U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12116220

Date: FEB. 22, 2022

Appeal of 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). The Petitioner was convicted of a specified offense against a minor as defined in the Adam Walsh Act, and the Director concluded that he did not prove, beyond any reasonable doubt, that he poses no risk to the safety or well-being of the Beneficiary, as required. 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. LEGAL FRAMEWORK

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).

Two portions of the then-Illinois Criminal Code are relevant to this proceeding. The first is Ill. Comp. Stat. Ann. 720 § 5/12-4(a) (West 2010), which stated the following at the time of the Petitioner's conviction:

> § 12-4. Aggravated Battery.
>
> (a) A person who, in committing a battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery.

Also relevant is Ill. Comp. Stat. Ann. 720 § 5/12-16(d) (West 2010), which stated the following:

> § 12-16. Aggravated Criminal Sexual Abuse.
>
> . . .
>
> (d) The accused commits aggravated criminal sexual abuse if he or she commits an act of sexual penetration or sexual conduct with a victim who was at least 13 years of age but under 17 years of age and the accused was at least 5 years older than the victim.

II. ANALYSIS

The Petitioner was convicted in 2010 of committing Aggravated Battery/Great Bodily Harm against a 15-year-old, in violation of Ill. Comp. Stat. 720 § 5/12-4(a). The Petitioner was sentenced, in part, to serve 60 days jail and two years of probation, pay fines, attend sexual offender counseling as directed, and to have no contact with his victim. However, in this case our inquiry into the Petitioner's criminal past will not begin and end with the conviction itself. When determining whether a conviction constitutes a specified offense against a minor as defined in the Adam Walsh Act, we may investigate the underlying facts or conduct. Matter of Introcaso, 26 I&N Dec. 304, 309 (BIA 2014). As the Board noted, the usage of the word "conduct" by Congress in the Adam Walsh Act suggests it is the underlying conduct, rather than simply the elements of the crime of conviction, that matters. Id. at 310.

The Petitioner's conviction under Ill. Comp. Stat. 720 § 5/12-4(a) flowed from his arrest for, and charge under, Ill. Comp. Stat. Ann. 720 § 5/12-16(d), Aggravated Criminal Sexual Abuse/Victim 13-16 Years Old. Consistent with Introcaso, we agree with the Director that the Petitioner is subject to the provisions of the Adam Walsh Act and will adjudicate this appeal accordingly. To prevail he must therefore demonstrate, beyond any reasonable doubt, that he poses no risk to the Beneficiary.

The Petitioner filed the instant fiancé(e) petition on behalf of the Beneficiary, a citizen of the Philippines, on May 4, 2018. The Director issued a notice of intent to deny (NOID) the petition, which explained that the Petitioner's convictions render him ineligible to be a petitioner, and requested evidence to establish, beyond any reasonable doubt, that he poses no risk of harm to the Beneficiary.

The Petitioner's NOID response included, in part, certified court documents, police investigative reports, a letter from his probation officer, an alcohol and drug evaluation, a sex offender evaluation, affidavits from the Petitioner and Beneficiary, and supporting letters. The Petitioner asserted that he poses no risk of harm to the Beneficiary. Also, the Petitioner argued that his offense, Ill. Comp. Stat. Ann. 720 § 5/12-4(a), is not sexual in nature, and that it therefore should not subject him to the consequences of the Adam Walsh Act. The Director denied the petition, concluding that that Adam Walsh Act did indeed apply, and that the submitted evidence was insufficient to establish, beyond any reasonable doubt, that the Petitioner poses no risk to the safety or well-being of the Beneficiary.

On appeal, the Petitioner no longer contests the Director's determination that he is subject to the provisions of the Adam Walsh Act. Instead, he limits the scope of his appeal to arguing that the Director erred by improperly weighing his evidence when conducting the "no risk" determination. The Petitioner asserts he has met his burden and poses no risk of harm to the Beneficiary. He argues that because he completed his sentencing satisfactorily, received a low risk for sexual recidivism, maintained employment, has had no additional issues with law enforcement, and provided multiple affidavits confirming his good character, he poses no risk of harm to the Beneficiary.

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

The record contains no documentation, and insufficient information, to establish that the Petitioner has rehabilitated and is at no risk to reoffend. Specifically, in the sex offender evaluation prepared by [redacted], LCSW, LSOE, LSOTP, the Petitioner stated he did not complete the sex offender treatment due to having been successfully discharged from probation. Although the evidence of record shows that the Petitioner successfully met the terms of his probation and attended all court-ordered sex offender treatments, the Petitioner has not demonstrated rehabilitation as the record does not demonstrate further counseling or evidence of a successfully completed sex offender treatment program.[2] We do acknowledge the sex offender evaluation states the Petitioner is at a "statistically low risk to offend sexually in the future" and that "low risk" is the lowest risk rating available.[3] However, the Petitioner's burden is not to establish that he poses a "low" risk. He must demonstrate, beyond any reasonable doubt, that he poses no risk. "Low risk" and "no risk" are not interchangeable terms (let alone no risk "beyond any reasonable doubt" as the statute mandates).

Even if the sex offender evaluation had determined the Petitioner poses "no risk," we would still assign it limited evidentiary value toward his "no risk" assessment. As the evaluator did not review the police records generated at the time of the allegations, it is unclear whether the evaluator had a complete

[2] We acknowledge the evaluator states the Petitioner is not recommended to "complete sex offender treatment at this time" (emphasis added). However, the evaluator does not state whether she would recommend treatment at a later date, or that the Petitioner would not need to complete further treatment.

[3] The evaluator states that "all people are statistically at some level of risk of any behavior" and it would be "unethical" to declare a person at "no risk to offend."

record of the Petitioner's conviction history and was therefore able to assess the Petitioner's risk appropriately. Although the Petitioner claims in his June 2019 statement that he is "deeply sorry" for what he did, the evaluation states the Petitioner takes "limited responsibility for his criminal charges." Taken together, the statements appear incongruous, and we cannot clearly determine whether the Petitioner feels appropriately remorseful for his behavior and/or remains a risk to the Beneficiary.

Moreover, while the Petitioner contends that the Beneficiary knows of his "bad past," the Beneficiary's July 2017 statement makes no mention of his conviction or the behavior surrounding it. Nor does the Beneficiary's mother or a majority of the Beneficiary's siblings mention the Beneficiary's conviction. Although the letter of support from one of the Beneficiary's brothers does state that the Beneficiary told him that the Petitioner "committed an aggravated battery," this letter does not demonstrate the Beneficiary knew the exact nature and details of the Petitioner's behavior. As such, the record is devoid of any substantive evidence that the Beneficiary has knowledge of the Petitioner's relevant criminal behavior.

We acknowledge the submitted letters vouching for the Petitioner's character, his steady employment, and lack of further arrests. However, the provided evidence is insufficient to outweigh the severity of his conviction, and it does not satisfy the high burden of proof Congress imposed. For all the foregoing reasons, the evidence of record, even when weighed in the aggregate, is insufficient to establish, beyond any reasonable doubt, the Petitioner poses no risk to the Beneficiary.

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.