(b)(6)

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

[redacted]

Date: MAY 30 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 with the field office or service center that originally decided your case by filing a 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 visa petition 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 the fiancée of a United States citizen 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).

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, the petitioner submits a statement.

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. *See* Adam Walsh Act, Pub. L. 109-248, §§ 2, 102, 501 (Jul. 27, 2006) (recognizing Adam Walsh, naming victims and stating findings regarding child pornography).

Section 111(7) of the Adam Walsh Act states:

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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).

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.

Facts and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on March 6, 2008. In March 2010, the Director of the California Service Center issued a combined notice of intent to deny (NOID) and Request for Evidence (RFE) because the evidence of record indicated that the petitioner was convicted of criminal sexual assault against a victim under the age of fourteen in the State of Illinois. Jurisdiction over the pending Form I-129F was transferred to the Vermont Service Center director, who issued a second NOID in December 2010. Both directors 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 directors provided the petitioner with a detailed list of acceptable evidence.

In response, the petitioner submitted: personal statements; a copy of an *Illinois Sex Offender Registration Act Registration Form*, dated September 2007; an undated motion to vacate and/or amend the petitioner's sentence with an attached affidavit of the petitioner, dated April 2010; a statement of the beneficiary; and evidence relating to the birth of the petitioner and the beneficiary's daughter in the Philippines in January 2011. The director determined that the evidence was insufficient to demonstrate that the petitioner posed no risk to the safety and well-being of the beneficiary of the visa petition and he denied the Form I-129F. The petitioner filed a timely appeal.

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 to petition for the beneficiary as the fiancée of a U.S. citizen. The petitioner's claims do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Analysis

Although requested by both the California and Vermont Service Center Directors, the petitioner did not submit certified copies of his conviction records. According to an undated statement of the petitioner, the "[o]riginal paperwork was lost during floods" and he, therefore submitted a copy of an *Illinois Sex Offender Registration Act Registration Form* (registration form), dated September 2007, that "shows all the file numbers and document file numbers for Federal, State, City, and all miscellaneous file numbers to cross reference [his] files." The petitioner indicated on the registration form that on October 6, 2000, he was convicted of criminal sexual assault of a fourteen-year-old victim in violation of Chapter 720, section 5/12-13(a)(1), of the Illinois Compiled Statutes (ILCS) and was sentenced to thirty months of probation. Although not provided on the registration form, information from the Illinois Sex Offender Information (ISOFI) website[1] indicates that the petitioner was additionally convicted of aggravated criminal sexual abuse of a victim between the ages of thirteen and sixteen in violation of 720 ILCS § 5/12-16.

At the time of the petitioner's convictions, 720 ILCS § 5/12-13(a)(1) provided, in pertinent part: "the accused commits criminal sexual assault if he or she . . . commits an act of sexual penetration by the use of force or threat of force." 720 Ill. Comp. Stat. Ann. § 5/12-13(a)(1) (West 2000). Aggravated criminal sexual abuse is a violation of 720 ILCS § 5/12-16 and occurs, in part, when: "the accused was 17 years of age or over and . . . (ii) commits an act of sexual conduct with a victim who was at least 13 years of age but under 17 years of age when the act was committed and the accused used force or threat of force to commit the act[.]" 720 Ill. Comp. Stat. Ann. § 5/12-16(c)(1) (West 2000). As 720 ILCS § 5/12-16 specifies the age of the victim and the petitioner affirmatively stated on the registration form that his victim was fourteen years old, the petitioner's offense is a "specified offense against a minor" defined under section 111(7)(H) and (I) of the Adam Walsh Act (criminal sexual conduct involving a minor and a sex offense against a minor).

Because the evidence demonstrates that the petitioner was convicted of a specified offense against a minor he must establish that he poses no risk to the safety and well-being of the beneficiary.

In an undated statement that was received in April 2010 by the Director of the California Service Center, the petitioner stated the following about his crime:

> I have been a law abiding citizen for most of my life. I happen[ed] to get caught up in a situation that falsely accused me of some serious hateful acts. The accuser happened to be a troubled teen who was using drugs and had multiple arrests. . . . I was married for 21 years prior to getting to know this child's mother thru [sic] work. I did her a favor of trying to help but it got me in trouble.

The petitioner provided further information about the crime and his subsequent punishment in a brief, undated statement submitted in support of the Form I-129F:

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[1] Illinois Sex Offender Information at www.isp.state.il.us/sor (last visited May 28, 20131).

> [I] have probation for 30 months which I have successfully completed and remained employed and record free from any other charges[.] I was accused in this plea agreement by my former fiancé['s] oldest son who was on drugs and in trouble with the law for a good part of his juvenile years, so with not having the money to fight these charges through jury trial and giving in [to] the pleas of my children on accepting this agreement I reluctantly accepted not knowing that I would be labeled for 10 years as a sex offender[.]

The petitioner claims that he was sentenced to 30 months of probation and that he was required to register as a sex offender for only ten years. Although requested in both NOIDs, the petitioner has not submitted any evidence to substantiate the sentence(s) imposed upon him by the court. Such evidence includes, but is not limited to: certified copies of his conviction records, evidence relating to the terms and conditions of his probation, and documentation of successful completion of his probation. While the petitioner states that all of his original documents were destroyed in a flood, he fails to explain why he could not obtain records of his conviction(s) from the Circuit Court of Cook County, Illinois at the present time. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner states that the provisions of the Adam Walsh Act should not apply to him because the law was enacted after his 2000 conviction and he was not aware that his plea could potentially jeopardize his ability to marry and start a family. In general, an application for benefits under the Act is adjudicated according to the facts and law as they exist on the date of the USCIS decision. *See Matter of Alarcon,* 20 I&N Dec. 557 (BIA 1992). The Adam Walsh Act was entered into force on its effective date, July 27, 2006, and as the petitioner filed the Form I-129F in March 2008, he is subject to section 402(b) of the Adam Walsh Act, as codified at section 101(a)(15)(K)(i) of the Act. That provision applies to U.S. citizens who have "been convicted of a specified offense against a minor," regardless of the date of the conviction.

According to the ISOFI website, the petitioner is listed as a "sexual predator" and is required to annually register as sex offender for his natural life. Although the petitioner implies that he was wrongfully accused by his victim, who was on drugs and in trouble with the law at the time of the offense, the record shows that the petitioner was convicted of a specified offense against a minor and regardless of his present claims, we cannot go behind his criminal conviction to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031 (BIA 1999); *Matter of Fortis*, 14 I&N Dec. 576 (BIA 1974).

In his April 2010 statement, the petitioner asserted that he went to counseling and was evaluated by a clinical sex therapist who certified that in her opinion, the petitioner was not a harm to society; however, the petitioner submits no evaluation to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Other than his statement that he is a law-abiding citizen, the petitioner has provided no evidence of his rehabilitation including, but not limited to: documentation of his successful completion of probation

and all other terms of his sentence; evaluations by psychiatrists, clinical psychologists, clinical social workers or other mental health professionals with experience in assessing risk and recidivism of sexual offenders attesting to the petitioner's rehabilitation or behavioral modification; a personal statement accepting responsibility for his crime and describing the probative details of his rehabilitation; and letters from family members, coworkers, supervisors or members of the community attesting to his good moral character. In her statement, the beneficiary describes how she and the petitioner met and her feelings towards him, but she does not indicate that she is aware of the petitioner's criminal conviction for sexually assaulting a fourteen-year-old boy or that the petitioner must register as a sex offender in the State of Illinois for the remainder of his natural life. The evidence fails to demonstrate that the petitioner 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.