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

(b)(6)

DATE: JUN 2 2 2015

FILE #:
PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the 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 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 failed to demonstrate that he posed no risk to the safety and well-being of the beneficiary. On appeal, the petitioner submits additional evidence and a brief contending that he was not convicted of an Adam Walsh Act offense and, further, that he poses no threat to the beneficiary.

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 or AWA), 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 his 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 follows:

> 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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) on March 3, 2011. The director issued a Notice of Intent to Deny (NOID) on July 17, 2012 because the evidence of record indicated that the petitioner was convicted in North Carolina to violating N.C.G.S. § 14-190.6 by permitting a minor to view pornography on the petitioner's computer. 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 court records showing he was charged in connection with an offense committed on [redacted] 2001 with three felony violations of the North Carolina General Statutes, N.C.G.S. § 14-202.1, Indecent Liberties with a Child, N.C.G.S. § 14-190.1, Disseminating Obscene Material, and N.C.G.S. § 14-190.6, Permitting a Minor to Assist in an Offense, but was convicted only on the third charge and the other two charges were dismissed. He also submitted a plea transcript, special conditions of the plea, the court's judgment, findings of aggravating and mitigating factors, a psychological evaluation, and supportive statements. The director found the evidence insufficient to show that the conviction was not for a "specified offense against a minor" and further found the petitioner, having been convicted of such an offense, failed to demonstrate that he posed no risk to the safety and well-being of the beneficiary of the visa petition.

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. Petitioner'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 [redacted] 2001, the petitioner was arrested and charged with the three aforementioned sex offenses under North Carolina criminal law. On [redacted] 2003, the

petitioner was convicted of an offense under section 14-190.6 of the North Carolina General Statutes. The disposition reflects that the petitioner was placed on 30 months of probation. At the time of the petitioner's conviction, the criminal statute stated, in pertinent part:

> **§ 14-190.6. Employing or permitting minor to assist in offense under Article.**
> Every person 18 years of age or older who intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1, shall be guilty of a Class I felony. (1971, c. 405, s. 1; 1983, c. 916, s. 2; 1985, c. 703, s. 6.)

The record contains the petitioner's admission that he let a twelve year old boy use the petitioner's computer to view pornography on the Internet and that this material consisted of persons engaged in various sex acts. The director therefore found the offense for which the petitioner was convicted to constitute a "specified offense against a minor" as defined under section 111(7)(I) of the Adam Walsh Act to include any conduct that by its nature is a sex offense against a minor. Further, the director determined the petitioner not to have submitted in response to the NOID evidence demonstrating that the conviction was not for a specified offense against a minor under the AWA.

Upon a full review of the record, we find that the petitioner has not overcome the basis for the denial. On appeal, the petitioner contends he was not convicted of an AWA specified offense because such an offense requires a physical act or a sex act involving contact, while his conviction under N.C.G.S. § 14-190.6 for providing obscene materials to a minor requires neither of these.[1] The record shows that the petitioner was convicted of a specified offense against a minor regardless of his present claims.

Federal courts have found that "sex offense against a minor" includes conduct other than a physical act or sex act. In *U.S. v. Dodge,* 597 F.3d 1347 (11th Cir. 2010), the court construed Title I of the AWA, the Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. § 16901, *et seq.*, defining a sex offender as someone convicted of a sex offense, to include someone convicted of transferring obscene material to a minor. *Id.* at 1350-51. The court in *Dodge* further noted the expansive language of section 111(7) of the AWA as indicating that Congress intended "sex offense" to be broadly interpreted. The court specifically rejected the petitioner's contention that section 111(5) of the AWA limits offenses requiring sex offender registration to those involving a physical act or sexual contact. The Board of Immigration Appeals (BIA) has likewise found that Congress intended that provisions in the Act concerning sexual abuse of minors provide "a comprehensive scheme to cover crimes against children" and thus "did not direct that crimes of sexual abuse be limited to crimes requiring contact as an element..." *Matter of Rodriguez-Rodriguez,* 22 I&N Dec. 991, 995 (BIA 1999) (a Texas statute regarding indecency with a child by exposure had no requirement of contact with the victim for the crime to be sexual abuse of a minor); *see also Bahar v. Ashcroft,* 264 F.3d 1309 (11th Cir. 2001).

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[1] Citing U.S. Supreme Court precedent, the petitioner also contends that the Adam Walsh Act infringes upon his right to marry. We note that the petition denial at issue does not address his right to marry, only his ability to procure a K visa. The petitioner remains able to travel to the Philippines -- as he has done previously to meet his fiancée -- and marry the beneficiary there or elsewhere. The record contains a copy of his valid U.S. passport showing a 2009 visit to the Philippines. He cites no case law supporting the claimed unconstitutionality of the AWA.

While maintaining that his conviction is not for a specified offense against a minor, the petitioner asserts in the alternative that he poses no threat to his fiancée. To support the claim he posed no risk to the beneficiary, the petitioner submitted a psychological evaluation dated September 4, 2012 from the licensed social worker who treated him from 2003 to 2005. This therapist noted that the petitioner acknowledged his criminal behavior, took responsibility for his actions, and successfully completed treatment. The evaluation concluded that the petitioner is not a sexual threat to another adult. In a February 6, 2013 addendum submitted on appeal, the therapist reaffirmed his conclusion, based on his experience providing sex offender treatment, and stated "[t]here are no standardized tests to accurately assess recidivism." Regarding the availability of standardized testing, we note that one such tool is the Static-99, a ten item assessment widely used around the world to evaluate the recidivism risks of male sex offenders.[2] The director correctly found that the therapist failed to perform any of the standard, recognized psychological tests used to determine an individual's recidivistic tendencies.

Besides relying on his therapist's evaluation, the petitioner contends that the passage of time since his 2001 offense without having re-offended supports his claim to pose no greater risk to his fiancée than would any other man in the general population. The petitioner also submitted correspondence between himself and the beneficiary, as well as supportive letters attesting to his religious faith and moral character. While the correspondence reflects that the beneficiary is aware of the petitioner's felony conviction, the character letters do not indicate whether their authors know of the petitioner's sex offender registration. 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.

The petitioner has not provided sufficient evidence to show that he is rehabilitated and poses no risk to the beneficiary. Although correspondence shows the petitioner told his fiancée of the conviction for his 2001 conduct, it does not establish whether he fully informed her of the details of his behavior, the sentence imposed consisting a prison term of 8-10 months suspended pending completion of 30 months' probation and sex offender counselling, or his ongoing requirement to register as a sex offender. The beneficiary stated that "for me you didn't made [sic] any mistakes because you didn't kill anyone, the fault you did is just you lend [sic] your computer to a kid and *you are punish [sic] for the sins you didn't commit*." (emphasis added). Her reference fails to acknowledge the petitioner's criminal history, specify exactly what the petitioner has told her about his crime, or indicate the petitioner is aware of the seriousness and consequences of the offense.

The fact that the petitioner reached a plea agreement to have two of three felony counts dismissed does not undermine the gravity of his conviction for a sex offense against a 12-year old child. Further, the felony judgment lists taking advantage of a position of trust as an aggravating factor, but the record contains no judicially-determined mitigating factors nor a statement by the petitioner expressing remorse for his actions. The psychological evaluation submitted does not indicate that any psychological tests were administered to assess the petitioner's recidivism risk. Documents submitted by the petitioner include the record of a 2002 arrest for third degree sexual exploitation of a

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[2] The Static-99 was created in 1999 by combining items in two prior sex offender risk assessment measures published, respectively, in 1997 (Rapid Risk Assessment for Sex Offence Recidivism, or RRASOR) and 1998 (Structured Anchored Clinical Judgement [sic], or SACJ) by the Static-99's developers. *Static 99: Improving Actuarial Risk Assessments for Sex Offenders*, R.K. Hanson and David Thornton.

minor that may have been dismissed, but the record is silent as to the circumstances regarding the arrest or disposition. Supportive statements attesting to his good moral character do not overcome his failure to demonstrate that he 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.