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

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 0 6 2013 Office: VERMONT SERVICE CENTER FILE

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 Vietnam, 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 that he posed no risk to the safety and well-being of the beneficiary. On appeal, counsel provides 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:

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[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 July 25, 2008. The petitioner initially submitted, *inter alia*: his own personal statement; a letter from the beneficiary's aunt, a letter from the beneficiary's uncle, ; the judgment and sentencing order from the petitioner's conviction record; an order to discharge the petitioner from probation; and a letter from sex offender program supervisor with the Sixth Judicial District Department of Correctional Services in Iowa. 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 June 3, 2004, he was convicted of lascivious acts with a child in violation of Iowa Code section 709.8. The petitioner was given a suspended sentence of five years and placed on probation for three years. 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 posed 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 as additional evidence: a letter from psychologist with the Sixth Judicial District of the Department of Correctional Services in Iowa; a letter from his employer, and a letter from his coworker, The director denied the nonimmigrant visa petition because the petitioner failed to demonstrate that he posed no risk to the safety and well-being of the beneficiary of the visa petition.

On appeal, counsel asserts that the petitioner has not reoffended since his conviction and he successfully participated in a sex offender treatment program. Counsel states that the petitioner was discharged from his term of probation and his citizenship rights have now been restored. Counsel states that the Adam Walsh Act does not apply to the beneficiary because she does not have any children. Counsel contends that the director imposed a heightened standard of proof beyond the language of the Adam Walsh Act.

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 brief submitted on appeal, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

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

The petitioner's record of conviction reflects that on June 3, 2004, he pled guilty to lascivious acts with a child in violation of section 709.8 of the Iowa Code. The petitioner was given a five year suspended sentence, placed on probation for three years and ordered to pay fines and restitution. The conditions of the petitioner's probation included the completion of a sex offender treatment program and no contact with the victim. The petitioner was also required to register as a sexual predator.

At the time of the petitioner's conviction, section 709.8 of the Iowa Code provided, in pertinent part:

> It is unlawful for any person eighteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:
>
> 1. Fondle or touch the pubes or genitals of a child.
>
> 2. Permit or cause a child to fondle or touch the person's genitals or pubes.
>
> 3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.
>
> 4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.
>
> Any person who violates a provision of this section shall, upon conviction, be guilty of a class "D" felony. . . .

Iowa Code Ann. § 709.8 (West 2004).

The petitioner's offense is, therefore, the "specified offense 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

Upon a full review of the record, we find that the petitioner has not overcome the basis of denial. Although counsel asserts that the director imposed a heightened standard of proof, we find no error in the director's decision the petitioner has not established that he poses no risk to the beneficiary. Counsel asserts that the petitioner "successfully completed counseling and rehabilitation programs." Counsel cites to letters the petitioner submitted from a sex offender program supervisor, and , a psychologist with the Department of Correctional Services. stated in a May 7, 2008 letter that the petitioner successfully completed the conditions of his probation and scored low on a risk assessment conducted in 2004. In his August 24, 2009 letter summarized the psychosexual evaluation he conducted when the petitioner was convicted in July 2004. He noted that the petitioner successfully completed a sex offender treatment program in

May 2007. Although Mr. and Mr. confirm that the petitioner completed a sex offender treatment program, the risk assessments they discuss were conducted immediately following the petitioner's conviction in 2004. The record is devoid of recent certified evaluations by psychiatrists, clinical psychologists, or clinical social workers attesting to the petitioner's rehabilitation and behavioral modification.

The petitioner has also failed to demonstrate that he has taken responsibility for his offense. In his statement, the petitioner does not discuss the circumstances of his offense and subsequent rehabilitation. The petitioner submitted the judgment and sentencing order from his conviction record, but failed to provide a copy of the information, complaint, or any other document to show the underlying criminal act of which he was convicted. The petitioner has also not indicated whether he has informed the beneficiary of his conviction. Although counsel asserts that the Adam Walsh Act does not apply to the beneficiary because she is an adult who does not have any children, the record does not contain a statement from the beneficiary, who is 28 years old, that acknowledges the petitioner's criminal history and confirms her desire to not have any biological or adopted children. The petitioner submitted letters from his supervisor, coworker, the beneficiary's aunt, and the beneficiary's uncle, attesting to his good moral character and strong work ethic. Of these individuals, only stated that he has knowledge of the petitioner's conviction. None of the other individuals who have attested to the petitioner's good moral character indicate that they are aware of his conviction. The petitioner's professional accomplishments and the statements attesting to his good moral character do not overcome his failure to demonstrate that he has taken responsibility for his sex offenses, is fully rehabilitated, and poses no risk to the beneficiary.

On appeal, counsel asserts that the denial of this petition has violated the petitioner's constitutional right to marry. Counsel is mistaken. A fiancée visa petition is an immigration benefit, not a constitutional right. *See Chiang v. Skeirik*, 582 F.3d 238, 242 (1st Cir. 2009) ("There is no authority for the view that a United States citizen has a constitutional right to engage in a marriage ceremony in the United States at which the foreign national is present.") Despite the denial of this petition, the petitioner remains free to marry the beneficiary in Vietnam or another country. *See Id.* (noting that the petitioner had "always been free to marry [the beneficiary] in China, in a third country, or, possibly, in the United States by proxy.").

Conclusion

Based on the foregoing discussion, the evidence of record does not support the petitioner's assertions that he poses no risk to the safety and well-being of the beneficiary. In fiancée visa petition proceedings, it is the petitioner's 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.