(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-R-

DATE: DEC. 24, 2015

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 fiancée 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 petition. The Director denied a subsequent motion to reopen and a motion to reconsider. The matter is now before us on appeal. The appeal will be dismissed.

On August 7, 2013, the Director denied the nonimmigrant visa petition, finding the Petitioner ineligible for family-based immigration benefits as he was convicted of a specified offense against a minor, and he did not demonstrate that he posed no risk to the Beneficiary. Specifically, on 1999, the Petitioner was convicted of indecency with a child-sexual contact, in violation of section 21.11(A)(1) of the Texas Penal Code (TPC). On March 31, 2014, the Director denied the Petitioner's motion to reopen and motion to reconsider finding that the Petitioner's lack of remorse over his crime or participation in counseling or rehabilitation programs were a negative factor in evaluating whether he posed a risk to his fiancée.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence submitted upon appeal.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

> 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 . . . 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 his 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.

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).

The Petitioner does not contest that he was convicted of a specified offense against a minor. On appeal, the Petitioner contends that he poses no risk to the Beneficiary as both he and the Beneficiary do not have any minor children and are of an age at which they would be unable to have children. The Petitioner submits a copy of an *amicus curiae* brief in the *Matter of Tatiana Aceijas-Quiroz* before the Board of Immigration Appeals (the Board). On May 20, 2014, the Board held that it did not have jurisdiction over the Adam Walsh "no risk" determination. See *Matter of Aceijas-Quiroz*, 26 I&N Dec. 294 (BIA 2014).

The Petitioner also asserts that, as his 1999 conviction predates the 2006 Adam Walsh Act, it cannot be used as a basis for denying the Form I-129F. Petition for Alien Fiancé(e). However, the law in effect as of the date the petition is adjudicated, not the date of the Petitioner's conviction, controls.[1]

The record contains a conviction record reflecting that the Petitioner was sentenced to 8 years in prison for indecency with a child under the age of 17 on 1999. The conviction record reflects that the Petitioner's victim was his step-daughter. On the Form I-129F, the Petitioner stated that his victim admitted that the charges were untrue. However, there is no statement from the victim supporting this contention, and a clinical evaluation of the Petitioner performed by a licensed clinical social worker (LCSW) indicates that the Petitioner admitted to the crimes of which he was convicted. The LCSW refers to a polygraph examination and determined that the Petitioner scored a 0 on the STATIC-99 actuarial assessment of risk of sexual or violent recidivism. The LCSW states that, apart from the Petitioner's sexual abuse of his stepdaughter for a five-year period, the Petitioner has no history of sexual contact with minors or sexual contact without consent, has never been accused or arrested for any type of violent offense, and poses no risk to the Beneficiary.

Upon a full review of the record, we find that the Petitioner has not overcome the basis of denial. Although the Petitioner claims he will not be a risk because both he and the Beneficiary are too old to have biological children, the record reflects that the Beneficiary has family members who may have young children to whom the Petitioner may pose a risk. Furthermore, although the Petitioner reports in the LCSW evaluation that the Beneficiary is aware of the Petitioner's criminal history, there is no evidence, such as a statement from the Beneficiary, to support this. Lastly, although the record indicates that the Petitioner committed acts against a minor, and the Beneficiary is over 60 years old, the Petitioner has not shown that the Beneficiary cannot also be a target of similar actions.

As indicated on the Form I-129F, the Petitioner has not expressed remorse for his criminal conduct or accepted responsibility for his behavior. Further, there is no evidence that the Petitioner has participated in any counseling or rehabilitation since his conviction.

A review of the relevant evidence submitted below and a full assessment of the evidence submitted on appeal does not demonstrate that the Petitioner poses no risk to the Beneficiary.

Additionally, the record lacks evidence that the Beneficiary and Petitioner had met in person within 2 years before the date of filing the petition. In support of his claim of travel to Mexico, the Petitioner submitted a self-dated photograph, two letters from friends, and an itinerary and a receipt for flights to Mexico on May 19, 2011, and returning to the United States on May 27, 2011. However, this is insufficient evidence to prove the Petitioner traveled to Mexico during the claimed period. While the record contains an itinerary reflecting that the Petitioner booked a flight to and from Mexico during the

[1] An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992)(internal citations omitted).

claimed period, the record does not contain copies of the Petitioner's U.S. passport or any other evidence of his physical travel to Mexico. An itinerary may be generated without an individual physically travelling to the destination booked. Without entry and exit stamps in the Petitioner's passport to establish that he traveled to Mexico the itinerary is insufficient evidence that the Petitioner actually traveled to Mexico. Moreover, the letters from the Petitioner's friends do not indicate that the Petitioner traveled to Mexico in 2011, but rather, in 2009.

We further find that, while the record contains a statement from the Beneficiary reflecting her intent to marry the Petitioner within 90 days of her entry into the United States, the translation of that statement does not comply with 8 C.F.R. § 103.2(b)(3):

> *Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In any future filings, the Petitioner should submit a translation for the document which complies with 8 C.F.R. § 103.2(b)(3).

The appeal will be dismissed for the above stated reasons. In fiancé(e) 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. As stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition.

ORDER: The appeal is dismissed.

Cite as *Matter of P-R-*, ID# 13921 (AAO Dec. 24, 2015)