U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-S-

DATE: JULY 29, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 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 Petitioner subsequently appealed that decision to us, and we summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v), as the Petitioner failed to submit any documents or statements that identified a legal or factual error.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits additional evidence, stating that he had previously supplemented the record after filing his appeal.

Upon review, we will deny the motions.

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]

[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

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).

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 Petitioner was convicted on [redacted] 2005, in [redacted] Massachusetts, District Court, of Indecent Assault and Battery On Child Under Age 14, in violation of Massachusetts General Laws (MGLA) Chapter 265, § 13B; and Unnatural Act With Child Under Age 16, in violation of MGLA 272 § 35A/A. He was also convicted on [redacted] 2006, of Unnatural Act With Child Under Age 16, in violation of MGLA 272 § 35A. The Petitioner's sentences included probation, sex offender counseling and sex offender registration.

On March 22, 2011, the Petitioner filed the instant fiancé(e) petition. The Director subsequently issued a notice 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 offenses, 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 motions, the Petitioner submits records of counseling, letters of support from 2005, phone records showing calls to the Beneficiary, receipts for money transfers to the Beneficiary, and a statement from the Beneficiary.

III. ANALYSIS

The Petitioner does not dispute that his convictions are for a specified offense against a minor. Rather, he claims that he supports the Beneficiary and that he successfully completed counseling.

The record of proceedings includes reports from the Petitioner's session with the Counseling and Psychotherapy Center that appear to cover the period from October 2009 until December 2010. Counselor notes indicate that the Petitioner terminated treatment because his probation ended and that he did not want to continue treatment. The notes further indicate that during treatments, the

---

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).

Petitioner completed "a number of assignments," took responsibility for his actions, and understood how he came to offend. The notes also indicate that he maintained a "number of distortions," could easily fall into a victim stance, and resisted changing his lifestyle. A search of the Massachusetts Sex Offender Registry Board (SORB) reveals that the Petitioner's sex offender registration is current, and lists him at "Level 3." According to the SORB, a Level 2 or Level 3 classification is for an individual who has a moderate or high risk to reoffend.

The Petitioner does not submit a statement about his offenses, expressing remorse or taking any responsibility for his actions. He also provides no information about his activities since the end of his probation in 2010, such as a record of employment or other activities in which he may have been involved that reflect on his character and his rehabilitation. The counseling reports, which contain little detail about his treatment and progress, note that the Petitioner stopped treatment as soon as he completed his probation, and the Petitioner has not submitted any evidence that he sought subsequent therapy. Although the Petitioner's sex offender registration is current, he is listed as a Level 3 offender, or as someone who, according to the SORB, is at a moderate or high risk to reoffend.

The letters from the Petitioner's friends attesting to his character, do not include any statement that the individual letter writers are aware of the Petitioner's criminal offenses, and the Beneficiary's statement is vague about her knowledge of the Petitioner's criminal history. The Beneficiary states that the Petitioner told her everything "including about his invalling [sic] with girl underage 16 years old," but she does not relay what the Petitioner told her. 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, as the Petitioner has not demonstrated his rehabilitation.

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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-S-*, ID# 17714 (AAO July 29, 2016)