U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5784809

Date: NOV. 17, 2021

Appeal of a Vermont Service Center Decision

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

The Petitioner, a U.S. citizen, seeks the Beneficiary's admission to the United States under the fiancé(e) visa classification. See Immigration and Nationality Act (the Act) section 101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i) (the "K-1" visa classification). A U.S. citizen may petition to bring a fiancée to the United States in K-1 status for marriage.

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 had not proven, beyond any reasonable doubt, that he poses no risk to the safety or well-being of the Beneficiary. On appeal, the Petitioner submits a brief and asserts that the Director erred.

We review the questions in this matter de novo. See *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.Y. Penal Law § 263.16, which states the following:

> Possessing a sexual performance by a child
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> A person is guilty of possessing a sexual performance by a child when, knowing the character and content thereof, he knowingly has in his possession or control any performance which includes sexual conduct by a child less than sixteen years of age.
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> Possessing a sexual performance by a child is a class E felony.

II. ANALYSIS

The Petitioner plead guilty in [redacted] 2004 for possessing a sexual performance by a child in violation of NY Penal Law § 263.16. The record indicates that the computer graphic images were of children less than sixteen years of age. As a result, the Petitioner was sentenced to 10 years of probation, to register as a sex offender, and to attend sex offender and psychiatric counseling.

The Petitioner filed the instant fiancé(e) petition on behalf of the Beneficiary, a citizen of Philippines, on December 29, 2016. The Director issued a notice of intent to deny (NOID) the fiancé(e) petition, and the Petitioner filed a timely response. The NOID explained that the Petitioner's convictions rendered him ineligible to be an I-129F petitioner, 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, in part, his court documents, arrest records, a detective's disposition, probation records, sex offender registry records, a certificate of relief from disabilities, a probation officer's letter, counselors' letters, a psychological evaluation, polygraph results, statements from the Petitioner and the Beneficiary, and several letters of support. The Petitioner argued that these documents were sufficient evidence to establish he poses no risk of harm to the Beneficiary. The Director found the evidence insufficient and denied the fiancé(e) petition. In particular, the Director noted the Petitioner did not address his level of risk as the record lacked evidence of the Petitioner's participation in sex offender treatment, rehabilitation, or behavior modification. The Director also noted the record lacked any police records or narrative offering third-party objective details of the Petitioner's arrest and conviction. In addition, the Director discounted the psychological evaluation by [redacted] as he did not review any police records or the detective's disposition.

On appeal, the Petitioner submits a brief and additional evidence, including an updated affidavit, updated counselors' letters, a letter of support, and documents to demonstrate his charitable giving. 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 and places particular emphasis on the following five factors: (1) the nature and severity of the offense; (2) the petitioner's criminal history; (3) the nature and circumstances of any other arrests and convictions, or history involving alcohol or substance abuse; (4) the Beneficiary's age; and (5) whether rehabilitation or behavior modification may have alleviated any risk posed as evidenced by completion of counseling and rehabilitation programs as well as by the significant passage of time between the conduct and the submission of the petition.

The Petitioner also asserts that the Director did not provide a reason to doubt that he does not pose a risk to his fiancée and focused on finding fault in the provided evidence as opposed to the merits of the evidence itself. The Petitioner argues that he did finish his sex offender treatment and that such completion is confirmed by his probation's officer letter. He further argues that the psychological evaluation should not be dismissed as the incidents leading to the arrest are irrelevant and that [redacted] understood all the circumstances that he needed to know to make his assessment.

The Petitioner, therefore, is arguing that the evidence of record demonstrates, beyond any 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 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 offense. Although the Petitioner asserts that he pleaded guilty simply to avoid jail time, the fact remains that the Petitioner accepted his charge, the terms and length of the probation, and Level I sex offender registration for ten years. We will not look behind his guilty plea; that is a matter between the Petitioner and the State of New York. In addition, the doubling of the Level I sex offender registration to 20 years since the Petitioner's plea suggests that the State of New York regards Level I offenders such as the Petitioner to be such potential threats to the public that it requires them to continue registering as sex offenders. In other words, the State of New York does not appear to share the view that the Petitioner poses no risk to public safety.

In his August 2018 affidavit, the Petitioner stated he was arrested while attempting to travel and visit the Beneficiary. The Petitioner has provided no evidence or documentation regarding this arrest. Without more information, we cannot determine the severity of the arrest and/or charges, or if he poses any additional risk to the Beneficiary. The uncertainty regarding the facts surrounding this incident lends further weight to our determination that the Petitioner has not satisfied his burden.

Although we acknowledge the parole officer's statement that the Petitioner completed sex offender treatment,[2] we agree with the Director that the record does not provide substantive details regarding the Petitioner's treatment and rehabilitation. For example, none of the counselors' letters in the record of proceeding discuss any specific sex offender treatments given to the Petitioner.[3] Nor do the letters provide insight to the structure of the sessions, the goal and objectives of the overall treatment, and the assessment of the Petitioner's rehabilitation.

[2] According to the parole officer's letter, the Petitioner completed his sex offender treatment with [redacted] and [redacted]

[3] The record of proceeding included four letters from three individuals who counseled the Petitioner with their NOID response. The Petitioner submitted letters dated February 2004 and August 2018 from [redacted], an August 2018 letter from [redacted], and a February 2004 letter from [redacted]

On appeal, the Petitioner provides two additional letters from two of his counselors, one from [redacted] and another from [redacted] However, neither letter provides meaningful insight into the Petitioner's treatment and rehabilitation. In his letter, [redacted] does not discuss any sexual offender treatment given to the Petitioner, but only states that they discussed what led the Petitioner to "use a computer to find a mate." While we acknowledge [redacted] worked as a parole officer and a probation officer for many years with "many criminals who did commit sex crimes," his letter does not detail his experiencing treating sexual offenders. In addition, while [redacted] states that it was more important to discuss the "root problems" in the Petitioner's life, he did not provide any details of the Petitioner's "sexual counseling" and "behavior modification." In sum, without more information regarding the details, scope, and goals of the Petitioner's sex offender treatment plan in his counselors' letters, we cannot determine if the Petitioner has rehabilitated and would be no risk to the Beneficiary.

Moreover, the 2018 psychological evaluation from [redacted] provides limited evidence that the Petitioner is not at risk to reoffend. The evaluation indicates the Petitioner's risk of recidivism is 12.9%, which is not synonymous with "no risk," "beyond any reasonable doubt." To the contrary, that figure indicates a more than one-in-eight chance of recidivism. Also, although the evaluator concludes the Petitioner is no risk to the Beneficiary since she is an adult female, the evaluation states the Petitioner "presents no more risk" of a sex offense against the Beneficiary "than anyone from the general population." Even if we were to accept for the sake of argument that the Petitioner poses a low risk to the Beneficiary, his burden is to demonstrate, beyond any reasonable doubt, that he poses no risk. As such, the evaluation is not sufficient to carry the Petitioner's burden.

As the Director noted, the evidence contained in [redacted] evaluation also lacks any review of the Petitioner's arrest from an objective third party source, such as arrest reports and court documents. While the Petitioner contends that the evaluator understood the Petitioner's arrest and conviction, the evaluation only incorporates the Petitioner's story or his counselors' versions of the events leading up to his arrest and conviction. Absent testimony regarding the circumstances of Petitioner's arrest, the evaluation's conclusions carry less probative weight. In addition, [redacted] uses the Petitioner's 2003 polygraph test in his assessment, and states this test specifically asked the Petitioner about the events leading up to his arrest. However, the polygraph examination report provided by the Petitioner does not include any specific questions about his arrest.

The Beneficiary states she is aware of the Beneficiary's conviction. However, the Beneficiary does not appear to be aware of his ongoing requirement to register as a sex offender. The Petitioner also includes personal letters of support from members of his family, church members, and other persons that attest to the Petitioner's character. Of the twenty-eight such letters of support contained in the record of the proceeding, only nine acknowledge his legal troubles or the felony, and only eight detail the nature of his Petitioner's crime and time served. For all of these reasons, the record lacks evidence that the Beneficiary and most of the people writing the support letters understand the exact nature of his conviction and/or that he must continue register as a sex offender.

In sum, the Petitioner has not provided sufficient evidence to show that he has rehabilitated and poses no risk to the Beneficiary. New York's extension of the period during which he must register as a sex offender, as well as his subsequent arrest, raise questions as to his rehabilitation and risk to the

Beneficiary. For all the foregoing reasons, the Petitioner has not established, beyond any reasonable doubt, that he poses no risk to the Beneficiary. The appeal will therefore be dismissed, and the petition will remain denied.

Moreover, although not addressed by the Director, we find no passport-style color photograph of the Beneficiary in the record of proceeding. The Petitioner therefore has not complied with the instructions on the form and has not submitted all required evidence, and he has not established eligibility for the benefit sought within the meaning of section 101(a)(15)(K) of the Act for this reason as well.

III. CONCLUSION

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

ORDER: The appeal is dismissed.