



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-D-B-

DATE: JULY 7, 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 visa status 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 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 admission.

The Acting Director, Vermont Service Center, denied the petition, concluding that the Petitioner is ineligible because he was convicted of a specified offense against a minor as defined in the Adam Walsh Act, and that he had not demonstrated that he poses no risk to the safety or well-being of the Beneficiary.

The matter is now before us on appeal. On appeal, filed on November 19, 2013, and received by us on January 4, 2016, the Petitioner submits additional evidence and states that he has completed all the requirements following his felony conviction.

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

I. LAW

The Petitioner is seeking to classify the Beneficiary as his fiancée.

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.^[*]

(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 [Adam Walsh Act or AWA].

The Adam Walsh Act 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. Pub. L. 109-248, §§ 2, 102, 501 (Jul. 27, 2006).

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. Section 111(7) of the Adam Walsh Act defines "specified offense against a minor" as follows:

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

^[*] 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).

(b)(6)

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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).

II. FACTUAL AND PROCEDURAL HISTORY

The record reflects that the Petitioner was convicted on [REDACTED] 2004, in the [REDACTED] State of Utah, of four counts of a first degree felony, Attempted Aggravated Sex Abuse of a Child, in violation of Utah state code 76-5-404.1. The record shows that on multiple occasions over a period of several months the Petitioner engaged in sexual activity with his adopted daughter, who was [REDACTED] years old at the time. The Petitioner was sentenced to a suspended term of three years to life, served 120 days in jail, was fined, and was given other stipulations by the court, including paying for therapy for the victim and completing sex offender therapy.

In August 2010, the Petitioner filed the Form I-129F, Petition for Alien Fiancé(e). The Director found that the Petitioner had been convicted of a “specified offense against a minor” as defined in section 111(7) of the Adam Walsh Act and that he had not established that he now poses no risk to the safety and well-being of the Beneficiary and denied the petition accordingly.

III. ANALYSIS

The issue on appeal is whether the Petitioner has established that he poses no risk to the Beneficiary. The Petitioner does not dispute that his conviction is for a sex offense against a minor as defined under section 111(7) of the AWA, but rather he seeks to establish that he poses no risk to his fiancée. The Petitioner bears the burden of demonstrating, beyond any reasonable doubt, that he poses no risk to the Beneficiary. Upon a full review of the record we will dismiss the appeal.

The Petitioner asserts that he completed all the requirements of probation, that all sentences and treatment requirements have been fulfilled, that he provided therapy and treatment for the victim, and that he is listed on the sex offender registry until [REDACTED] 2017. He states that he took his treatment program seriously and that he has taken a test that determined his sexual arousal is within the normal range. He claims that the Beneficiary is aware of his conviction and has talked with the victim, and that everyone with knowledge of his offense knows he will be a responsible husband. The Petitioner states that he made a mistake but has done all possible to make amends and seek rehabilitation. He further states that since his conviction he has remained employed and has raised three children.

In support, the Petitioner submits a 2013 letter from the psychologist who provided a 2003 psychosexual evaluation and progress reports to the judge presiding over the Petitioner’s criminal case. Among documents submitted to the record are: a 2004 presentence investigation report; proof of the Petitioner’s sex offender registration; the 2003 psychosexual evaluation; certificates of completion for psychoeducational skills classes dated October 20, 2003, and December 6, 2003; the

progress reports from 2003, 2004, 2005, and 2007; a probation progress report from 2007; a 2013 letter of support from the Petitioner's employer; a 2013 email from the Petitioner's former spouse, who is the mother of the victim; and letters of support from friends and from the Beneficiary's family.

Regarding documentation in the record, the November 2013 letter from the psychologist states that following a 2003 psychosexual evaluation, the Petitioner successfully completed the sexual offender treatment program certified by the State of Utah and more than one year of psychotherapy and that his performance was exemplary. It further states that a polygraph test had supported the Petitioner's contention that there had been only one victim, and that subsequent tests confirmed he had not reoffended and did not have inappropriate sexual attraction. The letter states that the Petitioner's sexual arousal patterns were reassessed on November 14, 2013, and that results were within the normal range. The letter concludes that the Petitioner does not appear to be a risk to reoffend and there appears to be no clinical reason that he should not be allowed to marry his fiancée.

The record also includes a March 13, 2007, progress report from the Petitioner's psychologist to the court indicating that the Petitioner made good effort in his assignments and that it would be appropriate to discontinue his court-ordered treatment and probation, but that it was recommended he continue group sessions once a month. A probation progress report, dated January 23, 2007, indicates the Petitioner completed the requirements under probation, including financial obligations, with no violations, and that he had reached maximum benefit, he had a good family support system, and he was an appropriate candidate for early termination.

The 2004 presentence report describes the Petitioner's actions that led to his conviction and states that the actions took place over several months and that the Petitioner did not disclose the abuse voluntarily, but that the victim had reported it to a neighbor. The report states that the Petitioner was then cooperative when contacted by detectives. The report includes a statement from the Petitioner describing how his actions progressed and stating that he had taken advantage of the victim, he was sad and regretful for causing everyone pain, he had taken away the victim's innocence, and he hoped the victim's life will not be ruined.

In a 2013 letter to U.S. Citizenship and Immigration Services (USCIS) the Petitioner stated that he takes full responsibility for his actions when he sexually abused his underage adopted daughter. The Petitioner stated that after his pastor was made aware the Petitioner called police to explain, made an appointment with them, and then confessed. He further stated that he provided therapy and treatment for the victim and that all sentencing requirements have been fulfilled.

The evidence in the record is insufficient to demonstrate beyond any reasonable doubt that the Petitioner poses no risk to the Beneficiary. The record contains no documentation and little information from 2007 to 2013 to support the Petitioner's contentions that he has rehabilitated and is not at risk to reoffend. Although evidence shows that the Petitioner successfully met probation and therapy requirements following his conviction, there is no evidence of the Petitioner's continued rehabilitation as the record contains no evidence that he continued counseling as recommended in

the 2007 progress report. Although the 2013 letter from the psychologist concludes that the Petitioner does not appear to be a risk to reoffend and there appears to be no clinical reason that he should not be allowed to marry, the letter provides only general information with little detail and no specific data results for testing of the Petitioner and does not explain or detail the tests that confirmed he had not reoffended and did not have inappropriate sexual attraction.

The Petitioner contends that the Beneficiary knows of his conviction, but there is no statement from the Beneficiary or other evidence in the record that she is aware of his conviction, nor do letters of support for the Petitioner indicate knowledge of his conviction. A 2013 letter from the Petitioner's employer states that he demonstrates the highest standards in his work quality and he trusts him around family and further indicates that he is aware of Petitioner's background, but offers no further detail concerning his knowledge of the Petitioner's criminal conviction.

The record contains insufficient evidence to establish the Petitioner's continued rehabilitation and lacks evidence that he divulged his conviction for attempted aggravated sexual abuse to the Beneficiary. We therefore find that the Petitioner has not established beyond a reasonable doubt that he represents no risk to the Beneficiary.

III. CONCLUSION

It is the Petitioner's burden to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden. The Petitioner has not demonstrated that he poses no risk to the Beneficiary.

ORDER: The appeal is dismissed.

Cite as *Matter of G-D-B-*, ID# 16831 (AAO July 7, 2016)