U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10621592

Date: AUG. 16, 2021

Appeal of Vermont Service Center Decision

Form I-129F, Petition for Alien Fiancé(e)

The Petitioner, a U.S. citizen, seeks classification of the Beneficiary as a "K-1" nonimmigrant under the fiancé(e) visa classification at 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 of the Vermont Service Center denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), concluding that the Petitioner is ineligible to petition for the Beneficiary because he was convicted of a specified offense against a minor as defined in the Adam Walsh Act, and because he had not proven, beyond a reasonable doubt, that he poses no risk to the safety or well-being of the Beneficiary. On appeal, the Petitioner submits a brief and contends that the petition should be approved.

We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Subject to subsections (d) and (r) of section 214 of the Act, 8 U.S.C. § 1184(d) and (r), nonimmigrant K classification may be accorded to a foreign national who "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 . . . ." Section 101(a)(15)(K)(i) of the Act. However, 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)]." 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 rehabilitation and to show, beyond any reasonable doubt, that he poses no risk to the safety and well-

[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. Section 111 of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, 120 Stat. 587 (2006). The list of applicable criminal activity is stated broadly to accommodate variances among Federal, state, and foreign criminal laws.

being of a beneficiary and any derivative child(ren). 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 (Aytes memo).

The relevant criminal law at issue in this proceeding is N.C. Gen. Stat. § 14-202.1 (2020), which states the following:

> Taking indecent liberties with children
>
> (a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:
>
> (1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or
>
> (2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years.
>
> (b) Taking indecent liberties with children is punishable as a Class F felony.

II. ANALYSIS

In [redacted]2014, the Petitioner was convicted of two counts of indecent exposure and indecent liberties with a child in violation of N.C. Gen. Stat. § 14-202.1. The record establishes that the Petitioner's victims were ten and twelve years of age at the time of his offense. He was sentenced to 16-29 months confinement, to 36 months' probation for each charge, and he was mandated to register as a sex offender.

The Petitioner filed the instant fiancé(e) petition on behalf of the Beneficiary, a citizen of Vietnam, on August 15, 2017. In her notice of intent to deny (NOID) the petition, the Director explained that the Petitioner's convictions render him ineligible to file the petition, and requested evidence to establish, beyond a reasonable doubt, that he poses no risk of harm to the Beneficiary.

The Petitioner's NOID response included his criminal records, documents showing he complied with the terms of his sentence, an independent risk assessment evaluation, and letters of support as well as documents substantiating his employment. The Petitioner argued that these documents constitute sufficient evidence establishing that he poses no risk of harm to the Beneficiary. The Director found them insufficient and denied the petition.

On appeal, the Petitioner does not dispute that his convictions constitute a "specified offense against a minor." However, he argues the Director erred in finding that he did not establish, beyond any reasonable doubt, that he poses no risk of harm to the Beneficiary. He asserts that the Director did not fully consider each of the "no risk" factors specified in the Aytes memo, with particular emphasis on

the following three factors: the nature and severity of the offense; all other criminal conduct of the Petitioner; and the nature and severity of any arrests involving alcohol, sexual or child abuse, domestic violence, or any other violent or criminal behavior. The Petitioner further argues that by virtue of his parental support, acceptance of responsibility for his crime, track record of employment, lack of any other criminal history, among other factors, he has demonstrated, beyond a reasonable doubt, that he poses no risk of harm to the Beneficiary.

The Petitioner further argues that the Beneficiary knows about his "mistake" and that because she is an adult with no children, there is no "presumption" of risk. He also points to statements made by medical professionals, one of whom states that being in a stable relationship lowers his risk of reoffending, and another who conducted court-appointed behavior modification therapy, which the Petitioner argues worked and led to him having a very low risk of recidivism score. The Petitioner received the second lowest score possible regarding his risk to society on a SONAR test.[2] According to the Petitioner, nine tests were administered, and their results show he has a 99.9% chance of not reoffending.

The Petitioner, therefore, is arguing that the evidence of record is sufficient to demonstrate, beyond a reasonable doubt, that he poses no risk of harm to the Beneficiary. We do not agree.

Upon review of the totality of the record, we conclude that the evidence is insufficient to demonstrate, beyond a reasonable doubt, that the Petitioner poses no risk to the Beneficiary. The Petitioner concedes that the severity of the offense is a negative factor weighing against whether the Petitioner can meet his burden but argues that because his crime involved a single incident and no physical harm to any of the victims, the severity of the offense is less.[3] While we agree that the record is sufficient to demonstrate he did not physically harm either of his victims, he makes no mention of the psychological damage his behavior could have caused. The fact that the Petitioner has not reoffended or that he does not have a documented history of alcohol or other violent or criminal behavior does not diminish the severity of his one offense. Moreover, the criminal court itself described the Petitioner's crime as a "sexually violent offense" and mandated that the Petitioner register as a sex offender for a period of thirty years. In the convicting court's assessment, the Petitioner was found to be such a potential threat to the public that it required him to continue registering as a sex offender until 2044.[4] In other words, the State of North Carolina does not appear to share the view that the Petitioner poses no risk to public safety.

The record contains no documentation and little information 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 that the Petitioner continued counseling. The 2017 letter from the [redacted]

[2] Specifically, the doctor who conducted the risk assessment evaluation (STATIC-99) test determined the likelihood of the Petitioner reoffending is low, specifically ".05 in 5 years and .11 in 10 years which is less than a quarter of a percent chance."

[3] The police incident report states that the Petitioner exposed his genitals to children who were playing in a common area of their neighborhood.

[4] *See State statutes or ordinances requiring persons previously convicted of crime to register with authorities*, (1996), 36 A.L.R.5th 161 (explaining that the purpose of sex offender registration acts is to protect communities and facilitate law enforcement by "making persons convicted of registrable crimes readily available for police surveillance…").

[redacted] signed by a licensed professional counselor, confirms that the Petitioner admitted his offense and took responsibility during counseling. However, the letter provides only general information with little detail. We reviewed the Sex Offender Risk Assessment performed by the [redacted] and acknowledge the Petitioner's overall low scores in terms of the likelihood that he will commit another crime. While it is indeed true that the Petitioner appears to have scored either "low" or "moderate-low" on every test, his burden is not to establish that he poses a "low" or "moderate-low" risk. Again, he must demonstrate, beyond any reasonable doubt, that he poses *no* risk. "Low risk" and "no risk" are not interchangeable terms, and the risk assessment is not sufficient to carry the Petitioner's burden.

The Petitioner contends that the Beneficiary knows of his "mistake." However, we note that the Beneficiary's July 2017 statement makes no mention of his crime or conviction, nor is there any other evidence in the record to show she is aware of his conviction or ongoing requirement to register as a sex offender. The letter of support from his employers (who happen to be the Beneficiary's relatives and who introduced the Petitioner to the Beneficiary) do not indicate knowledge of his conviction, either. The letter states that the Petitioner demonstrates good qualities at work and that his employers trust him, however this does not indicate that they are aware of Petitioner's crime or sex offender status, and in general, the record is devoid of any evidence that the Beneficiary (or the people responsible for introducing him to her) have knowledge of the Petitioner's criminal conviction.

We acknowledge the Petitioner's parental support has been established in the record, however, this evidence is insufficient to outweigh the severity and recency of his conviction as well as his ongoing requirement to register as a sex offender until 2044. For all the foregoing reasons, the record contains insufficient evidence to establish, beyond a reasonable doubt, the Petitioner poses no risk to the Beneficiary.

III. CONCLUSION

The record of proceeding does not establish, beyond a reasonable doubt, that the Petitioner poses no risk of harm to the Beneficiary. The petition therefore must remain denied.

ORDER: The appeal is dismissed.