



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-A-D-

DATE: MAR. 31, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as a fiancé(e) of a United States citizen. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before us on appeal. The appeal will be dismissed.

The Director denied the nonimmigrant visa petition because the Petitioner was convicted of a specified offense against a minor and the Director found he did not show that he posed no risk to the safety and well-being of the Beneficiary. On appeal, the Petitioner contends that the denial was erroneous and asserts having demonstrated he poses no threat to the Beneficiary.

I. 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.^[*]

^[*] 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).

(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 [Adam Walsh Act or AWA].

The Adam Walsh Act 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. Pub. L. 109-248, §§ 2, 102, 501 (Jul. 27, 2006).

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. 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 (see § 111(5)(B) of the Adam Walsh Act, which establishes guidelines regarding the validity of foreign convictions).

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129F, Petition for Alien Fiancé(e), on February 2, 2012. On November 20, 2012, the Director notified the Petitioner of the intent to deny the petition and requested documentary evidence to overcome the intended denial, because the evidence of record indicated that

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the Petitioner was convicted in federal court of traveling in interstate commerce for the purpose of engaging in a sexual act with a person less than 18 years old, in violation of 18 U.S.C. § 2423(b). Section 2423 states:

(b) Travel With Intent To Engage in Illicit Sexual Conduct:

A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

The Director requested that the Petitioner submit evidence he was not convicted of any “specified offense against a minor” as defined in section 111(7) of the Adam Walsh Act, and/or establish beyond any reasonable doubt that he poses no risk to the Beneficiary of the visa petition.¹ The Director provided the Petitioner with a detailed list of acceptable evidence.

In his December 5, 2012 response, the Petitioner submitted a letter requesting that the Beneficiary’s son, who was listed on the Form I-129F and is now [REDACTED] years old, be removed from consideration as a derivative beneficiary. The Petitioner provided no further evidence with his response and does not contest having been convicted of a “specified offense against a minor” pursuant to the Adam Walsh Act. Accordingly, noting that a request to remove the Derivative Beneficiary does not remove the Petitioner’s obligation to meet the requirements of the AWA, the Director denied the petition. *See Denial*, May 14, 2013.

The Petitioner and Beneficiary state that they met in 2009 while he was visiting the Philippines and they became engaged during a later visit in 2011. The Petitioner claims to be helping his fiancée’s family financially and, in addition to copies of plane tickets, he submitted in support of the Form I-129F photographs and mutual statements of intent to marry.

On appeal, the Petitioner submits documents including his criminal record, letters certifying completion of probation in 2004 and a one-year sex offender treatment program in 2003, supportive statements, and military records. The record indicates that the Petitioner was arrested on [REDACTED] 1999 after traveling from Virginia to Maryland for the purpose of engaging in sexual conduct with an individual who he believed was a 13-year-old female that he had met on the Internet, but was in fact an undercover FBI agent. The Petitioner was convicted after pleading guilty to a charge of Travel With Intent To Engage in Illicit Sexual Conduct and sentenced to 12 months plus one day in

¹ The Petitioner bears the burden of demonstrating, beyond any reasonable doubt, that he poses no risk to the Beneficiary. *See Memorandum from Michael Aytes, Associate Director for Domestic Operations, USCIS, HQDOMO 70/1-P, 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 5-7 (Feb. 8, 2007), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/adamwalshact020807.pdf.*

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prison. The Petitioner provides a copy of his February 2000 memorandum and motion for downward departure from the sentencing guidelines in which he acknowledges that a post-arrest search of his residence yielded what the prosecutor claimed to be child pornography, but disputed the relevancy of this information for sentencing purposes. We note that the Petitioner submitted only a copy of his own memorandum and did not provide a copy of the prosecution's sentencing memorandum describing the pornographic materials found in his home. The Petitioner was released in 2001 to court-supervised release for three years, completed sex offender treatment in 2003, and was discharged from supervision in 2004. In addition to the standard conditions of supervision listed on the "Supervised Release" form, the court ordered the Petitioner to participate in treatment programs relating to substance abuse and mental health as directed by his probation officer, have limited access to the Internet, and register as a sex offender in states where he lives, works, or studies. There is documentation that his obligation to register as a sex offender with the Pennsylvania State Police ended on [REDACTED] 2011.

III. ANALYSIS

The Director examined the evidence and found there was insufficient evidence to establish that the Petitioner poses no risk to the Beneficiary. Upon full review of the record, we concur with the Director and find that the Petitioner has not overcome the basis for the denial of the petition.

The Petitioner does not dispute that his conviction is for a sex offense against a minor as defined under section 111(7) of the AWA, but he claims that it has been many years since his 2000 conviction, that he poses no risk to the Beneficiary, and that no minor is the subject of the petition. The Petitioner admitted his crime and acknowledged in 2000 to being prone to addictive and compulsive behavior. He claims that his father was an alcoholic who became verbally and physically abusive when he drank. He states that his conviction resulted from an isolated lapse brought on by behavioral issues which he subsequently addressed and learned to manage through treatment.

Although he claims to have had an evaluation by a clinical psychologist, the Petitioner provides on appeal no psychological evaluation attesting to the degree of his rehabilitation or showing that he poses no risk to the Beneficiary. The record contains a 2013 letter from a counselor in Virginia purporting to have been the director of the Virginia facility that treated the Petitioner in 2003, but this correspondence is not on the letterhead of the facility and does not explain the drafter's present or past relationship with the treatment facility. Further, the letter describes only generally the treatment methodology of the sex offender treatment group to which the Petitioner was assigned, and the Petitioner has not submitted a report by the individual who provided treatment to the Petitioner or the leader of his group therapy sessions. There are no contemporaneous progress notes from either group or individual sessions nor any treatment summary by the person charged with clinical supervision of the Petitioner. While the letter states the Petitioner is not at risk to reoffend, this conclusion is based on the fact of his completion of group therapy rather than upon any specific testing evaluating his recidivistic tendencies.²

² Although by 2003 a risk assessment tool called the Static-99 was already in use in Virginia, there is no evidence that

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The Petitioner states that the Beneficiary is a mature adult female and asserts that he poses no risk to her, and he further states that no minor is included in the fiancée petition. There is no statement on the record from the Beneficiary indicating that the Petitioner has informed her of his conviction for a sex offense involving a minor and addressing whether she believes he poses a risk to her safety or well-being or to that of her [REDACTED] son. Further, although the Petitioner has requested that the Beneficiary's son be removed from the petition, the Beneficiary's son would not be precluded from obtaining a K-2 visa and traveling to the United States with his mother if the petition were approved.

We find the totality of the evidence insufficient to demonstrate beyond a reasonable doubt that the Petitioner poses no risk to the Beneficiary's safety or well-being or to that of her son. Although the record contains supportive letters from the Petitioner's friends, family members, and co-workers, there is no letter from the Beneficiary indicating she is aware of his sexual offense or stating whether she believes she and her son would be at risk. The Petitioner submits no letter or progress notes from the psychologist who led his court-ordered therapy in 2003, nor any recent evaluation from a clinical psychologist assessing his current psychological condition and likelihood to reoffend. The only psychological evidence on record is a statement written ten years after treatment concluded from a former director of the facility where group and individual therapy occurred. The statement does not address the risk posed to this specific Beneficiary by this Petitioner, nor discuss the Petitioner's current level of control of his compulsive tendencies.

Based on the circumstances of the Petitioner's 1999 sex offense, in which he traveled for the purpose of meeting and engaging in sexual conduct with an individual he believed to be 13 years old; his possession of child pornography referenced in his conviction record;³ insufficient evidence of his psychological treatment, rehabilitation, and current risk to reoffend; and lack of evidence that he divulged his sex offense conviction to the Beneficiary, we find that the Petitioner has not established beyond a reasonable doubt that he represents no risk to the Beneficiary or to her son.

IV. 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.

the Petitioner was administered this or any other objective test. 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.

³ The Petitioner's motion for a reduced sentence referred to the prosecution's memorandum indicating that child pornography was found during a post-arrest search of the Petitioner's home. However, as noted above, the Petitioner did not provide any more information or explanation concerning these pornographic materials. The record indicates that upon the Petitioner's motion, portions of the record of conviction, including the prosecutor's sentencing memorandum, were sealed, but there is no indication that the Petitioner does not possess a copy of this document or would be unable to obtain one.

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ORDER: The appeal is dismissed.

Cite as *Matter of K-A-D-*, ID# 15747 (AAO Mar. 31, 2016)