act specifically requires the petitioner to establish that he poses "no risk" to the beneficiary.

The beneficiary provided in her statement that she is aware of the petitioner's criminal conviction for corruption of the morals of a minor and indecent assault. She described the petitioner's conviction as "inappropriate sexual touching of a minor female, then age 16, on her breasts and leg." She stated that she understands that the petitioner has undergone psychological counseling and rehabilitation and she is satisfied that he poses no threat to her welfare. The beneficiary, however, failed to indicate that she has knowledge that the victim of the offense was the child of the petitioner's former fiancée, and her description of the crime as merely the sexual touching of the victim's breasts and legs demonstrates that the petitioner has not fully disclosed to her the details of and the circumstances surrounding his crime. Although counsel contends that the beneficiary does not have children, the beneficiary, who is 33 years old, failed to discuss whether she and the petitioner plan to have biological or adopted children. The petitioner himself has not provided a statement for the record in which he takes responsibility for the serious nature of his crime, discusses his rehabilitation, and indicates whether he and the beneficiary plan to have children.

The record of conviction establishes that contrary to counsel's assertions, the petitioner's offense involved physical compulsion of a minor child against non-consent. The information filed by the prosecutor provides that the petitioner caused his fiancée's minor daughter to "have indecent contact with him by forcible compulsion . . . [details excerpted]." The sexual offender deviance/risk assessment from Ms. [REDACTED] stated that according to police reports the victim was approximately 15 or 16 years old at the time of the offense and the petitioner had attempted to sexually assault the victim on a prior occasion when she was 13 years old. Ms. [REDACTED] further provided that the petitioner "admitted to grooming of the victim prior to his attempted sexual contact with her." These statements establish that the petitioner's assault of the victim was not a "single, one-time, momentary offense" as asserted by counsel, but planned and repeated over a period of time. The petitioner's military service, professional accomplishments, community service and involvement with his church have all been taken into account. However, these factors do not overcome his failure to demonstrate that he has taken responsibility for his sex offenses and is fully rehabilitated.

The statute requires the petitioner to establish that he poses "no risk" to the beneficiary and this risk determination lies within the sole and unreviewable discretion of the Secretary of Homeland Security, as delegated to USCIS. Section 204(a)(1)(A)(viii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(viii). Within its discretionary authority, USCIS has determined that the statute requires petitioners who have been convicted of specified offenses against minors to demonstrate beyond any reasonable doubt that they pose no risk to their beneficiaries. Contrary to counsel's claim on appeal, risk determinations under section 204(a)(1)(A)(viii) of the Act are not subject to the general preponderance of the evidence standard applicable to other immigration proceedings because USCIS has determined that the statute itself requires this heightened standard of proof.² Consequently, the evidence provided by the petitioner fails to demonstrate that beyond any reasonable doubt that he poses no risk to the beneficiary.

Conclusion

As the petitioner has failed to demonstrate beyond any reasonable doubt that he poses no risk to the beneficiary, the appeal will be dismissed and the alien fiancée petition filed by the petitioner on the beneficiary's behalf must remain denied. In fiancée visa petition proceedings, it is the petitioner's

² See *supra* note 1.

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NON-PRECEDENT DECISION

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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. The petition remains denied.