



U.S. Citizenship
and Immigration
Services

[REDACTED]

D6

Date: Office: VERMONT SERVICE CENTER FILE: [REDACTED]

DEC 18 2012

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

PETITION: Petition for Alien Fiancé(c) Pursuant to § 101(a)(15)(K)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)(i)

ON BEHALF OF PETITIONER:

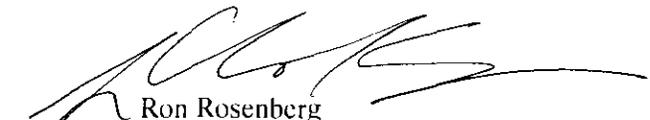
[REDACTED]

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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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 of the Vermont Service Center (the director) denied the nonimmigrant Petition for Alien Fiancé(e) (Form I-129F) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as a fiancé(e) pursuant to section 101(a)(15)(K)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(i).

Applicable Law

A U.S. citizen may file a Form I-129F petition on behalf of his intended spouse though the provisions of section 101(a)(15)(K) of the Act, which states, in pertinent part:

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 (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[.]

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).

Facts and Procedural History

The petitioner filed the Form I-129F with USCIS on March 22, 2010. The director subsequently issued a notice of intent to deny (NOID) the petition, 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 in 1998, the petitioner was convicted of being a party to two counts of soliciting a child for prostitution in the State of Wisconsin. The director requested that the petitioner submit evidence that he posed no risk to the beneficiary of the visa petition, and provided the petitioner with a detailed list of acceptable evidence.

In response to the director’s NOID, the petitioner submitted, *inter alia*: dispositions of his arrests and convictions for the crimes of soliciting a child for prostitution and bank robbery, including but not limited to, sentencing and court transcripts; evidence relating to his probation; letters from family members and friends; evidence relating to psychological evaluations and treatments that the petitioner has undergone; statements from the petitioner and beneficiary; and evidence relating to the petitioner’s community service. The director subsequently denied the petition because the evidence in the record was insufficient to demonstrate that the petitioner poses no risk to the beneficiary. On appeal, counsel submits a brief and copies of documents already in the record.¹

¹ Counsel filed the appeal on July 11, 2011, indicating that he would submit a brief or additional evidence to the AAO within 30 days. Counsel submitted his brief in August 2011 and in June 2012 he sought to further supplement the record by submitting a second brief, a second letter from the beneficiary, a letter from the beneficiary’s parents, and copies of evidence already in the record. The regulation at 8 C.F.R. § 103.3(a)(2)(vi) requires an affected party to make a written request for additional time to submit a brief. Here, counsel did not make such a request; he simply submitted materials for consideration ten months after conclusion of the briefing period. The AAO is not required to, and will not, consider this supplemental evidence in our decision, as the briefing period ended in August 2011.

Analysis

In proceedings for a Form I-129F petition, the petitioner bears the burden of proving eligibility for the requested visa classification. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met because the petitioner has failed to establish that he poses no risk to the beneficiary.

The record of conviction reflects that on March 16, 1998, the petitioner was convicted of two counts of being a party to the solicitation of a child for prostitution in violation of sections 939.05 (parties to a crime) and 948.08 (solicitation of a child for prostitution) of the Wisconsin Statutes (W.S.A.).² He was sentenced to eight years of imprisonment on each count to be served concurrently. Public records of the Wisconsin Department of Corrections also show that the petitioner is required to register as a sex offender in the State of Wisconsin until May 19, 2028. In addition, the record contains the petitioner's record of conviction for bank robbery, also in the State of Wisconsin, for violating 18 U.S. Code § 2113(a). On July 30, 1999, the petitioner was sentenced to forty-six months in prison for this offense.

The petitioner provided a statement describing the conduct that led to his 1998 conviction for being a party to two counts of soliciting a child for prostitution. According to the petitioner, he was working in the music industry when he met [REDACTED] who was the owner of an escort service. The petitioner stated that at first [REDACTED] showed him forged documents indicating that two girls who worked for the escort service were eighteen years old but he later learned that the girls were minors. The petitioner claimed that his role was to send the two girls on "strip tease" shows, and that he sent them out on five shows before he learned that they were underage, and two shows after he became aware that they were minors. The petitioner described his role in the escort service as follows:

I became involved with [REDACTED] when the girls that worked for him would steal money from him when he would leave town for business. So he asked if he could forward his phone to the recording studio where I spent a lot of time, and [REDACTED] would drop off a list of girls that were [sic] able to work usually 5 to 10. A client would call and I would call a girl on the list and give her the client's phone number, and if the client took the show the girl would confirm it with me and I would make a note of it that is it. [REDACTED] would look at the notes I made and collect his

² Section 939.05 of the W.S.A (parties to crimes) states, in pertinent part:

"(1) Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although the person did not directly commit it

(2) A person is concerned in the commission of the crime if the person:

(a) Directly commits the crime; or

(b) Intentionally aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. . . ." Wis. Stat. Ann. § 939.05 (West 1998)

Section 948.08 of the W.S.A (soliciting a child for prostitution) states, in pertinent part:

"Whoever intentionally solicits or causes any child to practice prostitution or establishes any child in a place of prostitution is guilty of a . . . felony." Wis. Stat. Ann. § 948.08 (West 1998)

³ Name withheld to protect identity.

monies[.] I would get no monetary payment[.] I did this because we were partners in the music business.

* * *

I did not hire the girls or participate in hiring any girls. I did not promote the escort service and my name was not on the license for the escort service.

The petitioner's description of himself as a passive and seemingly innocent assistant to ██████ in the operation of the escort service is, however, belied by information in the transcript of the October 13, 1997 preliminary hearing (*hearing transcript*) that the petitioner submitted below. As shown by the judge's remarks, the court found the petitioner much more complicit in the operation of the escort service than the petitioner described in his statement. According to the judge:

If there is any question about [the petitioner], I'm satisfied from the evidence adduced that he was either an agent of or in direct communication and control of ██████ in . . . acquiring these two minors to perform the acts that they were sent out on the street to do

The evidence is undisputed that they had a contractual relationship not only between the juveniles . . . and the institution in the person of ██████ and [the petitioner], to go out at their direction and under their control, since they not only were taken to and from locations by these defendants on various occasions, but also were provided protection and security by these particular defendants, and perform certain conducts for money.

* * *

In this particular instance there has been testimony . . . that ██████ and the petitioner] had knowledge of the fact that in conjunction with performing these "services," that they did engage in acts of prostitution, and in fact, that this had been communicated back to ██████ and the petitioner].

Hearing transcript at 24-25

The judge's summary of the evidence demonstrates that the petitioner's involvement in the escort service went beyond just answering the phone and collecting money from the girls on behalf of ██████ he was not the passive observer as he described himself. Counsel states on appeal that the petitioner has taken "extraordinary efforts to become rehabilitated, and such efforts have been successful." However, in his statement submitted to USCIS, the petitioner minimizes his role in the escort service to such an extent that counsel's claim regarding the petitioner's rehabilitation has little merit. His statement also diminishes the probative value of his claim that he poses no risk to the beneficiary's safety and well-being.

The record also contains a letter from ██████ dated November 12, 2010, who had treated the petitioner in group and individual settings until he was discharged from therapy in 2008. ██████ attested to the petitioner's capability of maintaining a healthy marital relationship with the beneficiary given the length of the couple's relationship, but did not opine on whether the petitioner would pose a

risk to the beneficiary. In her June 4, 2008 *Discharge Summary and Progress Report*, [REDACTED] identified the petitioner's high risks, in part, as: plausible deniability; issues with morals and integrity; thinking distortions; and lack of empathy. Although she stated in her November 12, 2010 letter that the petitioner was cognizant of his high risks as well as his interventions, she did not explain how such risks would affect the beneficiary.

The record also contains two letters from [REDACTED], a licensed psychologist. In his first letter, dated July 1, 2009, [REDACTED] asserted that he had been treating the petitioner for depression since 2008, but this letter did not discuss the petitioner's relationship with the beneficiary, other than to say that the petitioner described being in a committed relationship with someone whom he planned to marry. In his October 27, 2010 letter, [REDACTED] stated that he was "not aware of any documentation which substantiates that [the petitioner] poses any imminent danger to himself or others"; however, [REDACTED] did not identify the documentation to which he was referring or provide any evidence that he conducted any psychological tests of the petitioner. [REDACTED] two letters fail to provide any probative information regarding any risk that the petitioner may pose to the beneficiary.

The beneficiary indicated in her undated statement submitted below that she met the petitioner when he was a prisoner, but she does not explain whether she was aware that he was in prison for sex offenses against minors, bank robbery, or both. Nothing in her statement indicates that the petitioner told her about the nature of his crimes against the girls in the escort service, such as the petitioner's victims' ages, and how he participated in operations of the escort service. The beneficiary also does not disclose that she is aware that the petitioner must register as a sex offender in the State of Wisconsin until the year 2028. The letters from the petitioner's family and friends describe him in a positive light, and the record contains evidence of the petitioner's laudable community service and charitable work. However, the evidence in the record overall does not demonstrate that the petitioner poses no risk to the beneficiary.

Conclusion

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). *De novo* review of the relevant evidence fails to demonstrate that the petitioner poses no risk to the beneficiary and the petition will remain denied.

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.

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