



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

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

In Re: 10628068

Date: July 26, 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). A U.S. citizen may petition to bring a fiancé(e) to the United States in K-1 classification for marriage.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner was convicted of a specified offense against a minor and did not show that he posed no risk to the safety and well-being of the Beneficiary. On appeal, the Petitioner submits additional evidence and asserts that he poses no risk to the safety of the Beneficiary.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. Upon *de novo* review, we will remand the matter to the Director for further consideration. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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

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).

clearly demonstrate his rehabilitation and to show, beyond any reasonable doubt, that he poses no risk to the safety and well-being of the 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>.

II. ANALYSIS

In [REDACTED] 1990, the Petitioner was convicted of a violation of Oregon Revised Statutes section 163.355, Rape 3rd Degree. In [REDACTED] 1994, he was arrested for failure to register as a sex offender. The Director noted that the Petitioner was considered a non-expiring registered sexual offender in the State of Oregon and that for his conviction he was sentenced to 30 days confinement and 36 months of probation. Concerning his 1990 conviction, the Petitioner explained that his conviction resulted from pleading guilty to two counts of statutory rape when he was 21 years old and had relationships with two girlfriends who were under the age of 18. He asserted that he has not been in trouble with the law in the over 30 years since. The Director found that there was insufficient evidence to support a conclusion, beyond any reasonable doubt, that the Petitioner posed no risk to the Beneficiary. The Director cited to the 1990 and 1994 offenses and observed that, as part of the terms of his probation, the Petitioner was to undergo a sex offender evaluation and sex offender treatment but did not provide psychological assessments or other objective evaluations of his risk of reoffending. The Director also determined that the submitted affidavits from the Beneficiary and others did not adequately demonstrate awareness of all the facts and circumstances surrounding his conviction.

On appeal, the Petitioner submits additional records relating to his criminal history and level of risk to the Beneficiary. The documents submitted include the following: evidence relating to the Petitioner's attempts to obtain public records relating to his criminal history; letters from the Oregon Board of Parole and Post-Prison Supervision showing the Petitioner's classification level in the state's sex offender tracking system in 2019; a [REDACTED] Police Bureau background check;² a psychological evaluation dated July 22, 2011; and, updated letters from the Beneficiary, her parents, and a friend which discuss their knowledge of his 1990 conviction. The Petitioner also explains that his 1994 arrest charges were dropped because they were due to a filing mistake on the part of the Oregon State Police and not due to any failure on his part to register as required. In support of this claim, he provides a 2011 letter from a manager of the Oregon Sex Offender Registry stating he "completed his initial registration and his annual registrations in compliance with Oregon Law" and "has not been charged with any Failure to Register charges in Oregon."

Because this additional evidence is directly relevant to the Director's ground for denial of the petition, we will remand the matter for the Director to determine whether the Petitioner merits an exercise of discretion, and has otherwise established eligibility under sections 101(a)(15)(K), 214(d), and 204(a)(1)(A)(viii) of the Act. The Director may request any additional evidence considered pertinent

² We note that, among other risk and eligibility factors the Director may wish to consider on remand, an entry in the police background check appears to indicate the Petitioner was the subject of an offense dated November 13, 2002 for "Child Abuse-Assault." Because the record below does not otherwise raise or address this offense, we do not here determine its relevance to the petition's outcome.

to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.