



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

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

In Re: 17738409

Date: MAR. 9, 2022

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 did not provide sufficient evidence to determine if his conviction for felony false imprisonment constitutes a “specified offense against a minor” as defined in the Adam Walsh Act (AWA). The Director also denied the fiancé(e) petition because the Petitioner 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, additional evidence, and contends that the Director erred. 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” 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 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.

If a petitioner is convicted of a specified offense against a minor, the U.S. citizen must clearly demonstrate his rehabilitation and show, beyond any reasonable doubt, that he poses no risk to the safety and well-being of a 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> (Aytes memo).

## II. ANALYSIS

The Petitioner filed the fiancé(e) petition on February 6, 2017. The record establishes that the Petitioner has had multiple arrests and convictions over a period spanning 18 years (1991 to 2009). Most involved conduct by the Petitioner of a sexually violent nature against women and children.

We will first consider the issue of whether the Petitioner's conviction is a "specified offense against a minor" as defined in the AWA. If the answer to that question is no, then our inquiry ends, and the Director's decision will be withdrawn. If, however, the answer is yes, then we will go on to consider the question of whether the Petitioner has proven, beyond any reasonable doubt, that he poses no risk to the safety or well-being of the Beneficiary.

Upon review of the evidence, we conclude that the answer is yes: his conviction does in fact constitute a "specified offense against a minor" as defined in the AWA.

In reaching the conclusion that the Petitioner's [redacted] 2003 conviction is a "specified offense against a minor," as defined in the AWA, we rely, in part, on *Matter of Introcaso*, 26 I&N Dec. 304 (BIA 2014). As the Board noted in that decision, in this type of case our inquiry into a petitioner's criminal past does not begin and end with the conviction itself. When determining whether a conviction constitutes a specified offense against a minor as defined in the AWA, we may investigate the underlying facts or conduct. *Id.* at 309. As the Board noted, the usage of the word "conduct" by Congress in the AWA suggests it is the underlying conduct, rather than simply the elements of the crime of conviction, that matters. *Id.* at 310.

As such, and relevant to our analysis here, is the question of whether the Petitioner's evidence is sufficient to determine whether his conduct meets the definition of a "specified offense against a minor." On [redacted] 2002, the Petitioner was arrested for committing the following criminal acts: Burglary in the first degree under Cal. Penal Code § 459, Infliction of Corporal Injury on Spouse/Cohabitant under Cal. Penal Code § 273.5; Sexual penetration with foreign object with force under Cal. Penal Code § 289(A); Oral copulation with person under 14 with force under Cal. Penal Code § 288A; Rape Force/Fear under Cal. Penal Code § 261(A); Crime against nature sodomy under Cal. Penal Code § 286(A); Violation of court order to prevent domestic violence under Cal. Penal Code § 273.6; and Stalking under Cal. Penal Code § 646.9(A).

As a result of this arrest, the Petitioner was convicted, pursuant to a guilty plea, of felony false imprisonment under Cal. Penal Code § 236 on [redacted] 2003, and sentenced to three years' probation, and 93 days in jail. While the conviction was expunged on [redacted] 2006, it remains a conviction for immigration purposes. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003). The Petitioner argues that the victim of his false imprisonment conviction was not a minor child but an adult woman with whom he was cohabitating. However, in examining the underlying conduct of the Petitioner's arrest and conviction, we consider the fact that it appears a child victim was also involved. Specifically, the inclusion of the oral copulation with a person under 14 under Cal. Penal Code § 288A stemming from the same conduct indicates that more likely than not, a child was present, and a victim of the Petitioner's criminal conduct.

Moreover, another enumerated offense in the definition of a "specified offense against a minor" is "any conduct that by its nature is a sex offense against a minor." Thus, if a child was present during the incident leading up to the conviction (and the evidence suggests a child was present and living with the adult female victim), the Petitioner's conduct would meet the "any conduct that by its nature is a sex offense against a minor."<sup>1</sup> Furthermore, we can surmise from other evidence in the record that a child was present during the events in question based on several pieces of evidence. A restraining order meant to protect the victims of the Petitioner's false imprisonment conviction includes the name of a protected minor. This restraining order was issued on [redacted] 2002, and one month later, in late [redacted] 2002, the Petitioner was arrested for the conduct leading to his false imprisonment conviction, and in violation of the restraining order. Thus, we conclude that the totality of the evidence, including the restraining order with a minor household member included, the inclusion of a charge alleging sex crimes against a minor and stemming from the same event, and the Petitioner's admission of guilt to criminal conduct, strongly suggests that he victimized a minor such that his conduct meets the definition of "specified offense against a minor," and that the provisions of the AWA apply.

The Petitioner advances several arguments on appeal. First, he argues that his [redacted] 2003 conviction for false imprisonment involved an adult victim, and not a minor, which would mean it was not a "specified offense against a minor." We addressed that argument above, found it unpersuasive, and incorporate that discussion here. The Petitioner states further that his victim had to have been an adult because if it had been a child, neither the criminal complaint, the minute order, or the restraining order would have listed the victim's age since children's identities are protected. However, the evidence of record refutes that argument. The restraining order clearly identifies the minor household member by name. Moreover, the Petitioner's attorney provides an affidavit and an email exchange between him and the Superior Court of [redacted]'s court manager and asserts that the court system will not reveal the name and age of the victim(s) to the Petitioner's crime. Thus, contrary to the Petitioner's argument, the court system appears unwilling to reveal the full identity of any victim, regardless of their age at the time of the events in question.<sup>2</sup> Thus, the Petitioner's argument that the

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<sup>1</sup> A conviction under Cal. Penal Code § 236 requires the unlawful violation of the personal liberty of another. "Force is an element of both felony and misdemeanor false imprisonment. Misdemeanor false imprisonment becomes a felony only where the force used is greater than that reasonably necessary to affect the restraint. In such circumstances the force is defined as 'violence' with the false imprisonment effected by such violence a felony." *See People v. Hendrix* (1992) 8 Cal.App.4th 1458, 1462, 10 Cal.Rptr.2d 922.) Here, the Petitioner was convicted of felony false imprisonment, which means the underlying conduct involved violence force.

<sup>2</sup> The email dated March 16, 2021, addressed to the Petitioner's counsel from the Court Manager of the Superior Court of

victim's identity would not have been included in the minutes or restraining order, and criminal complaint, appears to be contradicted by the evidence since the court system protects a victim's full identity regardless of age, and a minor child's name is included in the restraining order.

Third, the Petitioner argues that because his false imprisonment conviction was a plea to the lesser included offense of corporal injury resulting in traumatic condition to spouse or cohabitant under Cal. Penal Code 273.5(a), his false imprisonment conviction had to have involved an adult victim. As we discussed above, the definition of a "specified offense against a minor" encompasses convictions for "criminal sexual conduct involving a minor" and "conduct that by its nature is a sex offense against a minor." Therefore, upon inquiry into the conduct resulting in his false imprisonment conviction, it appears that a minor child was victimized during the events resulting in his arrest and conviction, and the Petitioner has not provided evidence that refutes this.

Fourth, the Petitioner argues that the Director's reliance on his [redacted] 2009 arrest<sup>3</sup> is an abuse of discretion since application of the AWA requires a conviction and not an arrest. We agree with the Petitioner's argument to the extent that application of the AWA does require a conviction. However, while the Director's decision acknowledges the Petitioner's arrest in [redacted] 2009 for the crime of lewd and lascivious acts with a child under 14 under Cal. Penal Code §288(A), among other charges of a sexually violent nature, the Director's decision does not rely at all upon that arrest. To the contrary, the Director concluded that it was the Petitioner's conduct leading to his [redacted] 2003 conviction (not his [redacted] 2009 arrest) which involved a "specified offense against a minor" as defined by section 111(7) of the AWA, and that the Petitioner did not provide sufficient evidence to refute or conclude otherwise. As such, the Petitioner's argument is not dispositive to the issue at hand because the Director did not rest her decision on his [redacted] 2009 arrest.

The evidence of record strongly suggests that a child was present during the Petitioner's criminal acts on or about [redacted] 2002, and that he therefore has been convicted of a "specified offense against a minor" as contemplated in the AWA. Having made that determination, we will turn to the second question before us: whether he has established, beyond any reasonable doubt, that he poses no risk to the Beneficiary. As the Petitioner has provided no evidence to establish that he poses no risk to the Beneficiary, we must dismiss the appeal.

**ORDER:** The appeal is dismissed.

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California, states ". . . the protected party's DOB is to be redacted in the FDV cases prior to dissemination of copies."

<sup>3</sup> On [redacted], 2009, the Petitioner was arrested for committing the following alleged acts: Rape by force/fear under Cal. Penal Code § 261(a)(2); Crime against nature sodomy under Cal. Penal Code § 286(A); Infliction of corporal injury spouse/cohabitant under Cal. Penal Code § 273.5; Sexual battery while person is restrained under Cal. Penal Code § 243.4(A); Forced oral copulation under Cal. Penal Code § 287; Sex penetration by force/fear under Cal. Penal Code § 289(a); and Lewd and lascivious with child under 14 under Cal. Penal Code § 288(A).