



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Thaker, Ruchi
Thaker Berowitz LLP
225 Broadway, Suite 3001
New York, NY 10007-0000

DHS-CIS Legal Csl./LGA
26 Federal Plaza, Rm 1130
New York, NY 10278

Name:

Al

Date of this notice: 8/20/2010

Enclosed is a copy of the Board's decision and order in the above-referenced case.

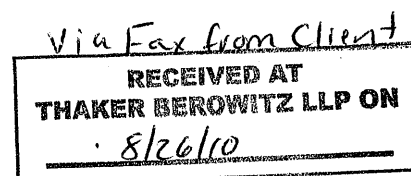
Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Mann, Ana



U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: - Buffalo, NY

Date:

In re: , Beneficiary of a visa petition filed by
, Petitioner

AUG 20 2010

IN VISA PETITION REVOCATION PROCEEDINGS

MOTION

ON BEHALF OF PETITIONER: Ruchi Thaker, Esquire

ON BEHALF OF DHS: Jason Raphael
Associate Regional Counsel

The petitioner has filed a timely motion to reopen our November 24, 2009, decision¹ dismissing his appeal of the U.S. Citizenship and Immigration Services (CIS) Field Office Director's February 9, 2009, decision revoking approval of the petition filed on behalf of the beneficiary as the wife of a United States citizen. Our decision was a summary affirmance of the Field Office Director's conclusion that the petitioner had failed to establish under section 204(a)(1)(A)(viii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(viii), that he poses no risk to the beneficiary as a result of his conviction for a sexual offense involving a minor.

The Field Office Director's decision states: "The standard of proof which the petitioner is required to meet in these cases is that of a preponderance of the evidence." However, the decision also states that "a petitioner who has been convicted of a specified offense against a minor must submit evidence that clearly demonstrates beyond a reasonable doubt that he or she poses no threat to the beneficiary." Because it is unclear which standard of proof the Field Office Director applied in this case, we will grant the motion and remand the record to permit him to clarify the standard of proof in a revised decision.²

Accordingly, the following order will be entered.

ORDER: The motion is granted, and the record is remanded to CIS for further proceedings.



FOR THE BOARD

¹ The petitioner's first filing of the motion was on February 19, 2010, prior to the expiration of the 90 day time limit for the filing of motions to reopen.

² Pursuant to section 204(a)(1)(A)(viii) of the Act, however, it is within the sole and unreviewable discretion of the Field Office Director to make the ultimate determination as to whether the petitioner has proven that he does not pose a risk to the beneficiary.