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

[redacted]

Date: DEC 12 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. On a subsequent motion to reopen and reconsider, the Director affirmed the decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and 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 Vietnam, as the fiancée 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 he failed to demonstrate that he posed no risk to the beneficiary. On appeal, counsel provides a brief and additional evidence.

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 U.S. Citizenship and Immigration Services (USCIS) on December 22, 2008. The director subsequently issued two notices of intent to deny (NOIDs), indicating that the petitioner could be prohibited from filing a family-based visa petition on behalf of the beneficiary because the evidence of record indicated that, in March 1992, he was convicted of annoying or molesting a child in violation of section 647.6 of the California Penal Code. 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 NOIDs, the petitioner submitted the following relevant evidence: letters from licensed marriage and family therapist; a letter from licensed clinical social worker; affidavits from the petitioner and the beneficiary; electronic mail correspondence between the petitioner and the beneficiary; the police incident report for the petitioner's arrest for child molestation; the court disposition and terms of probation for the petitioner's conviction for annoying or molesting a child; an order expunging the petitioner's conviction under section 1203.4 of the California Penal Code; a California certificate of rehabilitation; the incident report related to the petitioner's arrest in Illinois in January 1980 for public indecency; and the disposition for the petitioner's conviction for three counts of public indecency. 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 motion, the petitioner submitted the following additional evidence: statements from the petitioner and beneficiary; a letter from the petitioner's sister; a letter from the petitioner's second wife; a letter from licensed marriage and family therapist; letters from members of his church, Senior Pastor Dr. , Reverend Dr. Reverend and Reverend certificates of recognition from the petitioner's church; receipts from the petitioner's registration with the local police department; a psychological assessment and lesson plans from the petitioner's sex offender treatment program; and therapy invoices from The

director granted the motion to reopen and reconsider, but determined that the petitioner did not overcome the grounds for denial and affirmed the prior decision to deny the petition.

On appeal, counsel submits a legal brief and additional evidence: letters from the petitioner, the beneficiary and the petitioner's 11-year-old daughter; the petitioner's daughter's birth certificate; a psychological evaluation from Dr. ; and the petitioner's 2011 tax return showing his daughter as his dependent.

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 April 23, 1980, he was convicted in Illinois of three counts of public indecency and sentenced to one year of probation and a fine. In March 1992, the petitioner was convicted of annoying or molesting a child in violation of section 647.6 of the California Penal Code. The petitioner was sentenced to 30 days in jail and two years of probation with an order to register as a sex offender and participate in a treatment program. At the time of the petitioner's conviction for public indecency, section 11-9 of the Illinois Statutes provided, in pertinent parts:

> (a) Any person of the age of 17 years and upwards who performs any of the following acts in a public place commits a public indecency:
>
> (1) An act of sexual intercourse; or
>
> (2) An act of deviate sexual conduct; or
>
> (3) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of the person; or
>
> (4) A lewd fondling or caress of the body of another person of either sex
>
> . . . .

38 Ill. Stat. Ann. § 11-9 (West 1980)

At the time of the petitioner's conviction for annoying or molesting a child, section 647.6 of the California Penal Code provided, in pertinent part:

> Every person who annoys or molests any child under the age of 18 is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for not exceeding one year or by both the fine and imprisonment. . . . .

---

[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).

Cal. Penal Code § 647.6 (West 1992).

The incident reports for the petitioner's conviction for public indecency state that the petitioner exposed himself to minor children. The incident report for the petitioner's second conviction, annoying or molesting a child, shows that the victim of the petitioner's molestation was the petitioner's minor stepdaughter. The petitioner's two convictions are, therefore, "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

The petitioner has provided four statements in which he asserts that he has taken responsibility for his offenses and his rehabilitation. In his most recent statement, dated November 28, 2012, the petitioner asserts that he began sex offender treatment with in December 1991 and entered into group therapy for a twelve-week class. He stated that he thereafter remained in therapy with Mr. for twelve years during which time he was able to change his thinking patterns. He recounted that he and his second wife were also in couple's therapy with who specializes in working with families and sex offenders. He stated that through the couple's therapy sessions he and his second wife learned that he would not be of risk for reoffending and they could marry and have a child together. The petitioner stated that they have an 11-year-old daughter together and he has a good relationship with her and has made sure appropriate boundaries are set. The petitioner noted that in 2005 he started seeing his current therapist, , after Mr. retired. He stated that his church has also helped him learn to be accountable for his choices and actions. He contended that he has informed the beneficiary of his convictions and she trusts him and knows of his efforts to become a better person. Despite the petitioner's assertions about how he has rehabilitated himself, he does not acknowledge the span of time during which the molestation occurred (five to six years), or examine the effects of his behavior on his stepdaughter, who he victimized from the time she was eight until she was thirteen years old.

In the beneficiary's most recent (undated) letter, she provided that she has known the petitioner for five years and has knowledge of his past offenses. She stated that the petitioner has never abused or harassed her during their meetings. She contended that she is 38 years old and knows that the petitioner is not a risk to her. In her prior March 8, 2011 letter submitted on motion, the beneficiary recounted that she and the petitioner have been in contact for several years and he has visited her in Vietnam. She noted that the petitioner requested that she inform her family members about his sex offenses. The beneficiary stated that she and the petitioner plan to visit a therapist when she comes to the United States to address any questions or concerns that she may have. In her October 23, 2009 letter submitted in response to the first NOID, the beneficiary noted that she is happy that the petitioner does not want to have more children. She explained that not having children is fine with her because the petitioner already has children.

On appeal, counsel asserts that unlike the victims of the petitioner's crimes, the beneficiary is an adult who is aware of his offenses and does not feel threatened by him. Nonetheless, the statute does not limit the application of section 204(a)(1)(A)(viii) of the Act to instances where the intended beneficiary is a minor. It requires all citizens convicted of specified offenses to establish that they pose no risk to "the alien with respect to whom a petition ... is filed." Congress has chosen not to

limit the application to child beneficiaries and USCIS cannot create such a limit. By the plain language of the statute, the provision applies to all petitions (regardless of the age of the intended beneficiary) where the petitioner has been convicted of a specified offense against a minor.

Counsel also claims that because the petitioner has not harmed his minor daughter over whom he has retained joint custody, he also poses no risk to the beneficiary. The petitioner's second wife stated in her letter that she has known the petitioner since 1992 and believes that he has been rehabilitated. She noted that the petitioner "has taken his abusive past and his offenses and used them as a catalyst to change his life and break the chain of abuse and dysfunction that ran through his family." She stated that after a year of couple's counseling, they made the decision that the petitioner had evolved as a person and they were ready to marry and have a child together. She noted that although they divorced in 2009, they share joint custody of their daughter. She asserted that the petitioner wants what is best for their daughter and she believes that their daughter is safe with him. In her November 28, 2012 letter, the petitioner's daughter describes the custody arrangement, states that she enjoys spending time with her father and that she has spoken with the beneficiary over the telephone and corresponded with her by electronic mail. These letters indicate that the petitioner has maintained a healthy relationship with his daughter, but are insufficient to show that he poses no risk to the beneficiary.

The letters from members of the petitioner's church; Senior Pastor Dr. Reverend Dr. Reverend and Reverend attest to the petitioner's good moral character, but none of these individuals indicates that he or she is aware of the petitioner's specific criminal offenses of molesting his stepdaughter and public indecency in the presence of children.

The petitioner's previous therapist, Mr. stated in his letter dated October 22, 2009 that he had seen the petitioner during their treatment sessions from December 18, 1991 until June 29, 2005. He noted that their therapy covered psychological testing and weekly individual and group treatment. He stated that the petitioner "learned his lesson and changed his attitudes and developed an ethic that changed him." Mr. opined that the petitioner "was committed to changing his attitudes, his self-control, his self-knowledge and growth in empathy that would preclude further offense." He also opined that the petitioner "was at no further risk to re-offend by the end of treatment."

Ms. the therapist the petitioner saw in couple's therapy with his second wife, stated in her March 7, 2011 letter that the petitioner "presented throughout the period of couples' therapy as highly motivated for change and fully understanding his responsibility for his past and future choices." She opined that at the conclusion of their sessions "the couple had made considerable progress in understanding and handling the issues for which they came to therapy, and that the risk of another molest by [the petitioner] was low."

The petitioner's current therapist, Ms. also noted in her October 28, 2009 letter that the petitioner has "elected to remain in therapy well beyond the required period of time to cement his gains and, further, to understand and refine those characterological traits which may otherwise interfere with healthy functioning." She opined that the petitioner "works at a high level of integrity and depth and is rigorous in his self-regulation in the various aspects of his current life." She stated that the petitioner "has a young biological daughter (as well as older son(s)) and appears to relate to her with the utmost respect."

On appeal, the petitioner submits a psychological evaluation dated November 28, 2012 from Ph.D. Dr. stated that during the evaluation he: reviewed the petitioner's conviction records and sex offender treatment program materials; conducted clinical interviews with the petitioner's therapists and second wife; and administered, scored and interpreted psychological tests and instruments, which included the Personality Inventory, Psychopathy Checklist, HCR-20 Violence Risk Assessment Guide and the Spousal Assault Risk Assessment Guide. Dr. stated that after considering the totality of the data gathered during the evaluation, it is in his opinion "with a reasonable degree of professional certainty, that [the petitioner's] risk of harm to a romantic partner (or anyone else) is very low and similar to the typical American middle-age male."

The AAO does not dispute the expertise of the mental health professionals who have written letters on the petitioner's behalf and provided their opinions on his risk of reoffending. Their letters and the other relevant evidence in the record indicate that the petitioner has undergone years of therapy, taken substantial steps to rehabilitate and presents a low risk of reoffending. However, 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]

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

Conclusion

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. The petition remains denied.

[2] *See supra* note 1.