

§ N.13 U.S. Citizens and Permanent Residents Cannot Petition for a Relative If Convicted of Certain Offenses Against Minors – The Adam Walsh Act

(For more information, see *Defending Immigrants in the Ninth Circuit*, § 6.22, www.ilrc.org/criminal.php)

Legislation entitled the Adam Walsh Act¹ which was passed in 2006 imposes immigration penalties on *U.S. citizens and permanent residents* who are convicted of certain crimes against minors. A U.S. citizen or permanent resident who is convicted of a “specified offense against a minor” may be prevented from filing a visa petition on behalf of a close family member. If the petitioner is a permanent resident rather than a citizen, the person will be referred to removal proceedings to see if he or she is deportable.

The law provides an exception only if the DHS adjudicator makes a discretionary decision, not subject to review, that the citizen or permanent resident petitioner does not pose a risk to the petitioned relative despite the conviction.

Example: Harry is a U.S. citizen who pled guilty in 2005 to soliciting a 17-year-old girl to engage in sexual conduct. In 2010 he submits a visa petition on behalf of his noncitizen wife. Immigration authorities will run an IBIS check on his name to discover the prior conviction. His visa petition will be denied, unless he is able to obtain a waiver based on proving that he is not a danger to his wife.

“Specified offense against a minor” includes offenses that are not extremely serious, such as false imprisonment. It is defined as an offense against a victim who has not attained the age of 18 years, which involves any of the following acts. A state offense must be substantially similar to the federal offenses in the definition.²

- (A) an offense involving kidnapping, unless committed by a parent or guardian;
- (B) an offense involving false imprisonment, unless committed by a parent or guardian;
- (C) solicitation to engage in sexual conduct;
- (D) use in sexual performance;
- (E) solicitation to practice prostitution;
- (F) video voyeurism as described in 18 USC § 1801;
- (G) possession, production, or distribution of child pornography;
- (H) criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt this conduct;
- (I) any conduct that by its nature is a sex offense against a minor. This section is

¹ Section 402 of the Adam Walsh Act, effective July 27, 2006. See amended INA §§ 204(a)(1) and (b)(1) of the INA and 8 USC §§ 1154(a)(1) and (b)(i)(I). A minor is someone who is under the age of 18. See Title A, section 111(14), Adam Walsh Act.

² Title I, Subtitle A, section 111(7) of the Adam Walsh Act; see also “Guidance for Adjudication of Family-Based Petitions under the Adam Walsh Child Protection and Safety Act of 2006,” issued by Michael Aytes and dated February 8, 2007, page 2.

further defined at section 111(5)(A).³

Criminal defense counsel should assume conservatively that conviction of an age-neutral offense (e.g., false imprisonment under P.C. § 36) will be come within the definition if there is evidence to show that the victim was a minor.

Where the victim is a minor, counsel should attempt to plead to an offense that does not appear in the above list. If that is not possible, counsel should keep the age of the victim out of the reviewable record. However, it is not clear that the inquiry will be limited to the reviewable record and the categorical approach.

Juvenile Delinquency Dispositions. The definition of conviction for this purpose only involves certain juvenile delinquency dispositions, where the juvenile was at least 14 years old at the time of committing the offense. The offense must have been the same as or more severe than aggravated sexual abuse described in 18 USC § 2241, or attempt or conspiracy to commit such an offense. 18 USC § 2241 prohibits crossing a state border to engage in a sexual act with someone under the age of 12, or sexual conduct by force or threat with a person between the ages of 12 and 15.

For further information see generally Michael Aytes, Associate Director, Domestic Operations, USCIS, “Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiance(e) under the Adam Walsh Child Protection and Safety Act of 2006” (Feb. 8, 2007). Search www.uscis.gov or see 12 Bender’s Immigr. Bull. 414, 431 (App. F) (Apr. 1, 2007).

See also Sarah Bronstein, *The Adam Walsh Child Protection and Safety Act of 2006*, 12 Bender’s Immigr. Bull. 515 (May 1, 2007).

³ This includes a criminal offense that has an element involving a sexual act or sexual contact with another; a criminal offense that is a “specified offense against a minor” (therefore, any act described in A-H above is covered also by (I)); certain federal offenses -- 18 USC §§ 1152, 1153, 1591; chapters 109A, 110, or 117 of title 18 (but excluding sections 2257, 2257A, and 2258); a military offense specified by the Secretary of Defense in section 115(a)(8)(C)(i) of Public Law 105-119 (10 USC § 951 note); or attempt or conspiracy to commit an offense in the above four subsections.