

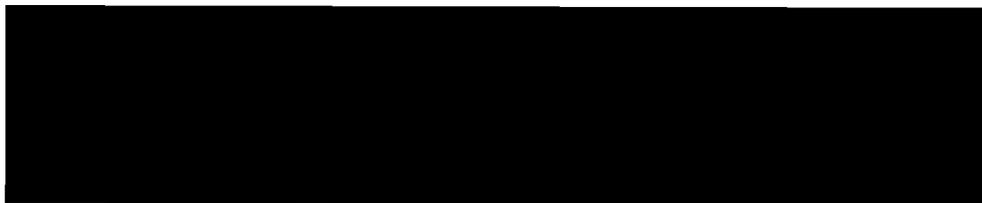
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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



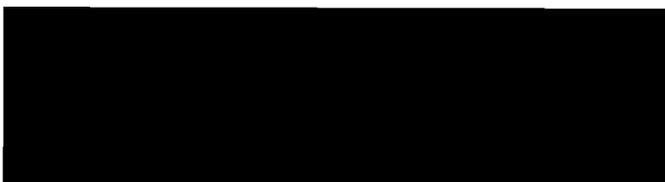
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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: **APR 09 2010**  
WAC 08 251 51054

IN RE: Petitioner: [redacted]  
Beneficiary: [redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a parish of the Assyrian Church of the East. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4). The petitioner originally stated that it intended to employ the beneficiary as a Bible and religious education teacher. Subsequently, the petitioner stated that it seeks to employ the beneficiary as the director of the Assyrian Center for Religious and Cultural Studies. Most recently, the petitioner has stated that the beneficiary was recently ordained as a deacon. The director determined that the petitioner had not established that the beneficiary's intended position qualifies as a religious occupation relating to a traditional religious function.

On appeal, the petitioner submits arguments from counsel, a letter from a church official, and documentation of the beneficiary's diaconal ordination.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The sole issue in contention concerns the qualifying nature of the beneficiary's intended work. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(5) defines "religious occupation" as an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible.

(D) Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

The petitioner filed the petition on September 23, 2008. The petitioner submitted copies of the beneficiary's various educational credentials and a letter from [REDACTED], pastor of the petitioning church, who described the beneficiary's duties:

[The beneficiary] currently teaches the . . . Bible . . . , History of the Assyrian Church, and Assyrian language to students between 4<sup>th</sup> grade and 12<sup>th</sup> grade. He also organizes and supervises the Chapel Celebration of Faith. This includes celebrating the Holy Eucharist and Spiritual activities such as prayers and reflections. . . .

As the Bible and Religious Education Teacher, [the beneficiary] will continue to be responsible for producing a comprehensive curriculum which integrates the main themes of the Bible, Catechism, Spirituality, and Contemporary Ethical Issues in its lesson plans for the academic year. He will continue to assist students in applying the values of the Bible and modern spiritual method for praying to their life. He will pursue a variety of methodologies regarding teaching the Bible including lectures, demonstrations, open discussions, power point presentation, and guest speakers. . . .

In this position, [the beneficiary] will be also responsible for maintaining a professional and positive attitude to the spiritual philosophies of the school and sustaining a learning zone where students' cultural differences are respected, dignified, and nourished. He will implement the disciplinary action of the school and attend all staff meetings and recommended training programs and conferences. He will promote the Assyrian ministry within the church. Additionally, [the beneficiary] will review, analyze and evaluate students' academic and spiritual growth.

On August 8, 2009, the director instructed the petitioner to submit "a **detailed description** of the work to be done" and "evidence that the duties primarily relate to a traditional religious function" (emphasis in original). In response, in a letter dated August 20, 2009, [REDACTED] described the beneficiary's teaching work at the petitioner's Assyrian American Christian School in the past tense. [REDACTED] stated that the beneficiary's "specific job duties . . . included" teaching courses on the Bible, "World's Religions," "Contemporary Moral and Ethical Issues," "Assyrian-Aramaic Language," church history, and "Ancient Assyrian Civilization" for a total of 37 hours per week, with an additional three hours devoted to "[o]rganizing and supervising the celebration . . . of the Holy

Eucharist” and “[s]upervising study hall.” [REDACTED] stated that the beneficiary’s responsibilities “included” such tasks as “[p]roducing comprehensive curriculums,” “[k]eeping records of students’ results in tests, projects, and essays,” and “[h]elping with the general housekeeping tasks.” The petitioner submitted course materials, bearing the beneficiary’s name, in some of the subjects named in [REDACTED] letter.

In a separate letter, also dated August 20, 2009, [REDACTED] stated that the petitioner had “decided to create the Assyrian Center for Religious and Cultural Studies” (sometimes called an “Institute” rather than a “Center”) and to make the petitioner the director of this new entity. [REDACTED] stated:

The position of the Director of the Assyrian Center for Religious and Cultural Studies is defined as someone who is able to articulate the religious education, proclaim the message of the Gospel of Jesus Christ, build up the community, motivate congregants to serve and lead them to worship and prayer. The minimum requirements for the position of the Director of the Assyrian Center for Religious and Cultural Studies [consist of] the following criteria: Master Degree in Bible or Theology, religious teaching experience, active and practicing member [of the petitioning] Parish with a strong and personal commitment to Jesus Christ, familiar with the teaching of the Holy Apostolic Catholic Assyrian Church of the East, fluent in Assyrian-Aramaic language, and demonstrate competency and leadership skills. . . .

[The beneficiary] is responsible for creating, designing, maintaining, and evaluating all areas of religious education for [the petitioner], either directly or indirectly. The duties he will be undertaking have the following objectives:

1. Teaching Bible, Religious Education, Assyrian-Aramaic language, Assyrian Ancient Civilization, and the History of the Holy Apostolic Catholic Assyrian Church of the East.
2. Providing a solid theological and spiritual foundation for young men for the order of deaconate.
3. Publishing religious, catechetical, linguistic books, and producing booklets and flyers related to the religious and cultural annual events of [the petitioner] such as the Assyrian New Year, Assyrian Martyr Day, and Assyrian Food Festival.

The daily and weekly work schedule for [the beneficiary] as Director of the Assyrian Institute for Religious and Cultural Studies is as follow[s]:

1. Being in the office of the Director of the Assyrian Center for Religious and Cultural Studies from 8:00 am to 3:00 pm daily, where he will be writing books and articles.
2. Teaching Assyrian-Aramaic language for deacons from 11:00 am to 12:30 pm on Fridays. He has finished writing a book for learning Assyrian-Aramaic language for the benefit of [the petitioning] Parish.
3. Teaching Bible, History of the Holy Apostolic Catholic Assyrian Church of the East, Assyrian Catechism, and World’s Religions on Wednesdays, Thursdays, and Fridays from 7:00 pm until 9:00 pm.

4. Facilitating in catechetical programming of the Sunday School from 10:00 am to 11:00 am.

The two letters quoted above indicate that the time the beneficiary spent in religious instruction had dropped from 37 hours per week to eight and a half hours.

The director denied the petition on December 16, 2009, stating that the petitioner had not shown that the beneficiary would primarily engage in religious activities. The director observed that the beneficiary would apparently spend “the majority of [his] time . . . in his office” rather than teaching religion as the petitioner had initially stated.

On appeal, [REDACTED] refers to his previous letters of August 20, 2009:

The first letter explained that the beneficiary was appointed as a full-time religious teacher (8:00 am – 4:00 pm from Monday to Friday) at [the petitioner’s] Assyrian American Christian School (AACS), which was an integral part of the [petitioning] organization . . . from April 2006 until the end of the academic school year in June 2009. . . .

However, due to the heavy financial burden and declining enrollment, [AACS] was officially closed on July 1, 2009. . . .

The second letter explained that the beneficiary was appointed [on] July 23, [2]009 as a full-time Director of the Assyrian Center for Religious and Cultural Studies (8:00 am – 3:00 pm from Monday to Friday, and 7:00 – 9:00 pm from Wednesday to Friday).

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). Here, the original job offer related to a teaching position at a school that no longer exists. After AACS closed its doors, the petitioner claims to have created a new Assyrian Center (or Institute) for Religious and Cultural Studies, but the petitioner has provided no evidence about this new entity or shown that it has any objective existence or purpose other than to justify the beneficiary’s continued employment.

The original job offer, as described in the petitioner’s initial filing, no longer exists. Therefore, USCIS cannot reasonably approve any petition based on that job offer. Likewise, the beneficiary cannot retain a September 2008 priority date based on a position that did not exist prior to August 2009. The petitioner cannot modify the terms of employment after the filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

We note that, on appeal, the petitioner revises the job offer yet again, stating that “[t]he beneficiary was finally ordained as a permanent deacon on November 15, 2009,” and as such “is part of the clergy of the Holy Apostolic Catholic Assyrian Church of the East.” [REDACTED] lists the beneficiary’s new diaconal duties, which overlap, but

differ significantly from both earlier versions of his duties. Counsel, in an appellate brief, asserts that the petitioner has adequately described the nature of the beneficiary's new duties as a deacon.

We do not argue, here, that the beneficiary's work as a deacon cannot qualify him for immigration benefits in the context of a properly filed petition. Nevertheless, the petition at hand was filed in 2008, relating to a teaching position the beneficiary no longer holds, at a school that is now closed. The beneficiary's ordination as a deacon more than a year later does not establish that the director should have approved the petition. The beneficiary's diaconal ordination would be more properly addressed in a new petition, filed after the ordination took place.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.