U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-L-

DATE: AUG. 15, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as his fiancée. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). A U.S. citizen may petition to bring a fiancé(e) (and that person's children) to the United States in K nonimmigrant classification for marriage. The U.S. citizen must establish that the parties have previously met in person within two years before the date of filing the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), have a *bona fide* intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within 90 days of the beneficiary's admission as a K nonimmigrant.

The Director, Vermont Service Center, denied the fiancé(e) petition, concluding that the Petitioner is ineligible to classify the Beneficiary as his fiancée because he was convicted of a specified offense against a minor and has not demonstrated that he poses no risk to the Beneficiary's safety or well-being.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

U.S. Citizenship and Immigration Services (USCIS) may not approve a fiancé(e) petition filed by a U.S. citizen who has been convicted of a "specified offense against a minor"[1] unless USCIS, "in [its] sole and unreviewable discretion, determines that the citizen poses no risk to the [intended fiancé(e)]." *See* sections 101(a)(15)(K)(i) and 204(a)(1)(A)(viii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(viii).

[1] The term "specified offense against a minor" is defined as an offense against a minor involving any of the following: an offense (unless committed by a parent or guardian) involving kidnapping or false imprisonment; solicitation to engage in sexual conduct or practice prostitution; use in a sexual performance; video voyeurism as described in section 1801 of title 18, United States Code; possession, production or distribution of child pornography; criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct; or any conduct that by its nature is a sex offense against a minor. *See* section 111 of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, 120 Stat. 587 (2006).

The burden is on the U.S. citizen to clearly demonstrate his or her rehabilitation and to show, beyond any reasonable doubt, that he or she poses no risk to the safety and well-being of the beneficiary and any derivative child(ren). *See* Memorandum from Michael Aytes, Associate Director for Domestic Operations, USCIS, HQDOMO 70/1-P, *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* (Feb. 8, 2007), http://www.uscis.gov/laws/policy-memoranda.

II. FACTUAL AND PROCEDURAL HISTORY

The record reflects that on [redacted] 2000, the Petitioner was convicted of First Degree Sexual Assault of Child in violation of section 948.02(1) of the Wisconsin Statutes, which states:

Sexual assault of a child

(1) First degree sexual assault. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B felony.

The Petitioner was sentenced to eight years in prison, which was stayed, probation of 10 years, and to register as a sex offender.

On August 2, 2012, the Petitioner filed the instant fiancé(e) petition.[2] The Director issued a notice of intent to deny (NOID), notifying the Petitioner that his criminal records indicated that he had been convicted of a specified offense against a minor and, therefore, the Director requested police reports and court records related to his offense, as well as evidence that he poses no risk to the Beneficiary. The Petitioner responded to the NOID, but the Director ultimately determined that the Petitioner had not established that he, beyond any reasonable doubt, poses no risk to the Beneficiary's safety and well-being.

With the appeal, the Petitioner submits a letter from a sex offender treatment facilitator and a one-page sheet of scores to a STATIC-99 assessment. The record of proceedings also contains letters of support signed from the Petitioner's relatives, a record of his attendance at treatment sessions, and a letter indicating that the Petitioner had successfully completed his probation and requirements of treatment.

II. ANALYSIS

The Petitioner does not dispute that his conviction is for a specified offense against a minor. On appeal, he submits a letter, dated December 27, 2013, from [redacted] a group facilitator of the Petitioner's sex offender treatment therapy that states the Petitioner participated in sex offender treatment from [redacted] 2001 to [redacted] 2006; that he successfully completed treatment and counseling, including cognitive behavioral therapy examining the underlying beliefs that the caused

[2] The record of proceedings shows that in 2011 the Petitioner submitted a fiancé(e) petition for another beneficiary that was denied as abandoned in 2013.

his behavior; and that a relapse prevention strategy was formulated. The letter states that the Petitioner had no further violations while in the program and that "according to records" the Petitioner "continues to be free from further law enforcement involvement." further states that "through correspondence and a check of records, I was able to assess [the Petitioner] using the Static-99R" and determined that the Petitioner was at low risk to reoffend. Other than this letter and the results of the STATIC-99 assessment, the Petitioner submits no evidence on appeal, such as a brief or a personal statements, that sets forth arguments in rebuttal to the Director's stated reasons for denying the fiancé(e) petition.

letter is insufficient by itself or in conjunction with the evidence already in the record of proceedings to demonstrate that the Petitioner poses no risk to the Beneficiary.

The positive factors in the record of proceedings are: a letter, dated June 12, 2013, from an agent of the State of Wisconsin, Department of Corrections, stating that the Petitioner successfully completed his probation term, treatment requirements, and all court obligations as of 2010; and a search of the Wisconsin Department of Corrections Sex Offender Registry, which shows that the Petitioner is compliant, meeting registration requirements. The negative factors that will discuss below, however, outweigh the positive ones.

The letters from the Petitioner's family members are supportive of the Petitioner's marriage to the Beneficiary; however, none of the letter writers express their knowledge of the Petitioner's offense and speak about his rehabilitation. Noticeably absent is a letter from the Beneficiary acknowledging not only her awareness of the Petitioner's criminal history generally, but also the nature of his offense, which involved the sexual assault of his -old stepdaughter. The Petitioner has never submitted into the record of proceedings a statement expressing an understanding of or remorse for the actions that led to his conviction, discussing his and the Beneficiary's plans for having children, or addressing his employment or other activities that would reflect on the changes he has made in his life since the time of his offense that would demonstrate he poses no risk to the Beneficiary.

letter was written more than seven years after the Petitioner's treatment concluded; he does not indicate that he had any direct contact with the Petitioner during those subsequent years. Although he scored the Petitioner as being at low risk to reoffend on the STATIC-99 assessment, based the Petitioner's score on "correspondence and a check of records," not through interviewing the Petitioner and gaining information from him relevant to the risk factors listed on the STATIC-99 assessment from which derived the Petitioner's overall score. Thus, assessment of the Petitioner's rehabilitation carries little weight. In addition, does not address any risk posed to the Beneficiary by the Petitioner based on his treatment of the Petitioner in the past. When viewed in its totality, the evidence in the record of proceedings does not support a conclusion that the Petitioner poses no risk to the Beneficiary, and the fiancé(e) petition that he filed on the Beneficiary's behalf must remain denied.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-L-*, ID# 18140 (AAO Aug. 15, 2016)